

shall commence an action against the other, his executors or administrators, in any court of this state it shall be lawful for the defendant at the trial, to set off as against the plaintiff, the debts or demands which may be due and owing to him as aforesaid; and any defendant failing to set off such debts or demands, shall thereafter be precluded from bringing any action for such debt or demand which might have been set off by virtue of this act.

Such debts shall be set off or the defendant barred.

2. That defendant in any such action, in order to avail himself of such set-off, shall plead the same, or give notice thereof in writing, annexed to the plea by him filed in the action.

Defendant shall plead or give notice of his set-off. Ib. § 11.

3. If on the trial it shall appear that there is any debt or demand as aforesaid, due and owing to the defendant, but that the same is not equal in amount to the amount which shall be due to the plaintiff, on his cause of action, it shall be the duty of the jury to allow, and set off so much as shall be found to be due and owing to such defendant, against the claim of the plaintiff, and to find a verdict for the balance; upon which the plaintiff shall have judgment and execution, as in other cases.

Plaintiff shall recover only balance due him. Ib. § 13.

4. If on the trial, the amount found to be due to the defendant on his set-off, shall equal, or exceed the amount found to be due to the plaintiff on his cause of action, the defendant shall be entitled to a verdict and judgment; which verdict and judgment shall, in case of such excess, be for the amount or balance, which shall appear to be due to the defendant on the adjustment and allowance of the debts and demands of the parties under this act; and upon such judgment, the defendant may have an action of debt, or a *scire facias*, or may issue execution thereon, as in other cases; unless the plaintiff is suing in his representative capacity, as executor or administrator, in which case the sum so found to be due the defendant, shall be deemed a debt of record, to be paid in the course of administration.

If amount due defendant shall equal or exceed plaintiff's demand, the defendant shall have judgment. Ib. § 14. Remedy on such judgment.

Sheriffs.

I. SHERIFFS.

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SHERIFFS.

I. Sheriffs.

An act concerning sheriffs.

Approved March 15, 1876.

P. L. 1876, p. 33.
Who eligible to
the office of
sheriff.

R. S. 833, § 1.

Sheriff to give
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Ib. § 3.

Form of oath.

1. That no person shall be sheriff of any county in this state, unless he shall have been a citizen of this state and an inhabitant of such county for at least three years next preceding his election.(a)

2. That the judges of the courts of common pleas in the several counties of this state, shall meet at the office of the clerk of the said court, in their respective counties, on the first Tuesday after the close of the annual election of members of the general assembly, on the penalty of fifty dollars for each defaulter, to be sued for and recovered by the collector of the said county, and applied to the use of the same; at which time and place the sheriff for the time being or sheriff elect, as the case may be, of the same county is hereby required and enjoined to attend with the certificate of his election and not less than five sufficient sureties, being freeholders and residents in the same county, to be approved of by the judges then met or the major part of them, and then and there, before the said judges, with such approved sureties, shall enter into bond for the faithful execution of his office in the sum of twenty thousand dollars, or in such greater sum not exceeding fifty thousand dollars as the said judges or the major part of them may order, which bond shall be in the form following, to wit:

"Know all men by these presents, that we, A. B., C. D., E. F., G. H., I. K., and L. M., all of the county of _____, are held and firmly bound to the state of New Jersey in the sum of _____ thousand dollars, to be paid to the said state, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals; dated this _____ day of _____ in the year of our Lord _____; the condition of the above obligation is such, that if the above bounden A. B. shall well and truly execute the office of sheriff of the county of _____, and in all things touching his said office shall well and truly, justly and faithfully perform and execute the same as well with respect to all persons concerned(b) as to the state aforesaid, then this obligation to be void, or else to be and remain in full force and virtue; signed, sealed and delivered in the presence of, and approved by us,

A. B. }
C. D. } judges of the pleas in and for the county of
E. F. &c. }

to the execution of which bond, the said judges, then present shall be subscribing witnesses; and the said bond so as aforesaid executed by the said sheriff or sheriff elect and his sureties, and approved of in the manner before prescribed shall be filed and securely kept in the office of the clerk of the court of common pleas, in and for the same county.

3. That every sheriff elect after having entered into bond as aforesaid, shall take and subscribe before the said judges, an oath or affirmation in the words following, to wit: "I do solemnly swear (or affirm), that I will well and truly serve the state of New Jersey in the office of sheriff of the county of _____; that I will in no case knowingly use or exercise the office of sheriff illegally, corruptly or unjustly; that I will neither directly or indirectly by any means or device, or under any color or pretense whatsoever, accept, receive, take, use, or enjoy, or consent to the accepting, receiving, taking, using or enjoying, any fee or reward of or from any person or persons whomsoever, for summoning, empanneling, or returning any inquest, jury or tales, other than such fees or rewards as are or shall be allowed by law; that I will not directly or indirectly exact, demand, or receive any manner of fee or reward from any person or persons, for serving, executing, or returning any writ, precept, process, or execution, or for performing any other service, act, or duty in my said office, other than such fees or reward as are or shall be allowed for the same by law;

(a) A commission affords no proof that the person elected was qualified according to law, *State v. Anderson*, Coze 318. His commission does not authorize the court to presume that he was eligible, *Ibid.* 326. When properly

called on by the court, it is incumbent on the sheriff to prove that he was eligible, *Ibid.*

(b) This includes the assignee or equitable owner of any judgment or execution, *State v. Smith*, 3 Gr. 84.

that I will not neglect, refuse, or delay to serve and return any writ, precept, or execution, to me directed and delivered, and to make sale of property by me levied upon and seized by virtue of any writ or execution, for any gift, promise, reward, or favor; that I will do no wrong to any person, for any gift, reward or promise, nor for favor or hatred; that I will do right to all persons in all things belonging to my office; that I will truly, faithfully and impartially and with all convenient speed, summon, empanel and return, or cause to be summoned, empaneled and returned, good and lawful men for jurors, able and sufficient and not suspected or procured, as is or shall be directed by law; that I will to the utmost of my power duly, faithfully, and with all convenient speed, execute, or cause to be executed all writs, processes, precepts, and executions to me directed, and which shall come to my hands, and will faithfully and truly return the same, according to the best of my skill and understanding; and that I will truly and honestly, without fraud or deceit, do, execute, and perform all services, acts, and duties of my said office, according to the best of my judgment, skill, and power;" and such oath or affirmation in writing, subscribed as aforesaid and attested by the said judges or a major part of them, shall be filed and securely kept in the office of the clerk of the court of common pleas, in and for the same county.

Oath to be filed by clerk.
Ib. § 4.

