

paid for the same; and the purchaser shall thereupon, and within thirty days thereafter, pay to the treasurer of this state the sum mentioned in such certificate; and the treasurer shall thereupon endorse a receipt for the same upon such certificate, and, upon producing the same certificate and receipt to the attorney general, he shall make, execute and deliver, in the name of this state, a deed to such purchaser for the lands, tenements and hereditaments in the same certificate mentioned, granting and conveying an estate of inheritance in the said lands, tenements and hereditaments to such purchaser, and to his heirs and assigns for ever; and, upon the production of such deed to the sheriff, he shall deliver the possession of the said lands, tenements and hereditaments to the purchaser thereof.

Attorney general to make conveyances.

4. That jurors and witnesses in every case of escheat, shall be entitled to the like compensation, as is authorized by law for attending in causes commenced in the supreme court; and that the expenses of conducting the said proceedings, shall be made out by the treasurer, and, when approved of by the legislature, shall be paid by him.

Compensation to be made by the state for certain services.

5. That it shall be the duty of the attorney general, in case of any waste done or committed on any lands, tenements and hereditaments which have escheated or may escheat to this state, to apply to the court of chancery for an injunction to restrain all such waste; and further, that the person or persons committing any such waste or other trespass upon such property, shall be liable in damages for the same, to be sued for and recovered, in the name of the state, by action of trespass, in any court having cognizance thereof.

Injunction to restrain waste, etc.

## Evidence.

### I. WITNESSES.

#### 1. COMPETENCY AND EXAMINATION OF.

1. Not disqualified by conviction of crime.
2. Party may be called by adverse party, when.
3. Interest no disqualification.
4. Party in a representative capacity.
5. Husband and wife competent.
6. Complainant competent to disprove answer.
7. Person whose name is forged, competent.
8. Person indicted may testify.
9. Interest or conviction of crime may be proved by witness.
10. Witness when excused from answering.
11. Testimony of parties may be taken by deposition.
12. Testimony of a deceased party at a former trial.

#### 2. PROCESS FOR. PRIVILEGE.

13. Process. Penalty for disobeying.
14. Subpoena to run into every county.
15. Privilege from arrest.

#### II. EVIDENCE IN PARTICULAR CASES.

16. Fraud in consideration pleadable.
17. Non-summmons may be shown in action on foreign judgment.
18. Omission to plead plene administravit.
19. Comparison of hand writing.
20. Certificate of notary when conclusive; how disputed.
21. In prosecution for libel, truth may be given in evidence.
22. Statutes of other states.
23. Reports of other states.

#### III. INSPECTION OF PROPERTY.

24. Inspection of premises or chattels.

#### IV. DEPOSITIONS.

##### 1. OF WITNESSES WITHIN THIS STATE.

25. May be taken before certain officers.
26. Witness compelled to appear.
27. How taken and filed.
28. Oath of person transmitting.

##### 2. OF WITNESSES OUT OF THE STATE.

29. Commission when and by whom issued.
30. Names of witnesses to be inserted; interrogatories.
31. Notice of application for, how served.
32. Commission on short notice.
33. Oath of commissioner.
34. How examination taken.
35. How commission returned.
36. Party may receive and deliver it.
37. Return of foreign commission.
38. Testimony of non-resident taken on notice instead of by commission; notice; examination.
39. To what courts statute applicable.

##### 3. MISCELLANEOUS PROVISIONS.

40. Exhibits may be annexed to depositions.
41. In supreme court may be sent to judge or clerk of circuit.
42. Examination to be read in evidence.
43. To be subject to objections.
44. To be paid for by party taking it.
45. Parties may have copies.
46. Taking out a commission not a stay.

##### V. EXAMINATION BEFORE COMMITTEES.

47. Committees may issue subpoenas and administer oaths.
48. Fees of witnesses.

##### VI. COMMISSIONS OUT OF COURTS OF OTHER STATES.

49. Process for, how obtained.
50. How served.
51. Copy of the official record of notaries public of other states, evidence.
52. In actions on sealed instruments, seal only presumptive evidence of consideration.
53. Committees of Legislature to have power to summon witnesses.
54. Committees empowered to compel attendance of witnesses.
55. May issue warrant of arrest.

## An act concerning evidence.

Revision—Approved March 27, 1874.

## I. Witnesses.

## 1. COMPETENCY AND EXAMINATION OF.

R. S. 957, 959, 964.

P. L. 1847, p. 146.

" 1849, p. 265.

" 1852, p. 155,

256.

" 1855, p. 668.

" 1859, p. 489.

" 1860, p. 260.

" 1862, p. 34,

225.

" 1865, p. 832.

" 1866, p. 709.

" 1870, p. 59, 62.

" 1871, p. 8, 12,

43,

" 1873, p. 73,

Conviction of

crime, not to dis-

qualify witness.

Party may be

called by adverse

party.

P. L. 1849, p. 265.

" 1852, p. 256,

27.

Amended.

Disqualification

for interest as

party or other-

wise abolished,

except when

other party dis-

qualified, &amp;c.

P. L. 1859, p. 489.

Amended.

Party in a repre-

sentative capac-

ity.

P. L. 1866, p. 709.

Husband and

wife competent.

P. L. 1870, p. 59.

Amended.

Except in cer-

tain actions.

But not com-

pelled to disclose

confidential com-

munications.

(a) Applies to all suits brought to trial after the act went into effect, (July 4th, 1849), *Van Valkenberg v. Den, Rahway Bank*, 3 Zab. 583.

(b) Previous to the passage of this act, a defendant was not a competent witness for the plaintiff, if called to prove a partnership or joint liability with his co-defendant, *Myers v. Hollingsworth*, 2 Dutch. 186.

(c) Nor will such testimony be rendered competent by the subsequent offer and admission of such disqualified witnesses, *Yetman v. Dey*, 4 Vr. 32. See *Handlong v. Barnes*, 1 Vr. 69. If either party die before the testimony on either side is taken, the evidence of the survivor is inadmissible, *Lanning v. Lanning*, 2 C. E. Gr. 228. The operation of the proviso must be limited to the cases in which the parties were rendered competent by the enacting clause, *Ibid*.

