any such city or township to compound for said penalties, or either of them, either before or after suing for the same, upon such terms as they may think proper.

Vested powers saved.

12. SEC. 6. Nothing contained in this act shall be construed to impair, or in any wise counteract, the full force and execution of the powers already vested in the corporate authorities of any such city or township, by their charters or acts of incorporation, or any supplements thereto.

Amendments.

Rev. 137.

R S., 986.

An act respecting amendments and jeofails.

Passed November 21, 1794.

Mistakes in process and records may be amended, etc.

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

Judgments not to be reversed for rasures, etc.

2. For error assigned, or to be assigned, in any record, process, warrant of attorney, writ original or judicial, panel, or return, because there are any rasures or interlineations, or any addition, subtraction, or diminution of words, letters, or titles, or parcel of letters, in any such record, process, warrant of attorney, writ, panel, or return, no judgment or record shall be reversed or annulled.

Court may order misprision of clerks to be amended.

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

Variance betw'n a record, and certificate thereof, amendable.

4. If any record, process, declaration, count, plea, warrant of attorney, writ, panel, or return, be certified defective, otherwise than according to the writing which thereof remains in the office, court, or place from whence the same is certified, the parties, in affirmance of the judgment of such record or process, may allege that the same writing is variant from the said certificate, and that being found and certified, the said variance shall be, by the said court, rectified and amended according to the first writing.(*b*)

(*a*) In an action on a bond with special condition and verdict not entered for the penalty, judgment was suspended until amendment could be made. *Webb* v. *Fish*, 1 *South.* *371 (*b*). So in debt on bail bond. *Hunt* v. *Allen*, 2 *Zab.* 533. A non-suit granted at the circuit for a variance caused by a mistake in copying the record, will be set aside *Den* v. *Hull*, 4 *Hal.* 277. In making up the record the clerk omitted the notice annexed to a plea of the general issue. A motion to amend was denied, because such notice forms no part of the record. *Stevenson* v. *Schenck*, *Pen.* *434. See *State* v. *Atkinson*, 3 *Dutch.* 420.

(*b*) After joinder in error, neither party can allege diminution, yet the court may award a *certiorari* to supply any defect in the body of the record, or in its out branches. *Gilliland* v. *Rappleyea*, 3 *Gr.* 138. So a *ca. sa.* and *fi. fa.* may be read after their return. *Allen* v. *Craig*, 2 *Gr.* 112. A court of error will upon motion amend the record sent up, in mere matters of form or clerical mistakes, but not in matters of substance. But it will permit the court below to amend the record in matters of substance, and will for that purpose, upon diminution alleged, call upon the court below to certify as to the matter alleged, even after argument. *Apgar* v. *Hiller*, 4 *Zab.* 808. Where the Sessions for a defect in their first return to a *certiorari*, made another return, a rule was taken to amend such second return for ambiguity. *State* v. *Hunt*, 1 *Hal.* 303. See *Sheppard* v. *Miller*, *Coxe* 402. The supreme court cannot compel the sessions to state the case, nor receive affidavits to prove that they have acted improperly. *Newton* v. *Gloucester*, 1 *Hal.* 405. The caption of an indictment may be so amended. *Nicholls* v. *The State*, 2 *South.* *542. (*a*). *The State* v. *Jones*, 4 *Hal.* 235. *The State* v. *Zule*, 5 *Hal.* 350. *State* v. *Norton*, 3 *Zab.* 33. A certified

Misprisions of clerks amendable.

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

No person to be prejudiced by ancient terms and forms.

6. By the ancient terms and forms of pleaders, no person shall be prejudiced, so that the matter of the action be fully showed in the writ, declaration, and pleadings.

Records not to be altered in any term after judgment.

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

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

8. If any issue hath been or shall be tried, by the oath or affirmation of twelve men, or more, for the party plaintiff or demandant, or for the party tenant or defendant, bailiff in assize, vouchee, prayee in aid, or tenant by receipt, in any action, suit, bill, plaint, or demand, in any court of record, then the court, by whom judgment thereof ought to be given, shall proceed and give judgment in the same, notwithstanding any mispleading, lack of color, insufficient pleading, or jeofail, any miscontinuance, discontinuance, or misconceiving of process, misjoining of the issue, lack of warrant of attorney of the party against whom the issue shall be tried, or any other default or negligence of any of the parties, their counsellors or attorneys; and the judgments thereof, so had and given, or to be had and given, shall stand in full strength and force, to all intents and purposes, according to the said verdict, without any reversal or undoing of the same by writ of error or otherwise, in like form as though no such default or negligence had ever been had or committed.