4. That the said judges, after having taken the bond and administered the oath or affirmation of office as aforesaid, shall deliver to every sheriff elect a certificate thereof, under their hands and seals, directed to the governor of the state in the form following: "This day personally appeared before us the subscribers, judges of the court of common pleas in and for the county of _____, A. B. and executed a bond to the state of New Jersey, with sufficient sureties by us approved, for the faithful execution of the office of sheriff of the said county of _____, and subscribed the oath of office in due form of law; given under our hands and seals, the _____ day of _____, in the year of our Lord _____;" which certificate shall be annexed to the certificate of election aforesaid and by the said judges delivered to the sheriff elect, to be by him transmitted to the governor, in order to be commissioned; and the said judges then present, shall for their services aforesaid, be severally entitled to the sum of one dollar and fifty cents, which the collector of the county is hereby authorized and required to pay out of any public moneys he may have in his hands.

Judges to make certificate to the governor.
Ib. § 5.
Form of certificate.

5. That every sheriff shall, on receipt of such certificate of his having given bond and taken the oath of office as aforesaid, be and he is hereby authorized to act in and execute his office of sheriff, before receiving his commission, for the space of one month and no longer, as fully to all intents and purposes as he will be after he has received his commission.

Sheriff then authorized to act.
Ib. § 6.

6. That the commission of every sheriff elected at any general election shall bear date and take effect on the Wednesday after the first Tuesday succeeding such general election, and his term of office shall expire on the first Tuesday after the third succeeding general election.

Date of commission and expiration of office.
Ib. § 7.
Amended.

7. That until the sheriff elect shall enter into bond and take the oath of office as aforesaid, the coroner or coroners last elected shall serve and execute all writs and process directed to the said sheriff.

Until sheriff qualified coroners to act.
Ib. § 8.

8. That if any sheriff elect shall presume to execute the office of sheriff before he shall have given bond and taken the oath of office, agreeably to the directions of this act, then all such his acts and proceedings done under color of office shall be absolutely void, and he shall for such offence be liable to be indicted for a misdemeanor, and on conviction fined in any sum not exceeding two thousand dollars.

Sheriff not to act till qualified.
Ib. § 9.

9. That if any person who shall have been elected to the office of sheriff shall neglect, refuse or be unable to give bond with sureties as aforesaid, or shall refuse to take the oath of office, agreeably to the directions of this act, at the times herein limited, then such office shall be deemed and taken to be vacant and such vacancy shall be supplied in the manner hereinafter prescribed.

Office when to be deemed vacant.
Ib. § 10.
Amended.

10. That if any sheriff for the time being of any county shall neglect, refuse or be unable to give bond with sureties as aforesaid, agreeably to the directions of this act, at the time or times herein limited, the office of

Penalty for presuming to act without giving bond.

such sheriff shall immediately expire and shall be deemed and taken to be vacant; and if such sheriff shall thereafter presume to execute the office of sheriff, then all such his acts and proceedings done under color of office shall be absolutely void, and he shall for such offence be liable to be indicted for a misdemeanor, and on conviction fined in any sum not exceeding two thousand dollars.

Governor may order prosecution of sheriff's bond.

R. S. 833, § 11.

Of suits and judgments on sheriff's bonds.

Ib. § 12.

Proviso.

Sheriff or his sureties not to be discharged from liability on any bond upon which suit is brought.

11. That it shall and may be lawful for the governor, or person administering the government, upon application made in writing by any person, his legal representative or attorney, who may be aggrieved, or suppose himself to be aggrieved, by the neglect, default, malpractice or misconduct of any sheriff in his office, to order a prosecution to be commenced upon the proper bond given or to be given by such sheriff and his sureties, and to be carried into effect at the costs and charges of the applicant.(a)

12. That all suits upon bonds given by sheriffs and their sureties in manner aforesaid, shall be instituted in the supreme court and not elsewhere; and when judgment shall be obtained upon any such bond the said court shall direct so much money to be levied on such judgment as shall be sufficient to satisfy the party aggrieved for his debt or damages, with costs, to be paid to the said party and upon the satisfaction of such debt, damages and costs such judgment may be satisfied of record; *provided*, there be no application to said court for relief thereon then pending; and if after judgment obtained upon such bond and before the same be actually satisfied of record, any other party aggrieved by the neglect, default, malpractice or misconduct of such sheriff in his office shall apply to the supreme court for relief, the said court shall direct such further sum to be levied thereon as shall be sufficient to satisfy such party for his debt or damages, with costs, and so on as often as application shall be made by parties aggrieved; and such judgment shall not be satisfied or discharged, of record so long as any application to said court for relief thereon be pending in said court.

13. That neither the obtaining of a judgment, as provided for in the preceding section, nor the satisfaction thereof, nor any proceedings thereon, shall operate or have the effect to discharge any sheriff or his sureties, or any or either of them, from liability on any bond upon which suit shall be or shall have been brought, but fresh suit may be instituted thereon, in manner aforesaid, as often as circumstances require, the same as if judg-

(a) A sheriff's sureties for one year are not liable for money raised by him in that year, on an execution of another year, *State v. Hardenburgh, Pen. *355*. Where the sheriff made a levy between the time of the delivery of the execution and the expiration of his term, but did not return the writ until after his re-election. *Held*, that those who were his bondsmen when he began the execution of the writ, are liable for all subsequent defaults in relation thereto, *State v. Hamilton, 1 Harr. 153, 156*. If the breach charged consisted in not levying at the time when the execution was delivered, it should be shown that the neglect was after the execution of the bond; and also that the defendant in execution then had lands or goods whereon the levy might have been made, *State v. Roberts, 7 Hal. 114*. If an execution is delivered to a sheriff four days before his term of office expires, and he has the means and opportunity of levying it upon the property of the defendant, and omits to do so to the prejudice of the plaintiff, he thereby renders himself and his sureties responsible, *Ibid.* A sheriff who levies a *fi fa.* on the estate, real or personal, of a defendant, is to finish the execution of the writ, although his term of office afterwards expires; and if he neglects so to do, or if having afterwards made sale, he refuses or neglects to pay over the moneys his sureties in the official bond in force at the time he received the execution will be responsible, *Ibid.* If an execution remains in the hands of a sheriff wholly unexecuted, until by a new election he is again charged with the office, it becomes his duty to execute the writ and make due return; and an omission to perform such duty will constitute a breach of his official bond, *Ibid.* A breach of duty by a sheriff in wholly neglecting to execute an execution does not necessarily preclude or prevent the occurrence of a subsequent breach of duty by his successor, into whose hands the writ may come unexecuted, in neglecting to execute it; nor by the same person holding the office of sheriff under a new election, *Ibid.* Where a sheriff, having an execution against the goods and chattels of one person, levies upon and sells the goods of another, it is not a breach of the condition of his official bond, and does not make his sureties liable to the party whose property is taken, *State v. Conover, 4 Dutch. 224*. If an officer

seize the property of a person not named in the writ, it is not an official act done by virtue of his office, but unofficial, and done by color of the office, *Ibid.*

A sheriff's bond may be put in suit at the instance of the assignee or equitable owner of any judgment or execution, *State v. Smith, 3 Gr. 85*. But not by a party injured by a tort of the sheriff, *State v. Conover, 4 Dutch. 224*.