(d) In a suit by an executrix in her representative capacity, the defendant cannot testify for himself, unless the complainant has first been sworn on her own behalf, *Shepherd v. McClain*, 3 C. E. Gr. 128. But the testimony of a defendant, unnecessarily made a party, is competent, under such circumstances, *Harrison v. Johnson*, *Ibid*, 420. The complainant is not a competent witness where any of the defendants are sued in a representative capacity, *Foyce v. Dutcher*, 3 C. E. Gr. 401. *Sweet v. Parker*, 7 C. E. Gr. 453. The plaintiff in an action against executors of their own wrong, is not competent, *Parker v. Thompson*, 1 Vr. 311. See *ante*, p. 112, note (a). Equity will not assume jurisdiction of a case where the only claim to relief is the death of the plaintiff at law after issue joined, and the consequent exclusion of the defendant's testimony and the loss of the plaintiff's, *Linn v. Neldon*, 8 C. E. Gr. 169.

(e) The complainant must have been first sworn on his

1. That no person offered as a witness in any action or proceeding of a civil or criminal nature, shall be excluded by reason of his having been convicted of crime, but such conviction may be shown on the cross-examination of the witness, or, by the production of the record thereof, for the purpose of affecting his credit.

2. In all civil actions in any court of record in this state, the parties thereto, shall be admitted to be sworn and give evidence therein, when called as witnesses by the adverse party in such action; and when any party is called as a witness by the opposite party, he shall be subject to the same rules as to examination and cross-examination as other witnesses; *provided*, that no party to a suit shall be compelled to be sworn or give evidence in any action brought to recover a penalty or to enforce a forfeiture; and *provided, also*, that this section shall not apply to suits for divorce.(a)

3. No person shall be disqualified as a witness in any suit or proceedings at law or in equity by reason of his or her interest in the event of the same as a party or otherwise, but such interest may be shown for the purpose of affecting his or her credit;(b) *provided nevertheless*, that no party shall be sworn in any case when the opposite party is prohibited by any legal disability(c) from being sworn as a witness, or either of the parties in a cause sue or are sued in a representative capacity,(d) except as hereinafter provided.

4. A party to a suit in a representative capacity may be admitted as a witness therein, and if called as a witness in his own behalf, and admitted, the opposite party may in like manner be admitted as a witness.(e)

5. In any trial or inquiry in any suit, action or proceeding in any court, or before any person having by law or consent of parties authority to examine witnesses or hear evidence, the husband or wife of any person interested therein as a party or otherwise, shall be competent and compellable to give evidence the same as other witnesses, on behalf of any party to such suit, action or proceeding;(g) *provided*, that nothing herein shall render any husband or wife competent or compellable to give evidence for or against the other in any criminal action or proceeding,(h) or in any action or proceeding for divorce on account of adultery,(k) except to prove the fact of marriage, or in any action for criminal

own behalf, *Shepherd v. McClain*, 3 C. E. Gr. 128. It must be upon his own offer; he cannot be called as a witness by the other party, *Hartman v. Alden*, 5 Vr. 522. If the defendant is an executor and complainant offers himself as a witness and is examined without objection by defendant the subsequent examination of the defendant will not legalize such evidence, but defendant must move to suppress it, otherwise he will be deemed as not interposing any objection, *Walker v. Hill*, 7 C. E. Gr. 513.

(g) The relation of husband and wife will not protect her from making a discovery relating solely to her own conduct, and affecting only her own interests, *Metter v. Metter*, 3 C. E. Gr. 270. Under the act of April 17, 1868, a wife was not a competent witness in a suit by or against her husband, but only in a suit by or against herself, *Van Houten v. Post*, 6 C. E. Gr. 355. A wife, who was a party to a fraudulent deed, is competent to testify what was her intent and purpose in making such deed, *Mulford v. Tunis*, 6 Vr. 257.

(h) A wife in a suit between others may not testify to any matter, for which, if true, her husband may be indicted, *Den. Stewart v. Johnson*, 3 Harr. 88. Nor can a husband, in a collateral proceeding, be a witness directly to charge his wife with an indictable offence, *State v. Wilson*, 2 Vr. 77. A husband or a wife, in a suit in which neither is a party, can be asked a question for the purpose of disgracing or discrediting the testimony of the other, when the matter inquired into is not indictable, *Ware v. State*, 6 Vr. 553. The testimony of a married woman illegally elicited before a grand jury, on a charge of bigamy against her husband, is not admissible against her on a question of property, *Wilson v. Hill*, 2 Beas. 143.

(k) *Ante* p. 315, note (b).

conversation; nor shall any husband or wife be compellable to disclose any confidential communication made by one to the other during the marriage.

6. The complainant or petitioner, in any action, or proceeding of an equitable nature in any court, shall be a competent witness to disprove so much of the defendant's answer as may be responsive to the allegations contained in the bill of complaint or petition, and any defendant in any such action or proceeding, shall be a competent witness for or against any other defendant not jointly interested with him in the matter in controversy.<sup>(a)</sup>

Complainant competent to disprove answer.  
P. L. 1855, p. 668, § 2.

7. Upon the trial of any indictment for falsely making, altering, forging, or counterfeiting, or for uttering, or publishing as true any record, deed, or other instrument or writing, 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.

Person whose name forged competent witness upon trial of indictment.  
R. S. 957, § 6.

8. Upon the trial of any indictment, allegation, or accusation of any person charged with crime, the person indicted or accused shall be admitted to testify as a witness upon such trial, if he shall offer himself as a witness therein in his own behalf.

Person indicted may testify in his own behalf.  
P. L. 1871, p. 12.

9. The interest of a witness in the event of the action or proceeding, or his conviction of a crime,<sup>(b)</sup> may be proved by an examination of such witness or otherwise, and his answers upon such examination may be contradicted by other evidence.

Interest or conviction of crime may be proved by witness.  
P. L. 1855, p. 668.

10. A witness shall not be excused from answering any questions relevant and material to the issue; *provided*, the answers will not expose him to a criminal prosecution or penalty, or to a forfeiture of his estate.<sup>(c)</sup>

Witness when excused from answering.  
Ib. § 4.

11. When a party to any civil action in any court of record in this state shall be entitled by law to be examined as a witness in his own behalf, or to examine as a witness any adverse party therein, it shall be lawful to obtain such testimony by commission or examination *de bene esse*, or in any other way that other witnesses may be examined in such suits, and the attendance of such party may be compelled by the same process as is authorized in the case of other witnesses; *provided*, that nothing in this section shall compel any party to be examined as a witness in any case where he cannot now be compelled by law to be so examined.

Testimony of parties may be taken by depositions.  
P. L. 1852, p. 225, § 1.  
Amended.

12. In case of a new trial of any civil action wherein the parties have been examined as witnesses, if either party shall have died since the former trial, and the action shall have been duly revived, and proceeded with at the suit of, or against the legal representatives of such deceased party, the surviving party, and also such legal representative shall be competent witnesses on such new trial, and the testimony of such deceased party on the former trial of said action, may also be proved and admitted on the new trial thereof.

Testimony of a deceased party at a former trial.  
P. L. 1871, p. 43.

2. PROCESS FOR—PRIVILEGE.

13. If any person on whom lawful process shall have been duly served to testify, depose or give evidence concerning any cause or matter pending 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 command of said process, having no lawful or reasonable excuse for such default he shall, for every such offence, forfeit to the party aggrieved any sum not exceeding fifty dollars, to be ascertained and adjudged by the court in which he may be subpoenaed to attend, and shall also pay to the said party damages equivalent to the loss sustained by the want of his evidence, to be recovered by action of

Process.  
R. S. 957, § 3.  
Amended.

Penalty for disobeying.

(a) The complainant may be a witness, under this section, even after the death of the defendant, *Lanning v. Lanning*, 2 C. E. Gr. 228. *Murlatt v. Warwick*, 4 C. E. Gr. 439. This section does not extend to the trial of an issue out of chancery, *Black v. Lamb*, 1 Beas. 110.

(b) Formerly a witness could not be asked whether he had been convicted and punished for petit larceny, *State v. Bailly*, Pen. \*416(e).

(c) A witness at common law could not be asked a question tending to disgrace herself, *Vaughn v. Perrine*, Pen.

\*728. *Fries v. Brugler*, 7 Hal. 80. A bill for discovery whether defendant since her marriage has not committed adultery with any person whatever, and with whom, and at what time and place and under what circumstances, is demurrable. A defendant is not bound to accuse herself of a crime, or to furnish any evidence whatever leading to such an accusation, *Marsh v. Marsh*, 1 C. E. Gr. 391. A juror falls within the statute, and may be examined to prove the alleged cause of challenge, although it tend to his own disgrace, *State v. Fox*, 1 Dutch. 566.

trespass on the case, with costs, and shall, in addition thereto, be punishable as for a contempt of the court out of which such process shall issue.(a)

Subpœna to run into every county of state.  
Ib. § 4.

14. 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, is hereby authorized to issue process of subpœna requiring the attendance of a witness who resides in any part of this state, out of the jurisdiction of the said court, to give evidence in any cause or matter pending in the said court; and every person who shall be duly served with such subpœna, shall 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 non-attendance, if he had been within the jurisdiction of the said court at the time of the service of the said subpœna.

Privileged from arrest.  
Ib. § 2.  
Amended.

15. Every witness shall be privileged from arrest 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 subpœna previously and duly served, and in going to and returning from the same, allowing one day for every thirty miles from his place of residence; any arrest made in violation of the privilege in this section shall be a contempt of the court out of which the subpœna issued, and the said court, or any judge thereof, may by an order, forthwith discharge such witness from arrest.(b)

If privilege violated court may discharge.

## II. Evidence in particular cases.

Fraud in consideration of sealed instrument.

P. L. 1871, p. 8.

16. In any action upon any instrument in writing, under seal, the defendant in such action may plead and set up as a defence therein, fraud in the consideration(c) of the contract upon which recovery is sought, as fully and to all intents and purposes as if such instrument were not under seal.

Non-summons in action on foreign judgment.

P. L. 1852, p. 155.

17. In any suit upon a foreign judgment, or a judgment of any court out of this state, the defendant, or person sought to be affected by such judgment, may show that the defendant therein was not summoned, did not appear, or was not within the jurisdiction of such foreign court, notwithstanding it may be recited in the record of such proceedings that he was summoned or did appear, or was within the jurisdiction of such court; and such recital shall not conclude said defendant, or estop him from proving that the same is not true.(d)

Recital of appearance not conclusive.

Omission to plead plene administravit.

Not conclusive evidence of a devastavit.

P. L. 1865, p. 832, § 1.

18. The omission to plead *plene administravit* or *plene administravit præter* by executors or administrators in actions brought against them in their representative capacity, shall not be held to be conclusive evidence of a *devastavit*; (e) and in any action brought against them upon any judgment suggesting a *devastavit*, where such judgment was to be made and levied of the goods and chattels of the testator or intestate, executors or administrators may show that they have not elogned, wasted and converted, and disposed of to their own use said goods and chattels, and that they duly administered the estate of their testator or intestate, notwithstanding the omission by them to plead either of said pleas in the original action against them; *provided*, that notice of their intention to offer such

(a) An attachment was refused in a *certiorari*, where the subpœnas had been issued by the attorney, *State v. Newark & Turnpike Co.*, Pen. \*338. So, where a subpœna *duces tecum* was defective, commanding a party only to appear at a certain place and time named in the writ, and to bring with him a certain book, but omitting the direction to testify, *Murray v. Elston*, 8 C. E. Gr. 212. It must also appear clearly that the fee of the witness was tendered to him, *Ogden v. Gibbons*, 2 South. \*532; and that the subpœna was served within the jurisdiction of the court, and the disobedience indicated an intention to contemn its process and authority, *State v. Trumbull*, 1 South. \*139.

(b) The privilege is not extended to persons attending as witnesses, unless claimed under the protection of a subpœna "previously and duly served," *Rogers v. Bullock*, Pen. \*516. A party to a suit in chancery, who resides in another state and comes here to give testimony in his own behalf before a master, is, while necessarily attending before the master and going to and returning from the place of examination, privileged from the service of a summons in a civil cause, without any subpœna *ad testificandum* being served, *Dungan ads. Miller*, 8 Vr. 182. *Parker v. Hotchkiss*, 1 Wall. Jr. 269; overruling *Blight v. Fisher*, Pet. C. C. 41.