Where it is assigned as a breach that A. and B. recovered a judgment in the name of C. against D. for damages sustained by C. and it is then alleged that the promises made by D. to C. the judgment recovered by the latter against the former and the execution issued thereon were for the use, &c. of A. and B. *Held*, that the pleading is unintelligible, for there can be no record of a recovery at law by A. and B. in the name of C., *State v. Smith, 3 Gr. 84, 86*. There may be a recovery by C. for the use of A. and B., and if such be the case the facts should be so pleaded that the sheriff may put either of them in issue, *Ibid. 87*. *Held* also, that it is double pleading, inasmuch as there is first an averment that A. and B. recovered in the name of C. and afterward another that the promises on which the action was brought, judgment recovered, and execution issued, were for the use, &c. of A. and B., *Ibid.* It is not necessary to assign breaches on the record, after a judgment by default on a sheriff's bond, *State v. Edsall, 5 Hal. 190*.

A notice to assess damages upon a judgment entered upon a sheriff's bond, is properly served upon the sheriff and his sureties, and need not be served upon the attorney, who appeared for the defendants in the suit on the bond, *State v. Edsall, 5 Hal. 190*. Although more than a year and a day have elapsed since an amercement was entered, no *scire facias* is necessary, since the notice of the motion takes its place, *State v. Hamilton, 1 Harr. 153*. The motion for assessment is a summary proceeding admitting all the defences which may be pleaded by the sheriff in bar of execution if a *scire facias* had been issued, *Ibid.* On such motion the court cannot go back of the amercement, *Ibid. 157*. Applications for assessments on a sheriff's bond are limited to six years, *State v. Hardenburgh, Pen. *355*. See *Knowlton v. Read, 6 Hal. 320*.

ment had not been obtained thereon and the same satisfied of record; *provided*, that the sureties in any sheriff's bond shall not be charged by virtue of this act beyond the sum contained in such bond.

14. That the sheriff of every county of this state shall have the custody, rule, keeping and charge of the jail or jails within such county, and of all prisoners in such jail or jails; and shall be responsible for the conduct of any keeper whom he shall appoint for the same, except where the board of chosen freeholders of any county may have appointed or may hereafter appoint a warden or keeper of such jail or jails.

Sheriff to have custody of jail.

R. S. 853, § 13.

15. That it shall be the duty of sheriffs and jailors to receive from constables and other officers all persons who shall be apprehended by such constable or officers for offences against this state; and if any sheriff or jailor refuse to receive any such offenders, he shall be adjudged to be guilty of a misdemeanor, and, on conviction, shall be fined at the discretion of the court.

To receive prisoners.

Ib. § 14.

16. That every sheriff, undersheriff, coroner, jailor and other officer, shall let out of prison all persons who are or shall be arrested by them or any of them, or be in their or any of their custody, by virtue of any writ, process or warrant, in any personal action or by reason of any indictment for trespass, upon reasonable sureties of competent persons, having sufficient within the counties where such persons shall be so let to bail, to appear at such day and place as the said writ, process or warrant shall require, except such person or persons as are or shall be in custody or prison by condemnation, execution, surety of the peace, or special command of any court of justice; and that no sheriff, nor any of the officers or ministers aforesaid, shall take or make, or cause to be taken or made, any obligation for any cause aforesaid, or by color of his or their office, of any person, or by any person who shall be in his or their custody or prison by course of law, but only to themselves respectively, and by the name of their office, and upon condition written, that the said prisoner shall appear at the day and place mentioned and contained in said writ, process or warrant; and if any sheriff or other officer, or minister aforesaid, return upon any person, that he hath taken the body, or that such person hath surrendered himself or herself, such sheriff or other officer or minister shall be chargeable to have the body of such person, at the day of the return of the said writ, process or warrant, in such form as he or they were before the making of this act. (a)

Who may be let out on giving bail.

Ib. § 15.

Form and condition of bail bond.

17. That sheriffs and other officers, whose duty it is or shall be to make return of any writ or process, shall put their own names to the return of such writ or process, so that the court may know of whom they receive such return; and any sheriff or other officer, who shall not sign such return shall be amerced, and also answer damages to the party. (b)

Returns of process, how made.

Ib. § 17.

18. That no sheriff, undersheriff, coroner, or officer or minister, shall convey or carry or cause to be conveyed or carried any person or persons, by him or them arrested, or being in his or their custody, by virtue or color of any writ, process, or warrant, to any tavern, ale house, or other public victualling or drinking house, without the free and voluntary consent of the person or persons so arrested or in custody; nor charge any such person or persons with any sum of money for wine, brandy, rum, gin, spirits, ale, cider, beer, victuals, or any other liquor or things whatsoever, except what he, she, or they shall call for of his, her or their own free accord; nor shall cause or procure him, her or them to call or pay for any such liquor, victuals, or thing except what he, she, or they shall particularly and freely ask for; nor shall demand take, or receive, or cause to be demanded, taken, or received, directly or indirectly, any other or greater sum or sums of money than is or shall be by law allowed to be taken or demanded for such arrest, taking and detaining, or waiting until the person or persons so arrested or in custody, shall have given an appearance or bail, as the case may require or agreed with the person or persons at whose suit or prosecution he, she, or they shall be taken or arrested, or until he, she, or they shall be sent to the proper jail of the county or

Duty of sheriff and other officers in regard to prisoners in custody.

Ib. § 18.

(a) Where a sheriff, *colore officii*, takes a bond for the performance of matters not authorized by the statute, the bond is void. *Allen v. Smith*, Sax. 43. See *Griggs v. Drake*, 1 Zab. 169. An action for a rescue can only be brought by the sheriff, *Breuster v. Vail*, Spen. 56, 58.

(b) The return must be proved by the person in whose handwriting it appears to be. *Den, Lee v. Ercoul, Coxe* 283. *Browning v. Flanigin*, 2 Zab. 567.

place where such arrest or taking shall be; nor shall exact or take any reward, gratuity, or money for keeping the person or persons so arrested or in custody out of jail or prison; nor shall take or receive any other or greater sum or sums for one or more nights' lodging or day's diet or other expenses, than what is or shall be allowed by law.

Privileges allowed prisoners.
Ib. § 19.

19. That every sheriff, undersheriff, jailor, keeper of any prison or jail, or other person or persons whomsoever, to whose custody or keeping any person or persons so arrested or taken shall be committed by virtue of any writ or process, or on any pretense whatsoever, shall permit and suffer him, her, or them so arrested or taken, at his, her, or their will and pleasure to send for and have any victuals or necessary drink or food from what place and whom they please, and also to have and use such bedding, linen, and other things, as he, she or they shall think fit, without purloining or detaining the same, or any part thereof or enforcing or requiring him, her, or them to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her, or them in using thereof or relating thereto.

Debtors and criminals to be kept separate.
Ib. § 20.

20. That it shall not be lawful for any sheriff, jailor or keeper of any jail to confine or keep debtors and criminals together in the same room or chamber, but they shall be confined and kept separate and apart from each other in distinct rooms.

Penalty for violating three preceding sections.
Ib. § 21.

21. That if any sheriff, undersheriff, coroner, jailor or other officer, or minister aforesaid, shall offend against the three clauses or sections immediately preceding, or any of them, or any part thereof, every such offender shall, besides being punished on conviction for a misdemeanor forfeit and pay double damages to the party aggrieved, to be recovered, with costs, by action of debt in any court having cognizance thereof.

For what causes sheriff may be amerced.
Ib. § 22.

22. That if any sheriff or coroner shall neglect or refuse to execute any writ of execution to him directed, and which hath or shall come to his hands, or, where the execution shall be by *feri facias*, shall neglect to file a just and true inventory of the goods and chattels, lands and tenements, so taken in execution, unless such sheriff or coroner return that he hath levied to the value of the debt or damages and costs, or shall voluntarily or negligently omit for the space of two months, rendering to the plaintiff or plaintiffs his, her or their representative or attorney, the money which he shall have received from the sale of the estate, real and personal, of the defendant or otherwise, he shall be amerced in the value of the debt or damages and costs, to and for the use of the said plaintiff or plaintiffs; *provided*, that ten days' notice in writing shall be given to such sheriff or coroner by the plaintiff or plaintiffs, his her or their representative or attorney, before any motion shall be made for such amercement; which said amercement, so as aforesaid ordered by the court, shall have the force and effect of a judgement; whereupon execution, in the name and for the use of such plaintiff or plaintiffs, or his, her or their representatives, may instantly, on motion in open court, and without any further proceedings, be awarded and issued against the goods and chattels, lands and tenements of such sheriff or coroner so amerced as aforesaid; *provided*, that nothing in this act contained shall prevent the party injured from proceeding, at his election, against such sheriff or coroner by attachment according to law.^(a)

(a) For returning an insufficient inventory, the sheriff will be amerced for the amount of the debt and costs, *Watson v. Hoel, Coxe* 136. It is not a ground to amerce a sheriff that he has not returned an execution according to law, *Ritter v. Mersels*, 4 Zab. 627. *Waterman v. Merrill*, 4 Vr. 378. *Hoagland v. Todd*, 7 Vr. 352; 8 Vr. 544. That section of the practice act which provides for the amercement of the sheriff in case he fails to make return of "any summons, *ca. res.*, or other process," refers to mesne process and not process of execution, *Ibid.* 628. Where there are goods upon which an execution might operate with effect, the fact that there is no inventory filed, is ground for amercement, *Todd v. Hoagland*, 7 Vr. 352. Where the sheriff is specially instructed to proceed immediately on a *fi. fa.*, and does not dispute the instructions, it is no excuse that he had offered the property for sale after the term at which the execution was returnable, and had adjourned two or three times for want of bidders, the plaintiff not being specially informed of either, *Lorillard v. Welsted*, 3 Hal. 271. If he be ruled to return his writ, he is liable to amercement, unless it be accompanied by an inventory, save when, as the statute directs, he returns that he has levied to the

value of the debt or damages and costs, *Hoagland v. Todd*, 8 Vr. 544, 546. Where the court directed an order to be entered for the appearance of the defendants, pursuant to the act for the relief of creditors against corporations (*P. L.* 1817, § 3), and before judgment in such suit the sheriff had sold under a judgment by confession in favor of a third party. *Held*, that the sheriff may be amerced for refusing to sell under execution in the suit first begun, *Stansbury v. Pal. Cloth Co.*, 2 South. *433—see opinion of *Southard, J.*, dissenting, *Ibid.* *442; reversed, *Id.* *861. A sheriff cannot be amerced for refusing to grant an adjournment of his sale, *Hoagland v. Todd*, 8 Vr. 544. But he may be amerced for neglecting to execute his writ, and any misconduct which substantially deprives the party of the substantial benefit of the writ, is such neglect, *Ibid.* He may be amerced if, after levy, he permits the defendant in execution (who is a store keeper) to continue selling the goods taken in execution, *Ibid.* The words, "writ of execution," apply to writs of *fi. fa.* as well as to writs of *ca. sa.*, *Kemble v. Harris*, 7 Vr. 526, reversing 6 Vr. 392. Where there is adverse claim to property levied on by a sheriff and the plaintiff's attorney and the sheriff are in correspondence

23. That when an amercement as aforesaid has been obtained against any sheriff or coroner, it shall be lawful for the court, at the request of the plaintiff or plaintiffs, his, her or their attorney or legal representative, to appoint one or more elisor or elisors, to whom the execution upon such amercement shall be directed, and who, on accepting such appointment and receiving such execution, shall have as full power and authority to levy upon, seize and sell the estate, real and personal, of such sheriff or coroner and make deed or deeds for the same and in all things to execute the said writ of execution, as any sheriff might or could have by law, in cases of execution to him directed, and shall be entitled and liable to the like fees and penalties.

Elisors appointed.
Ib. § 23.

Their powers and duties.

24. That the court of common pleas, and circuit court in and for the respective counties of this state, shall have the like power in cases of contempt and disobedience as aforesaid, to award attachments, and proceed thereupon against the sheriff or coroner of such county where the said court is held, as the supreme court now hath or hereafter shall have.

Pleas may award attachment for contempt.
Ib. § 24.

25. That in case of a sale on execution made by a sheriff, undersheriff, coroner or other officer, he shall, within thirty days thereafter, file in the clerk's office of the court out of which the execution issued, a true statement and calculation, in order of time, of the execution or executions in his hands upon which such sale was made, and the amount due thereon,

Statement of sales to be filed by sheriff within thirty days thereafter.
P. L. 1847, p. 4, § 2.

as to the action to be taken in the premises, the latter asking and the former promising instructions, the sheriff is not liable to amercement for not proceeding to sale until he shall have disobeyed or disregarded positive, reasonable and lawful directions to that end, *Ibid.* For not taking a bail bond, the sheriff is liable to be amerced, *Cunningham v. Jaques*, 4 *Harr.* 42, 44. Where an irregular return to a *fi. fa.* has been filed, and the plaintiff proceeds to sue out a *ca. sa.* which is executed, he cannot amerce the sheriff on the ground of irregularity in his proceedings, *Hustick v. Allen*, *Coxe* 168. A sheriff may be amerced after he is out of office, *Ibid.* If, after a motion to amerce, the plaintiff gives the sheriff time, and he neglects to raise the money during such time, or to proceed to a sale, as he ought to do, and has time enough to do, he will be amerced, *Scott v. Dow*, 2 *Gr.* 350. The word "execute" means to "fulfill or complete the execution," *Ibid.* *Waterman v. Merrill*, 4 *Vr.* 378, 381. *Kemble v. Harris*, 7 *Vr.* 526, 529.