(c) See *Den v. Moore*, 2 South. \*475, note (a), and *Lord v. Brookfield*, 8 Vr. 552.

(d) To an action upon a judgment recovered in another state, it is a good plea, that the defendant was not served with process, that he did not appear in person or by attorney, and that he was not resident within the jurisdiction of the court at any time pending the suit, or when judgment was rendered therein, *Price ads. Ward*, 1 Dutch. 225. It is proper to plead *nil debet*, and to give notice that no summons had been served, *Beale v. Berryman*, 1 Vr. 216. Where a suit is brought against two defendants, one of them can plead a want of jurisdiction in the foreign court over his co-defendant, *Mackey ads. Gordon*, 5 Vr. 286. See *Moulin v. Trenton Insurance Co.*, 4 Zab. 222. If the record shows an appearance, the party must show that the attorney had no authority to enter such appearance, *Gifford v. Thorn*, 1 Stock. 703. *Nichols v. Nichols*, 10 C. E. Gr. 60. See *Hedden v. Hedden*, 6 C. E. Gr. 62. *Field v. Gibbs*, Pet. C. C. 155. *Harrison v. Rowan*, Ib. 489.

(e) That it was formerly such admission, see *Barackiff v. Griscom*, Coxe 165. *Howell v. Potts*, Spen. 1.

evidence be given to the plaintiff twenty days before the trial of the action upon such judgment.

19. In all cases where the genuineness of any signature or writing is in dispute, comparison of the disputed signature or writing with any writing proved to the satisfaction of the court to be genuine, shall be permitted to be made by witnesses; and such writings and the testimony of witnesses respecting the same, may be submitted to the court or jury as evidence of the genuineness or otherwise of the signature or writing in dispute; *provided, nevertheless*, that where the handwriting of any person is sought to be disproved by comparison with other writings made by him, not admissible in evidence in the cause for any other purpose, such writings, before they can be compared with the signature or writing in dispute, must if sought to be used before the court or jury by the party in whose handwriting they are, be proved to have been written before any dispute arose as to the genuineness of the signature or writing in controversy.

Comparison of handwriting.

Writings used by way of comparison must be proved to have been made before dispute arose.

20. The certificate of a notary public of this state, or of any other state or territory of the United States, under his hand and official seal accompanying any bill of exchange or promissory note which has been protested by such notary for non-acceptance or non-payment, shall be received in all the courts of this state as competent and conclusive evidence of the official character of said notary, and also of the facts therein certified as to the presentment and dishonor of such bill or note and of the time and manner of giving or sending notice of dishonor to the parties to such bill or note; *provided*, that the party offering the same shall have annexed a copy of such certificate to his declaration, demand or other pleading; *provided nevertheless*, that if the opposite party shall give notice with his plea or other pleading or when the action is brought in the court for the trial of small causes, by filing a notice on the return day of the summons or the day after, that he intends to dispute the fact of due presentment or notice of dishonor, then such certificate shall not be made evidence by this section, but the facts necessary to fix the liability of such party shall be established by proof as heretofore. (See *Sec. 51*).

Certificate of notary conclusive evidence.

P. L. 1862, p. 34. Amended.

If copy annexed to pleading.

Unless opposite party shall annex to his pleading notice that he disputes facts stated.

21. In any prosecution for 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.

In prosecutions for libel, truth may be given in evidence.

R. S. 961.

22. The printed statute books and pamphlet session laws of any of the United States, printed and published by the direction or authority of such state, shall be received as evidence of the public laws of such state, in any court of this state; and the court may determine whether any book or pamphlet, offered as such, was so printed or published, either from inspection, or the knowledge of the judge or judges, or from testimony; and no error shall be assigned for the rejection of any book or pamphlet, offered as such, unless it be proved on error that such book or pamphlet is received as a statute book or pamphlet containing the session laws of said state, in the courts of such state whose statute book or pamphlet containing the session laws, it purports to be; nor shall any error assigned for the admission of such book or pamphlet be sustained, unless it be shown in support thereof, that the statute offered in evidence or some material part thereof, was not in force in such state at the time of the transaction or matter to which it was offered as pertinent or material.<sup>(a)</sup>

Statutes of other States.

P. L. 1847, p. 146.

23. The reports of the judicial decisions of other states and countries may be judicially noticed by the courts of this state, as evidence of the common law of such states or countries and the judicial construction of the statutes, or laws thereof, and the usual printed books of such reports shall be plenary evidence of such decisions.

Report of judicial decisions of other States.

P. L. 1860, p. 260

### III. Inspection of property.

24. In any case in which it shall appear to the court or a judge, that an

(a) The laws of other states can only be brought to the knowledge of this court by proof, *Uhler v. Semple*, 5 C. E. Gr. 289. *Ball v. Franklind Co.*, 3 Vr. 104. *Campion v. Kille*, 1 McCart. 229. Proof by an attorney of such state is not sufficient, *Van Buskirk v. Mulock*, 3 Harr. 185, overruling

*Hale v. Ross*, Pen. \*807. But where a defendant in chancery was such attorney, his testimony in connection with printed copies of the laws of that state, was received, *Condit v. Blackwell*, 4 C. E. Gr. 196.

Inspection of premises or chattels by jury or witnesses. inspection or examination of any premises or chattels in the possession or under the control of either party, in respect of which, or some right in, or injury from or to which the action shall be brought, would aid in ascertaining the truth of any matter in dispute between the parties in the action, it shall be lawful for the court or a judge, to order that the party in whose possession, or under whose control such property shall be, shall permit an inspection and examination of the said premises or chattels, by the jury or by the opposite party, or by such persons as he shall name as witnesses, at such times and under such regulations as the court or judge may prescribe; which said inspection or examination may be ordered by the court or judge, either before or during the progress of the trial.

May be ordered by the court or a judge.

Either before or during the trial.

#### IV. Depositions.

##### 1. OF WITNESSES WITHIN THE STATE.

May be taken before certain officers. 25. If any material witness in an action or suit of a civil nature<sup>(a)</sup> in any of the courts of this state, be in this state,<sup>(b)</sup> but is ancient or very infirm, or is sick,<sup>(c)</sup> or is about to go out of this state,<sup>(d)</sup> then the deposition of such witness may, at the option of either party, be taken *de bene esse* before any justice of the supreme court, or judge of the court of common pleas, or supreme court commissioner, or 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<sup>(e)</sup> 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 cross-examine, if he shall think fit.<sup>(g)</sup>

R. S. 959, § 6. Amended.

Notice required.

Witness compelled to appear etc. Ib. § 13 and 12. 26. Any material witness of the description aforesaid, being in this state, may be compelled to appear and be examined before any of the said officers, in the same manner and under the same penalties as if subpoenaed to appear and testify in the court wherein the said action is pending; and shall be allowed compensation for his time and attendance at the same rate as if he had personally appeared and given testimony in the cause before the court in which it is pending.<sup>(h)</sup>

Compensation of.

How such deposition taken and filed. Ib. § 8. 27. Every person deposing as aforesaid, shall be sworn or affirmed to testify the whole truth,<sup>(k)</sup> and shall subscribe the testimony by him 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;<sup>(m)</sup> and the deposition so taken shall be retained by such officer until he deliver the same, together with a certificate of the reasons of its being taken, and of the notice, if any was 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 either by mail or private messenger, to such judge or clerk, who shall open and immediately file the same, in the office of the said clerk, there to remain as of record.

How transmitted to court.

Oath in such case. Ib. § 3. 28. The person by whom such deposition shall be transmitted to the judge or clerk, as authorized in the preceding section, 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.<sup>(n)</sup>

(a) Appeals from orders of removal in settlement cases and from orders of affiliation and maintenance, are included, *Hildreth v. Overseers of Hopewell*, 1 Gr. 5; and appeals before the common pleas, *Ramsey v. Dumars*, 4 Harr. 66.

(b) Not necessary that he be an inhabitant of the state, *Smith v. Ruesscastle*, 2 Hal. 361.

(c) That a witness is sick is not sufficient ground to issue a commission after the plaintiff has rested his evidence. The commission must be applied for, executed and returned before the trial, *Ogden v. Robertson*, 3 Gr. 124.

(d) If "about to go out of the state," the deposition may be taken by the justice before whom the cause is pending, *Burley v. Kitchell*, *Spem*. 305.

(e) Notice to the attorney, it seems, is sufficient, *Ludlam v. Broderick*, 3 Gr. 269. But see *Middleton v. Taylor*, *Coze* 445, and *Arnold v. Eenshaw*, 6 Hal. 317. See § 31.

(g) If no notice be given of the time and place of examination, the depositions must be suppressed, *Parker v. Hayes*, 8 C. E. Gr. 186.

(h) The commissioner has no power to adjourn the examination, but must continue it from day to day, *Parker v. Hayes*, 8 C. E. Gr. 186.

(k) A certificate of a master in chancery that the witness was duly sworn, is sufficient, *New Jersey Express Co. v. Nichols*, 3 Vr. 166; 4 Vr. 434. The cautioning need not appear on the face of the depositions, *Ludlam v. Broderick*, 3 Gr. 269. *Burley v. Kitchell*, *Spem*. 305. But see *Steward v. Bowne*, *Pen*. \*960.

(m) The statute does not require the magistrate to certify to this, however prudent it may be to do so, *Sayre v. Sayre*, 2 Gr. 487. See *Den*, *Crouther v. Lloyd*, 2 Vr. 395. The caption may be drawn subsequently, *Ibid*. But when drawn, in a deposition from the supreme court, cannot be altered by a judge at the circuit, *Emmett v. Briggs*, 1 Zab. 53.

(n) The statute is satisfied, when upon the commission, produced by the clerk and appearing duly filed, is endorsed a certificate by one of the justices of the court from and by whom and when he received it, with his name subscribed thereto, and annexed is an affidavit made on the same day in the terms of the statute, although the justice does not certify in the endorsement that he had opened it and delivered it to the clerk of the court, *Hildreth v. Overseers of Hopewell*, 1 Gr. 5.

## 2. OF WITNESSES RESIDING OUT OF THE STATE.

29. If a material witness in any action or proceeding of a civil nature (a) Commission, when and by whom issued. in any of the courts of this state reside out of this state, (b) it shall be lawful for the court in which such action or proceeding is pending, or for any judge thereof, in term or vacation, on affidavit or proof thereof to the satisfaction of the said court or judge, and on such terms as the court or judge may direct, to award and issue, under the seal of the court, a commission to such person or persons, as the court or judge 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 affirmation. R. S. 959. § 1. Amended.

30. 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 attorneys, or counsel in the cause in which the testimony is to be used, (c) 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 commission; and each party shall be at liberty, with the approbation (d) of the said court or judge, to insert in the said interrogatories such questions as he or she may think proper or necessary. Names of witness to be inserted in commission. Ib. § 1. • Interrogatories to be approved and annexed.

31. A party intending to apply for a commission to examine a witness or witnesses in any cause, shall give eight days' notice of such application, and of the name or names of the witness or witnesses to be examined, and of the place of his, her or their residence, and also of the name or names of the person or persons whom the party applying intends to nominate as commissioner or commissioners, and shall serve therewith a copy of the interrogatories intended to be annexed to the said commission, in order that the adverse party may examine the same and submit cross interrogatories if he think proper. (e) Notice of application for. Copy of proposed interrogatories to be served therewith.

The notice mentioned in this section shall be served on the attorney or solicitor, when the party appears by attorney or solicitor. (g) Notice how served.

32. The issuing of the commission may be ordered and the interrogatories may be approved upon shorter notice than is directed by the foregoing section, by consent of parties, or upon matter being made to appear to the said court or judge to excuse the want of full notice, and that shorter notice is necessary to prevent delay. Commission may be issued on shorter notice.

33. The commissioner or commissioners appointed under this act, or under the general power or authority of the court of chancery, or such of them as shall act, shall, before they enter upon their duties, take 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. (h) Oath of commissioner. Ib. § 2. Amended.

34. The said commissioner or commissioners 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 How examination taken. Ib. § 2.