A sheriff will not be amerced if the plaintiff has, by his own interference, prevented him from discharging his duties, *Stryker v. Marseles*, 4 *Zab.* 542. Directions to stay proceedings on an execution, given by one of the assignors, and a guarantor of the bond sued on, are not sufficient to excuse a sheriff from amercement. He should accept directions only from the plaintiff or his attorney, *Stephens v. Clark*, 3 *Hal.* 270. If he cannot levy, he is not accountable to the plaintiff, *Lloyd v. Wyckoff*, 6 *Hal.* 216, 218. Where an execution was delivered to the sheriff on its return day, and a levy made two days afterward, and the sheriff states these facts to the plaintiff's attorney, on a motion to amerce, the sheriff is not estopped from setting up that such levy was a nullity, *Kemble v. Harris*, 7 *Vr.* 526, 530. A letter was received by the sheriff from the plaintiff's attorney, after levy made, and before the return of the writ, in these words: "you may delay proceeding till you hear from me or Mr. W., holding on to your levy." *Held*, that such an interference with the regular course of proceedings under the execution, amounts to an acceptance and ratification by the plaintiff, of whatever had been done or omitted by the sheriff up to that time, so far, at least, as to preclude the plaintiff from alleging any such act or omission as a ground of amercement, *Waterman v. Merrill*, 4 *Vr.* 378. Where the amercement had been waived, and time given, and the sheriff afterwards advertised the property for sale, and notified the plaintiff thereof, and adjourned several times for want of bidders, and at the time of the motion the sale stood adjourned, the court would not at the second term after waiver of said notice order the sheriff amerced, *New Brunswick Bank v. Welsted*, 3 *Hal.* 271. If the plaintiff by letter directs the sheriff "to adjourn the sale and stay until further orders," he cannot on an application to amerce the sheriff, insist that the officer did not make a full and complete inventory of the personal property on which he levied, *Paterson Bank v. Hamilton*, 1 *Gr.* 159. By giving such directions to the sheriff, the plaintiff accepts and ratifies the return, and absolves the sheriff from any neglect to execute the writ, which had previously occurred; at least so far as to preclude the plaintiff from setting up those matters as grounds of amercement, *Ibid.* If the plaintiff, after notice of amercement, informs the sheriff by letter, that he should not move to amerce him in pursuance of such notice, but should trust to his raising the money in the following vacation," he cannot afterwards move to amerce the sheriff because he has neglected to file a just and true inventory of the goods and chattels of the defendant, *Scott v. Dow*, 2 *Gr.* 350. So, if after directing his attorney to proceed against the sheriff for not selling, the plaintiff's agent gives the sheriff instructions incompatible with the notice of amercement, *Le Roy*

v. Blauvelt, 1 *Gr.* 341, 342. Where the sheriff of B. returned a *fi. fa.* under which a levy of six cents was made, and then a *testatum fi. fa.* was directed to the sheriff of E., giving credit for such sum, the sheriff of E. cannot object to an amercement, on the ground that the money should be first made out of the sheriff of B., *Trenton Bridge Co. v. Ward*, 1 *South.* 320. A sheriff is not by a levy and sale estopped from denying the plaintiff's title to the proceeds, nor from showing that he had levied on and sold, by mistake, property not subject to seizure and sale under plaintiff's execution, *Hopkins v. Chandler*, 2 *Harr.* 299. *Harris v. Kirkpatrick*, 6 *Vr.* 392. *Lomerson v. Hoffman*, 1 *Dutch.* 625. *Browning v. Flanigan*, 2 *Zab.* 567.

That the sheriff has served and returned a *capias* which was enclosed with the notice, is strong evidence that both papers came to his hands; but not that he received them ten days before the first day of the term, *Melvin v. Purdy*, 2 *Harr.* 162. Service of notice of amercement on the sheriff must be a personal service, *Anonymous* 1 *Hal.* 159. Proof of notice sent by mail is not sufficient, *Ibid.* Such notice is operative from the time of service, and is good without a date, or with an impossible date, *Scott v. Dow*, 2 *Gr.* 350. A notice of amercement must state a legal ground of amercement specifically, and with the same certainty as is required in a declaration. A notice of amercement "for not having returned said execution according to law, and for neglect of duty by you in relation to said execution," is insufficient, *Ritter v. Marseles*, 4 *Zab.* 627. It is not sufficient in a notice to a sheriff of a motion to amerce, to assign as the ground, that it is "for not executing the writ of execution." The notice must assign neglect or refusal to execute it, as the ground, *Harris v. Kirkpatrick*, 6 *Vr.* 392, 395. *Stryker v. Marseles*, 4 *Zab.* 542. Notice of a motion to amerce need not be given to the sheriff's sureties, *State v. Hamilton*, 1 *Harr.* 153, 156. *Nil debet* is no plea to an action of debt on an amercement, *Canfield v. Allen*, *Coxe* 203. The supreme court will set aside a judgment of amercement which has been improvidently entered, *Le Roy v. Blauvelt*, 1 *Gr.* 341. Judgment of amercement may be entered against the sheriff, to stand as security, although the judgment upon which the execution issued was opened, *Bell ads. Kelly*, 2 *Harr.* 270, 275.

The sureties, although not parties to the proceedings to amerce, are nevertheless concluded thereby, *State v. Hamilton*, 1 *Harr.* 153, 156.

On motion to amerce, the burden of showing that property of which the defendant was found in possession and on which a levy was made, was not the property of the defendant, is upon the sheriff, *Harris v. Kirkpatrick*, 6 *Vr.* 392, case reversed, 7 *Vr.* 526. An alleged fraud in the exercise of the sheriff's discretion as to adjournments, cannot be investigated on a motion to amerce, *Hoagland v. Todd*, 8 *Vr.* 544, 546. So far as it draws in question the truth of the return, the proceeding by amercement may be considered as standing in the place of an action on the case for a false return, and as governed by the same principles, both as to the matters to be proved and the amount of proof required, *Waterman v. Merrill*, 4 *Vr.* 379. If a plaintiff assigns all his interest in a suit to A. and B., and then takes the benefit of the insolvent law, and the sheriff is appointed his assignee, and the suit is carried on to judgment and execution, and the sheriff raises the money thereon, but does not pay it over to A. and B., an amercement will not be ordered against him, without proof that he had notice of the assignment to A. and B., and that he had voluntarily omitted or neglected to pay them after such notice, *State v. Salem Pleas*, 5 *Hal.* 319.

respectively, at the time of such sale mentioning the time or times of sale, as also the amount of sales, certified under his hand, together with his bill of costs, or execution fees, for which service he shall be entitled to one dollar; *provided*, that such statement, so filed, shall not be conclusive against any person other than such officer; *and provided*, that if there be more sales than one, such statement shall be made and filed within thirty days after the final sale.