(a) Depositions taken when no suit is pending, are inadmissible, *Den, Bickham v. Pissant*, Coze 220. A deposition regularly taken in a former cause between the same parties is not of itself evidence in a subsequent action between them, *Trimmer v. Larrison*, 3 Hal. 56. It may be made competent by proof that the suit was between the same parties and related to the same matter, and by producing a compared or duly certified copy, *Camden and Amboy Railroad Co. v. Stewart*, 4 C. E. Gr. 343; 6 C. E. Gr. 484. The deposition of a deceased witness, taken in the prerogative court, on a caveat against the will, may be read in an ejectment, where the plaintiff in ejectment claims title under the person who was executor of the will and the defendant was one of the caveators, *Turner v. Hand*, 3 Wall. Jr. 88.

(b) Non-residence alone of a material witness, is sufficient ground for a commission, *Leonard v. Sutphen*, 3 Hal. Ch. 545.

(c) Interrogatories must be signed by the parties or their counsel, *Graham v. Whitely*, 2 Dutch. 254. *Ludlam v. Broderick*, 3 Gr. 269.

(d) The "approbation" merely extends to the discretion and judgment which the court must exercise as to the legality and admissibility of the questions proposed, *Wilson v. Cornell*, 1 South. \*118.

(e) Notice of the application was always necessary, *Wilson*

*v. Cornell*, 1 South. \*117. *Den v. Farley*, Ib. \*124. *Ogden v. Robertson*, 3 Gr. 124. *Ludlam v. Broderick*, 3 Gr. 269. But the affidavit to show that the witness lives out of the state, need not be taken on notice, *Den v. Wood*, 5 Hal. 62. Such affidavit must be produced, *Hendrick v. Craig*, 2 South. \*568. The affidavit and notice are filed, *Den, Whitenack v. Voorhees*, 2 Harr. 24.

(g) Ante § 25, note (e).

(h) An oath "faithfully" to execute, &c., omitting the other terms, is insufficient, *Den, Perry v. Thompson*, 1 Harr. 72. So, "truly, faithfully and without partiality, to take the examinations and depositions," &c., is bad, *Lawrence v. Finch*, 2 C. E. Gr. 235. Such oath taken before a person who styles himself "one of the peace of the county," is good, if the commissioner certifies that he had taken the oath prescribed, before a person authorized to administer an oath at the place of his residence, *Ludlam v. Broderick*, 3 Gr. 269. So, if the *jurat* be signed "A. B., justice of the supreme court of N. S.," the court will intend that he had power to administer an oath, although it be nowhere averred in the proceeding, *Den, Sallar v. Applegate*, 3 Zab. 115. It is not necessary that the *return* show that such officer had authority to administer the oath, but the court must be satisfied by competent evidence that he had, *Lawrence v. Finch*, 2 C. E. Gr. 235.

- commissioner or commissioners, and cause the examination of each witness to be reduced to writing and signed by such witness; and the said commissioner or commissioners shall also sign the same.<sup>(a)</sup>
- How commission returned.  
Ib. § 2. 35. The said commissioner or commissioners shall annex such examination 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 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.<sup>(b)</sup>
- Endorsement by judge or clerk. 36. 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,<sup>(c)</sup> it shall 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 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.
- Party may receive and deliver it.  
Ib. § 3. 37. 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.
- Oath in such case. 38. Either party in a civil cause desiring the testimony of any witness who resides out of this state, may, instead of taking his testimony by commission, take the testimony of such witness *de bene esse* before any judge of any supreme, circuit or district court, or court of common pleas, of the state where such witness is, or before any commissioner of deeds appointed by the governor of this state, resident in the state where such witness is, or before a commissioner specially appointed for that purpose by the court in which such action is pending, or any judge thereof; *provided*, that notice in writing of the time and place of such examination, and of the names of the witnesses to be examined shall be given to the adverse party, his attorney or solicitor, that he may be present and put interrogatories if he shall see fit, which notice shall be served, allowing time for attendance after service, not less than at the rate of one day,
- Of the return of foreign commissions.  
Ib. § 4. his files, will not deprive the party of the benefit of it, *Moran v. Green*, 1 Zab. 562.
- Oath in such case. <sup>(c)</sup> A deposition handed by the magistrate to A, and by A to B, by whom it was kept for some time and then returned to the magistrate and by him transmitted to the court with his affidavit that it did not appear to have been tampered with, cannot be read, *Sayre v. Sayre*, 2 Gr. 487.
- Testimony of non-resident witness may be taken on notice, instead of by commission.  
P. L. 1862, p. 225. Amended.  
Notice of such examination. <sup>(a)</sup> See § 27, note (m).  
<sup>(b)</sup> The commission may be opened by a judge in vacation, *Den v. Wood*, 5 Hal. 62. When to be filed with the clerk of the court, *Emmett v. Briggs*, 1 Zab. 53. As to the acts to be done by the judge and clerk, the statute is only *directory*, and any omission on their part, as if the judge neglects to file it, or the clerk permits it to be taken from

(Sundays excluded), for every fifty miles of travel; *provided also*, that in all cases at least ten days' notice, exclusive of Sundays, shall be given; and *provided further*, that in cases where such testimony is desired to be taken of witnesses residing in any foreign state or kingdom, or in any state or territory of the United States, situate upon the Pacific Ocean, so many days' notice shall be given as shall be directed by the court in which said cause shall be pending, or any judge thereof, at chambers; the officer taking such testimony shall first take an oath or affirmation fairly and impartially to take the same, before some person authorized to administer an oath in the state, territory or kingdom where he shall reside; the testimony of such witness shall be taken on oath or affirmation, administered according to the law of this state, upon interrogatories to be then and there put by the parties, or either of them, or any person authorized in their behalf, and such interrogatories and the answers thereto, shall be reduced to writing by the officer taking such testimony, and shall be subscribed in his presence by the deponent; and thereupon the same shall be certified, sealed up, endorsed, directed and forwarded, as is required in case of depositions taken under the twenty-ninth section of this act.

Oath of officer.

How examination conducted.

How examination returned.

39. The provisions of this act in relation to the examination of witnesses by depositions shall apply to any proceeding in the court of chancery, supreme court, circuit court, court of common pleas, or orphans' court, wherein the testimony of witnesses may be required as the basis of judicial action by virtue of any statute or other law of this state.

To what court statute applicable.

P. L. 1873, p. 73. Amended.

3. MISCELLANEOUS PROVISIONS.

40. Documentary evidence exhibited before any officer, commissioner or commissioners, taking any deposition or exhibits proved by any witness may be annexed to, and returned with the depositions of the witnesses so taken; or the said officer, commissioner or commissioners, shall, if requested by the party exhibiting such documentary evidence or producing such exhibit, mark it as an exhibit in the suit, and return it to the party offering the same, and the same shall be received in evidence in all respects as if annexed to and returned with the said depositions.

Exhibits may be annexed to depositions or marked as exhibits.

P. L. 1870, p. 12.

R. S. 959, § 2.

41. Depositions taken by virtue of this act, in any cause in the supreme court, may be transmitted to the judge holding the circuit court of the county in which the venue is laid, or to the clerk of such circuit court, to be by him filed, instead of being filed in the office of the clerk of the supreme court.

If taken in supreme court may be sent to and filed with clerk of the circuit.

42. The examination of any witness by commission or deposition taken, returned and filed, as provided for in this act, or a duly certified copy thereof, (a) shall be as 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, proof being first made to the satisfaction of the court that such witness resides, or is out of this state, or is dead, or by reason of age, sickness, or bodily infirmity, is unable to attend the said court, and if the testimony be taken under the thirty-eighth section of this act, proof being made that notice of the taking thereof was given as therein prescribed. (b)

Examination to be read in evidence.

R. S. 959, § 10.

P. L. 1862, p. 225, § 4.

Amended.

43. Any deposition or examination taken under this act, shall be subject to be excluded or overruled, wholly or in part, according to the opinion of the court, upon any objection taken to the competency of the witness, the materiality or competency of the evidence given, or the regularity of the questions put; but shall not be excluded for any irregularity or informality in taking or returning the same, if the court in which the same is offered shall be satisfied that the testimony of the witness has been fairly and truly taken and returned; and if such deposition or examination shall be admitted in evidence by the court, no exception shall be taken to the admission thereof, on the ground of any irregularity or informality in taking or returning the same.

Deposition shall be subject to objections as to competency, etc.

But shall not be excluded for informality.

No exception on ground of informality.

(a) The old practice was to serve a subpoena *duces tecum* on the clerk, who would attend in person, send his under clerk, or depute the attorney in the cause to take charge of the commission, *Tupper v. Weston*, 1 Zab. 572, note.  
(b) It is necessary to the admissibility of the deposition, to show that all the requirements of the statute have been

complied with, *Lawrence v. Finch*, 2 C. E. Gr. 235. If the evidence was competent when given, the death of the witness or of the other party before the trial, will not exclude it, *Ibid.* *Ramsey v. Dumars*, 4 Harr. 66. *Martell v. Warwick*, 3 C. E. Gr. 108; 4 C. E. Gr. 439.

To be at expense of party taking such examination.

R. S. 959, § 12.

Parties may have copies. Ib. § 9.

Taking out a commission not a stay of proceeding.

Power of committee to issue subpoenas.

P. L. 1870, p. 62. Amended.

Any member may administer oath.

Subpoena, how served.

Refusal to obey, how punished.

Punishment for testifying falsely.

Fees of witnesses. Ib. § 3.

Process for, how obtained.

R. S. 959, § 14.

44. 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.

45. The parties to the action 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.

46. The taking out of a commission for the examination of witnesses shall not be a stay of proceedings in the action.<sup>(a)</sup>

#### V. Examinations before committees.

47. Whenever the common council of any city within this state shall have appointed a committee of members of their body upon any subject or matter within the jurisdiction of such common council, or to examine any officer of the city or member of said council in relation to the discharge of his official duties or conduct, or to the receipt or disbursement by him of any moneys in the discharge of said duties, or concerning the possession or disposition by him, in his official capacity, of any property belonging to the said city, or to inspect or examine any book account, voucher, or document, in the possession or under his control as such officer, relating to the affairs or interest of such city, such committee is hereby authorized to issue a *subpoena ad testificandum* or *subpoena duces tecum*, to any person within this state, to appear before them to give testimony or information required for the purpose above mentioned; and any member of such committee is hereby authorized to administer oaths to all such witnesses as may appear or be brought before them; the subpoenas herein provided for may be served by any police officer or constable of the said city; and in case any person summoned shall refuse to obey such subpoena, or to give testimony, or to answer questions as required, or to produce any books, papers, or documents, as required, it shall be lawful for such committee, upon affidavit proving the facts, to apply to any judge of the supreme court for an attachment against such person, as for a contempt; and it shall be the duty of such judge to hear such application, and if satisfactory proof be made of such refusal to issue an attachment, directed to any constable or police officer of such city, for the arrest of such person, and upon his being brought before him, to proceed to a hearing of the case; and the said judge shall have power to enforce, by imprisonment in the county jail, obedience to such subpoena, and the answering of any question that may be proper, or the production of any book, paper, or document, that the witness would be compelled to produce in a court of law, and also to compel such witness to pay the costs of the said proceeding, to be taxed by the judge; and any person who shall wilfully and corruptly testify falsely to any material matter upon oath or affirmation, administered by any member of such committee, upon such investigation or inquiry, shall, upon conviction thereof, be subject to the penalties of perjury.

48. Witnesses subpoenaed by virtue of the preceding section, shall be entitled to the fees of witnesses in civil actions, to be paid out of the city treasury upon certificate of such committee.

#### VI. Commissions out of courts of other states.

49. In case a commission issued out of any court 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 testimony before such commissioner or commissioners, any justice of the supreme court of this state, may upon application made to him by or on behalf of such commissioner or commissioners, and upon proof being made of such refusal, make an order awarding process of subpoena 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

<sup>(a)</sup> The cause may be noticed for trial, and if the judge thinks there has been ample time for the return of the commission, he may order on the trial, unless good cause is shown for delay, *Stokes v. Garr*, 2 *Harr.* 451. See *Den v. Wood*, 5 *Hal.* 62. *Den v. Farley*, 1 *South.* \*124.

the duty of the said clerk to issue process of subpoena under the seal of the said court, requiring such witness to appear and testify before such commissioner or commissioners.

50. The process of subpoena 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 attending in pursuance of such subpoena, shall be entitled to the same fees as witnesses in other cases; and any witnesses disobeying such process shall be subject to the same penalties as are provided for in cases pending in the supreme court of this state.