Prisoners to be actually detained in prison.

R. S. 833, § 25.

26. That all prisoners, either upon contempt or mesne process, or in execution who are or shall be committed to any prison, shall be actually detained within such prison until they shall be from thence discharged by due course of law; and if at any time the keeper of any prison shall permit or suffer any prisoner committed to his custody either upon contempt or mesne process, or in execution, to go or be at large out of prison except by virtue of some writ of *habeas corpus* or rule of court, (which rule of court shall be granted only on motion made or petition read in open court) and except, also, when otherwise provided by law, every such going or being out of the said prison shall be adjudged and deemed, and is hereby declared to be an escape. (a)

Prisoners for debt, etc., to be safely kept.
Ib. § 26.

27. That every person who, by virtue of any writ of execution against his body, for any debt recovered or acknowledged, or damages assessed, awarded or adjudged in any court of record, hath been or hereafter shall be taken or arrested by any sheriff or other officer, to whom any such writ hath been or shall be directed, and every person who hath been or shall be committed to the custody of any sheriff or other officer, in execution for any such debt or damages, shall be safely kept in prison in close and secure custody, without bail or mainprise, except when otherwise provided by law, until he shall satisfy and pay such debt, or damages; and if any such sheriff or other officer shall permit or suffer any such person so taken, arrested or committed, or hereafter to be taken, arrested or committed, to go out of prison or be at large, by bail, mainprise, or otherwise, without the assent and agreement of the plaintiff, such sheriff or other officer shall thereby become answerable to the plaintiff for the debt or damages for which such person was or shall be taken, arrested, or committed; and the plaintiff may recover the same, with costs, by action of debt against such sheriff or other officer.

Or sheriff liable.

So if in custody on process from chancery.
Ib. § 27.

28. That if any person is or shall be in the custody of any sheriff or other officer for not performing any decree of the court of chancery, whereby money is ordered or decreed to be paid, and shall escape from the said sheriff or other officer, then and in every such case, the person or persons, his, her or their executors or administrators, to whom the money was to be paid by the said order or decree, shall have the same remedy against the said sheriff or other officer as if such person so escaping had been in custody upon an execution at law, and shall recover the money ordered or decreed to be paid to him, her or them in and by such order or decree against such sheriff or other officer, with costs, in any action of debt or upon the case, to be brought against such sheriff or other officer in any court of record of this state.

Retaking, etc., must be pleaded, and oath necessary.
Ib. § 28.

29. That no retaking on fresh pursuit shall be given in evidence on the trial of any issue in any action of escape against any sheriff or keeper of any prison, unless the same be specially pleaded, nor shall any special plea be taken, received or allowed unless oath or affirmation be first made in writing by such sheriff or keeper of such prison, against whom such action shall be brought, and filed with such plea, that the prisoner, for whose escape such action is brought, did, without his consent, privity or knowledge, make such escape; and if such affidavit shall at any time afterwards appear to be false, such sheriff or keeper of such prison, shall on conviction thereof, be adjudged to be guilty of a misdemeanor, and be punished by fine not exceeding fifteen hundred dollars.

Duty of sheriff or his deputies if resistance made.
Ib. § 29.

30. That when the sheriff, or any of his deputies, find that resistance will be made against any process of execution, the sheriff, laying aside all other business, and taking with him the power of the county, shall forth-

(a) As to what constitutes an escape, see *Patten v. Halsted*, 1 Harr. 350. *Patten v. Halsted*, Coze 277. *Dunham v. Solomon*, 1 Harr. 50. *Camp v. Allen*, 7 Hal. 1. *Smith v. Allen*, Sax. 43. *Cramer*, 2 South. *498. *Eayre v. Earle*, 3 Hal. 359. *Woodruff v. Barrett*, 3 Gr. 40. *Browning v. Rittenhouse*, 9 Vr. 279. *Anderson v. Radley*, Pen. *1035. *Beatty v. Ivins*, Pen. *623. For pleadings and proceedings, see *Jones v. Pemberton*, 2 Rogers v. Brundred, 1 Harr. 159.

with go in his proper person and execute the same; and if he find resistance, he shall certify to the court the names of the persons making such resistance, their aiders, assistants, favorers, and procurers, so that they may be proceeded against according to law.

31. That if any person hath been or shall be condemned in any court of record of this state, and hath been or shall be by virtue of such condemnation committed to prison, there to remain until he or she make satisfaction to the party to whom he or she is or shall be condemned, and any writ or writs shall be granted, commanding the sheriff or keeper of the prison where such prisoner is held, to have the body of such prisoner, with the cause of his or her imprisonment, in the court of chancery or supreme court, or before the chancellor or any judge or justice of the supreme court, and it be returned upon the said writ or writs that the said prisoner is condemned by judgment given against him or her, then, and in every such case, such prisoner shall be immediately remanded, and remain in prison according to law until satisfaction be made for the sum adjudged.

When prisoner to be remanded on habeas corpus. Ib. § 30.

32. That the sheriff of each county in this state shall keep a true account of all the moneys by him paid out under the directions of the third section of an act entitled "An act concerning juries," approved March twenty-seventh, eighteen hundred and seventy-four, and submit the same for examination to the clerk of the court, who is hereby required to examine said account, and certify the same, if found correct; and the said sheriff, upon the production of said account, so certified to the county collector, with an affidavit annexed thereto that the said account is just and true and that the money claimed by him is justly and honestly due to him, shall be paid the amount so due him by said collector, who shall be entitled to an allowance for the same in the settlement of his accounts with the board of chosen freeholders of his county.

Sheriff to keep account of moneys paid out under jury act.

P. L. 1847, p. 4, § 1.

To be paid by county collector.

33. That the sheriff and keeper of every jail in any county of this state shall be and he is hereby authorized and commanded to receive all prisoners committed to his custody, by the authority of the United States, and to keep them safely until discharged by the due course of the laws of the same; and if any sheriff or jail keeper shall neglect or refuse to perform the services and duties required of him by this act, or shall offend in the premises, he shall be liable to the like penalties, forfeitures and actions, as if such prisoners had been committed under the authority of this state; *provided always*, that every prisoner who shall be committed for any offence by the authority of the United States shall be supported by the same during his confinement in said jail.

Sheriff, etc., to receive prisoners committed under authority of the United States.

R. S. 314.

Proviso.

34. That the sheriff or keeper of every jail in any county of this state, shall on or before the first days of April and October, semi-annually, make out the name of all prisoners who, since the last settlement, shall have been committed to his custody under the authority of the United States, and the time they shall have been respectively confined, with an account of the amount thereof at fifty cents per month for the use and keeping of such jail for every person so committed, together with an account of their subsistence at the rate established by law for state prisoners, and transmit the same to the United States marshal for this district for payment.

Names and costs of subsistence to be transmitted to U. S. marshal semi-annually.