How served.  
Ib. § 15.

Penalty for refusal to attend.

**An act concerning the records of notaries public of other states and territories.**

Approved March 21, 1874. P. L. 1874, p. 57.

51. SEC. 1. That whenever the register or other book of any notary public appointed and qualified under the laws of any state or territory of the United States containing a record of the official acts of such notary public by him done in pursuance of his office shall have been, or shall hereafter be, in pursuance of the law of such state or territory, by reason of the death, removal or other disability of such notary public, deposited in the office of the clerk, prothonotary or recorder of deeds of the city or county in which the said notary public resided at the time of his acting as such notary public, a copy of such record or of any part thereof respecting the protesting of any note or bill of exchange protested by such notary public, and the time when, place where and upon whom demand of acceptance or payment was made, with a copy of the notice of non-acceptance or non-payment (if a copy of such notice shall appear on said record), how the notice of non-acceptance or non-payment was served, and time when, or if sent, in what manner, and the time when, and to whom, duly certified under the hand and seal of such clerk, prothonotary or recorder of deeds, or otherwise proved to be truly taken from said record, shall be held and received in all the courts of this state as conclusive evidence of the facts therein recited, and also of the official character of said notary public; and whenever it shall appear from such record that the said note or bill of exchange had been protested for want of acceptance or payment thereof, and that the said notary public making such protest had duly notified the drawer or endorsers, by mail, of the demand of payment or acceptance and refusal thereof, without specifying the names or the post office address of such drawer or endorsers, the copy of such record certified or proved as aforesaid, shall be held and received in all the courts of this state as conclusive evidence that the drawer and endorsers of such note or bill of exchange were duly notified of such demand and refusal; *provided*, that the party offering the same shall have annexed a copy of such record to his declaration or other pleading, or shall, at least twenty days before the trial of any cause where such record is to be offered in evidence, serve upon the opposite party or his attorney a notice that he intends to offer in evidence upon said trial such record or a copy thereof, setting forth the cause; *and provided further*, that any party may contradict by other evidence any of the matters appearing upon the said record in all cases where such party shall give notice of his intention so to do within five days after a service of the notice mentioned in the first proviso of this section.

A duly proven copy of the official record of notaries public of other state shall be received as evidence in the courts of this state.

Proviso.

**An act concerning sealed instruments.**

Approved April 6, 1875. P. L. 1875, p. 56.

52. SEC. 1. That in every action upon a sealed instrument, or where a set-off is founded upon a sealed instrument, the seal thereof shall be only presumptive evidence of a sufficient consideration, which may be rebutted as if such instrument was not sealed; and that all instruments executed with a scroll, or other device by way of a scroll, shall be deemed a sealed instrument.

In actions on sealed instruments seal only presumptive evidence of consideration.

**An act concerning fees.**

Approved March 19, 1874. P. L. 1874, p. 54.

53. SEC. 1. That any joint committee of the legislature, any standing

Committees of either house of the legislature, to have power to summon witnesses and employ secretaries and counsel.

Witness fees.

Chairman of committees to certify bills, and state treasurer shall pay them.

committee of either house, or any special committee which shall have been, by resolution, directed to enter upon any investigation or inquiry, the pursuit of which shall necessitate sending for persons and papers and the examination of witnesses, shall have power to summon before them such persons as they may deem necessary and proper to testify in the matter under investigation, and shall also be authorized to employ such legal and clerical assistance as they may deem necessary, and the persons so testifying shall be entitled to receive the like witness fees and mileage as are now allowed to persons summoned to testify in the courts of this state; and the treasurer of this state is hereby authorized and directed to pay upon the warrant of the comptroller, such fees and compensations for the above-named purposes as shall be certified to have been correct and necessary by the chairman of the committee under whose authority and by whose order such expenses shall have been incurred, and approved by the governor.

**An act to define the powers of legislative committees of investigation.**

Approved March 11, 1875.

P. L. 1875, p. 26.

Committees empowered to compel attendance of witnesses.

Expenses, how paid.

Proviso.

May issue warrant of arrest.

54. SEC. 1. That any joint committee of the legislature, any standing committee of either house, or any special committee which shall have been or may be by resolution, directed to enter upon any investigation or inquiry, the pursuit of which shall necessitate sending for persons and papers and examination of witnesses, shall have power to compel the attendance before them of such person or persons as they may deem necessary and proper, to testify in the matter under investigation, and any member of said committee may swear any person who shall come to testify before said committee; and any person who shall have been so sworn, and who shall swear falsely shall be guilty of perjury; and said committee shall be authorized to employ such legal and clerical assistance as they may deem necessary; and the treasurer of this state is hereby authorized and directed to pay, upon the warrant of the comptroller, such fees and compensation for the above named purposes, and for the expenses of the sergeant-at-arms in the execution of the warrant mentioned in section two of this act, as shall be certified to as correct and necessary by the chairman of the committee, under whose authority and by whose order such expenses shall have been incurred; *provided*, such certificate be first approved by the governor.

55. SEC. 2. That if any person or persons shall be summoned in writing, by order of any such committee, to testify before it and shall refuse or neglect to obey said summons, it shall be lawful for the speaker of the house of assembly or the president of the senate, upon application to him, by warrant under his hand, to order the sergeant-at-arms of the house over which he shall preside to arrest such person or persons and bring him, her, or them before said committee; and it shall be the duty of the sergeant-at-arms to whom such warrant shall be directed to execute the same.

## Executions.

### I. FORM OF AND RECORDING.

1. Form of writ against goods and lands.
2. Execution against lands to be recorded.

### II. WHAT MAY BE LEVIED ON.

3. Money.
4. Notes, stock, etc.
5. Clerk or cashier of company to give certificate.
6. Proceedings when clerk, cashier, etc. of joint stock company is non-resident.
7. Such clerk, etc., to return statement and certificate.

8. How proprietary rights levied on and sold.
9. Executions against townships, cities, etc.

### III. PROPERTY EXEMPT FROM.

10. In case of debtor having a family.
11. Sheriff to make inventory and appoint appraisers.
12. Duty of appraisers.
13. Fees of sheriff and appraisers.
14. Exemption where executions issue into different counties.
15. By whom selection to be made if defendant absent.