P. L. 1867, p. 922.

35. That every sheriff shall, at the expiration of his office, turn over, in writing under his hand and seal, all writs unexecuted to the succeeding sheriff, who shall execute and return the same.

Writs unexecuted to be turned over to successor. R. S. 833, § 31.

36. That no person shall exercise any other civil office during the time that he holds and exercises the office of a sheriff; and that by acceptance of the latter office, his commission for any other civil office shall be null and void.

Sheriff not to exercise any other civil office.

37. That whenever the sheriff of any county, before the expiration of his term of office, shall die or remove out of the jurisdiction of the state, or otherwise become disabled by law to execute the office, and as often as the office of sheriff in any county shall become vacant, it shall be the duty of the judges of the court of common pleas of the said county, or any three of them, forthwith, as soon as may be, after information or knowledge of the happening of such death, removal or other disability, or of such vacancy, to direct the clerk of such court to certify such death,

Provision for deaths, removal or disability.

R. S. 833, § 33.

Amended.

removal or other disability, or the fact of such vacancy to the governor; and the clerk of such court shall immediately certify the same under his hand and the seal of such court, to the governor, who shall forthwith, on the receipt of such certificate, fill such vacancy by appointment, and the commission of the person by him so appointed shall expire when a successor is elected and qualified, which successor shall be elected, at the next ensuing general election, for the full term of three years.

Person appointed
by governor to fill
vacancy, to give
bond, &c.

38. That every person appointed by the governor, pursuant to the provisions of the foregoing section, to fill a vacancy in the office of sheriff shall, before he proceed to execute such office, give the bond and take and subscribe the oath or affirmation in manner and form as is prescribed by this act, for a sheriff elect; and such person shall, upon receiving information from the governor of his appointment, give notice thereof to the judges of the court of common pleas of his county, assigning a time not less than three days from the giving of such notice when he will be ready to qualify for such office; and the said judges are hereby required to attend at the office of the clerk of said court, at the time so assigned, on the penalty for default as is prescribed in the second section of this act; and every person so appointed to fill a vacancy shall, in all respects, comply with the provisions and requirements of this act, and be subject to all regulations and restrictions herein prescribed, and shall be subject to the same penalties, suits and amercements for any violation thereof, or for any neglect of duty, as he would have been subject to in case such person had been elected to the office of sheriff.

When coroner to
act.

R. S. 883, § 34.

39. That whenever the sheriff of any county, before the expiration of his term of office shall die or remove out of the jurisdiction of the state, or otherwise become disabled by law to execute the office, and as often as the office of sheriff in any county shall for any reason become vacant the coroners of the county or either of them shall serve and execute all writs and process and shall have full power and authority to execute all the other duties of such office of sheriff, until another sheriff shall be appointed and qualified to act; and the coroner or coroners executing such writs, process and powers shall be answerable for the due execution of the same during such interval in like manner as the sheriff would have been.

Death or disabil-
ity of officer hav-
ing writ levied.
Ib. § 35.

40. That whenever any sheriff or coroner, or other person to whom any writ of execution by *feri facias* hath heretofore been directed, or shall hereafter be directed hath levied or shall levy the same execution on the goods and chattels or on the lands and tenements of the party named therein, and such sheriff, coroner or other person hath died, or shall die, or hath or shall become disabled by law to discharge the duties of their respective office or appointment, or hath removed or shall remove himself or themselves out of the jurisdiction of the state, and continue to reside thereout discharging the duties of their respective office or appointment, by a sale of the property or estate so levied on, then, or in either of the said cases, it shall and may be lawful for the court, in which judgment is or shall be had, to award a special *scire facias* against the party named in such execution or the lawful representative of such party, according to the circumstances in the case, to show cause why the property or estate so levied on should not be sold, or such part thereof as may be sufficient to satisfy the whole or the residue of the moneys contained in the said execution; and if the said *scire facias* be returned served, or if no service thereof can be made, be published as prescribed by law, and the said party should not appear at the time at which such *scire facias* shall be made returnable, and within ten days after such return day plead or show sufficient matter to the contrary, the said court shall thereupon award a writ, to be directed to the sheriff or coroner, for the time being, of the county where the levy was made, commanding the said sheriff or coroner to sell the property or estate so levied on, or so much thereof as may be sufficient to satisfy the whole or the residue of the moneys due on said execution; which sale the sheriff or coroner is hereby authorized and required to make, in as full and ample manner, to all intents and purposes as if the said execution had been originally directed to such sheriff or coroner, and shall be entitled to the same fees for services done, and liable to all the

Special sci. fa. to
issue.

Writ awarded.

penalties and consequences of law for neglect of duty, as if the said execution had been originally directed to such sheriff or coroner.(a)

41. That it shall be lawful for any judge or justice of any court out of which any writ or process has been or shall be issued, upon application made upon notice to the other party, where notice can be given, the facts being verified to the satisfaction of said judge or justice, to make order that the sheriff or coroner, for the time being, of the county, proceed to execute any writ or process which shall have been directed to any sheriff, coroner or other persons who hath died or shall die, or hath or shall become disabled by law to discharge the duties of his office or appointment, or hath or shall remove out of the jurisdiction of this state, and continue to reside thereout, without discharging the duties of his office or appointment in relation to the command thereof, and upon such order being made, and upon a memorandum thereof signed by such judge or justice being endorsed upon said writ or process, such sheriff or coroner for the time being shall proceed to execute the same or complete the execution thereof, and to do and complete all other acts in the premises, in as full and ample a manner as the said sheriff or other officer might himself have done had such death, removal or disability not occurred, subject to the same regulations and restrictions, and to the same penalties, suits and amercements, for any neglect of duty thereon.

In case of death or disability of sheriff or coroner court may order sheriff or coroner for time being to execute writ.

42. That any sale to be made by such sheriff or coroner for the time being, in virtue of this act, of any estate, real or personal, and any conveyance to be made by such sheriff or coroner of any real estate so sold, shall be as good and effectual in the law, to all intents and purposes, as if the writ or writs of execution on which such property or estate was levied, had been originally directed to such sheriff or coroner.

Sale made by such sheriff or coroner for time being, good and effectual.

43. That the appointment of any undersheriff hereafter to be made shall be by writing under the hand and seal of the sheriff; and further, that every undersheriff, before he intermeddles in such office, shall take and subscribe, before one of the judges of the court of common pleas of the county, an oath or affirmation, well and faithfully to execute the office of undersheriff, according to the best of his skill and judgment; which appointment, with the certificate of the oath or affirmation thereupon endorsed and attested by the said judge, shall be by such undersheriff carefully filed, and securely kept in the office of clerk of the court of common pleas in and for the same county; provided, that nothing in this section contained shall be construed to prevent the sheriff from removing his undersheriff at pleasure.(b)

Appointment of undersheriff.

R. S. 833, § 37.

Certificate and oath to be filed with clerk.

Proviso.

44. That if any person shall proceed to execute the office of undersheriff before he shall have received an appointment as aforesaid, and taken the oath or affirmation of office, and filed the same appointment and certificate of such oath or affirmation in the clerk's office as aforesaid, then all such his acts and proceedings done under color of office shall be absolutely void.

Acts of persons as undersheriff before filing oath, &c., to be void. Ib. § 38.

[For fees of sheriffs see FEES AND COSTS. For duty of sheriff as to collection of fines, costs, &c., see JUSTICES COURTS, Sec. 142].

(a) A plea of payment to a *scire facias*, under the statute, will not be supported by evidence of a bargain and sale of lands, by the defendant to the plaintiff in execution, unless such bargain and sale has been consummated, *Earle v. Earle*, *Spen*. 347. In such case advantage cannot be taken of the want of a lawful and sufficient levy. *Ibid*. Where the lessor of the plaintiff claims title under a sheriff's deed, made to him after a sale by virtue of a special *scire facias*, parol evidence is inadmissible to impeach the judgment on the *scire facias* by proving the death of the plaintiffs before the writ issued. *Den v. Manning*, *Spen*. 612. If admissible, it is not a ground to non-suit the plaintiff, but the evidence should go to the jury. *Ibid*. A publication of the writ, in such case, is unnecessary. *Hught v. Sprader*, 3 *Hd.* 182. A return to the writ, "that the defendant hath nothing," is sufficient. *Ibid*.

(b) There are two kinds of deputies of a sheriff: a general deputy, or under-sheriff, who by virtue of his appointment has authority to execute all the ordinary duties of the office of sheriff, and a special deputy who is an officer *pro hac vice*, to execute a particular writ on some certain occasion. The former is bound to take an oath of office, and file his appointment; but the latter is not, *Allen v. Smith*, 7 *Hd* 159. A general deputy may, in the name of the sheriff, delegate authority to a special deputy for the execution of

process. *Ibid*. 163. A deputy sheriff cannot act until sworn into office, and his swearing in will not have relation back, so as to validate previous acts, *Den, Lee v. Evald*, *Coxe* 283. A sheriff cannot appoint a special deputy, *pro hac vice*, by parol. *Meyer v. Patterson*, 1 *Stew.* 239. See *Kloopping v. Stellmacher*, 7 *Vr.* 176, 179. A sheriff cannot constitute a special deputy to serve even an original writ, by a mere verbal command, without delivery of the writ, *Meyer v. Bishop*, 12 *C. E. G.* 141; 1 *Stew.* 239. A special deputy of a sheriff is in no sense a public officer, but merely the private agent or officer of the sheriff, and neither his appointment nor his relation to the sheriff can be presumed from his acts, *Ibid*. The rule that the acts of *de facto* public officers are valid in respect to the public, and the rights of third persons, does not apply to deputy sheriffs, *Ibid*. A general authority to an attorney to make special deputations, will not authorize him to appoint a deputy to serve process, *James ads. Cox*, 4 *Hd.* 333. It seems, that a summons in ejectment may be served by any person by direction of the sheriff, and without any written deputation. *Kloopping v. Stellmacher*, 7 *Vr.* 176. A writ of attachment may be executed by a deputy, *Morrell v. Gardiner*, *Spen* 573. A coroner may appoint a deputy to execute a writ of replevin, *Jewell v. Hutchinson*, 2 *Vr.* 71. Parol evidence of a person acting as deputy sheriff, is sufficient, *Den, Lee v. Evald*, *Coxe* 283.

SOLDIERS HOME.

II. County jails.

An act concerning county jails.

Approved April 20, 1876.

P. L. 1876, p. 230.

Price for victual-
ing prisoners
fixed by board of
freeholders

45. SEC. 1. That it shall hereafter be lawful for the boards of chosen freeholders in the several counties of this state to fix the price per day for victualing the prisoners confined in the county jails; *provided*, that the price so fixed shall not in any case exceed the amount now fixed by law in any county.

An act respecting county jails.

Approved March 8, 1877.

Board of free-
holders may re-
mit part of sen-
tence for good
conduct of pris-
oner.

46. SEC. 1. That from the sentence of any person to the common jail of any county in this state there may be remitted by the board of chosen freeholders of said county, or by the committee on discharge of prisoners of such board, upon the recommendation of the sheriff or jail warden in whose custody such person may be, for good conduct, a term not exceeding one day for every six days of said sentence.

If such person
again committed,
required to serve
time remitted.

47. SEC. 2. That if any such person shall be again convicted and sentenced to imprisonment in such county jail, such person shall, in addition to such sentence, be required to serve out the number of days remitted to him or her on the previous term.

Board of free-
holders to have
power to remit
fines and costs.

48. SEC. 3. That the board of chosen freeholders of the several counties of this state, or the committee on discharge of prisoners of any such county, shall have power to remit fines and costs due to their respective counties, and to discharge from imprisonment in the county jail of such county, any person committed or held therein, in default of the payment of such fines and costs; but no person shall be discharged, under the provisions of this section, until he or she shall have remained confined for such default for a term at least equaling one day for every dollar so remitted, or for a term of six months in the whole.

All sentences to
county jail to be
made subject to
provisions of this
act.No person to be
discharged with-
out approval of
presiding judge
of common pleas.

49. SEC. 4. That all sentences to the county jail of any county shall be construed and understood to be made under and subject to the provisions of this act; *provided*, that the provisions of this act shall not apply to or affect any person heretofore convicted and now undergoing punishment; *and provided further*, that before any person is discharged in accordance with the provisions of this act, or has his or her fine remitted the action of the board of freeholders in that respect shall be approved of by the presiding judge of the court of common pleas.

Soldiers Home.

1. Appointment of managers.
2. Powers and duties of board of managers.
3. Appointment of commandant and other officers.
4. Duties of commandant.
5. Duties of superintendent.
6. Notice for admission of patients.
7. Requisites for admission.
8. Patients admitted to receive benefits.

9. Managers may grant temporary relief.
10. Out-patients may be relieved by board.
11. Salaries, how paid.
12. Managers to visit home.
13. Soldiers from other states may have temporary ad-
mission.
14. All accredited to this state may be admitted.
15. When home may be used as a hospital.

An act to provide for the organization of the New Jersey Home for Disabled Soldiers.

Approved April 4, 1866.

P. L. 1866, p. 955.

Appointment of
managers.

Term of office.

1. That Marcus L. Ward, Daniel Haines, Charles S. Olden, Edwin A. Stevens, William A. Newell, and Rynear H. Veghte, he and they are hereby appointed managers of the New Jersey Home for Disabled Soldiers, and shall hold their offices for the term of five years and until others are appointed in their stead; subject to removal by the supreme court, on the recommendation of the governor; their successors shall be appointed by the supreme court at the first term of any year; and the said court may at any time fill vacancies in the said board of managers.