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

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

copy of the surrogate's proceedings on an application for probate, has the effect of a record, against which no averment will be admitted by the ordinary. *Abraham Coursen's Will*, 3 *Ch. Gr.* 410. The court will not notice any alleged irregularity of the court below unless established by the record. *Coxe* v. *Field*, 1 *Gr.* 216. The rules and proceedings of the court below, in the book of minutes, may be brought up. *Stansbury* v. *Squier*, 2 *South.* *861. *Evans* v. *Adams*, 3 *Gr.* 378. *State* v. *Jones*, 5 *Hal.* 357. *Warren* v. *Drost*, 3 *Har.* 336. But only in cases where there has been a judgment. *Den Rutherford* v *Fen*, 1 *Zab.* 700. A return or answer to a rule, on a court below, should be made by the court, and not by the clerk, as his individual act. *Worrel* v. *Searing*, *Spen.* 670.

(*a*) A verdict will cure an ambiguity, but it will not mend the matter where the gist of the action is not laid. *Farwell* v. *Smith*, 1 *Har.* 133 *The United States* v. *The Virgin*, *Pet. C. C.* 7.

Amendment of *summons* allowed, where under the mechanics' lien law it was issued against the party as *builder* only, where the same person was both builder and owner, *Cornell* v. *Matthews*, 3 *Dutch.* 522. See *Washburn* v. *Burns, et al.*, 5 *Vr.* 18. And in ejectment where the affidavit of service was defective, *Den* v. *Applegate*, 7 *Hal.* 321. *Kloepping* ads. *Stellmacher*, 7 *Vr.* 176. And where the description and boundaries of the premises claimed were defective, *Stewart* v. *Camden and Amboy R. R. Co.*, 4 *Vr.* 115. So where a *certiorari* was improperly entitled as to the defendant, *Frame* v. *Boyd*, 6 *Vr.* 467. So in an action on a constable's bond, where the name of the party for whose use the action was brought, was not indorsed, *Wiley* ads. *Paterson*, 3 *Harr.* 440. See *Sayres* v. *Ridgway*, 3 *Hal.* 373, and cases cited under PRACTICE OF LAW §43.

Amendment of the *declaration* was allowed, after judgment by default, in an action of covenant where a mistake in the date of the lease, and in the description of the premises, had been made. *Boudinot* v. *Lewis*, *Pen.* *512. By altering the date on which the judgment in another state was laid, after joinder in demurrer. *Lanning* v. *Shute*, 2 *South.* *778. But not after judgment on a plea of *nul tiel record*. *Gulick* v. *Loder*, 2 *Gr.* 572, 3 *Gr.* 416. When statute of limitations was pleaded, leave given to add a count stating a promise by the administrator. *Saltar* v. *Saltar*, 1 *Hal.* 405. Where a variance arose from an evident misprision of one word in a new assignment in an action of trespass. *Nelson* v. *Ayres*, 7 *Hal.* 62. *Howell* v. *Ashmore*, 1 *Stock.* 82. To the common counts plaintiffs were allowed to add counts on a special agreement; and this after the cause had been removed into the court of appeals, the judgment reversed, a *venire de novo* ordered, and the record remitted to the supreme court. *Rogers* v. *Phinney*, 1 *Gr.* 1. *Willis* v. *Fernald*, 4 *Vr.* 207. *Joslin* v. *New Jersey Car Spring Co.*, 7 *Vr.* 146. Where a demurrer was filed in an action brought on an administrator's bond given to the ordinary in his individual name, because he was described as *late* ordinary. *Williamson* v. *Updike*, 2 *Gr.* 270. See *Halsted* v. *Fowler*, 2 *Zab.* 48. Where the plaintiff had mistaken the date of an act of the legislature, and the name of a

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

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

11. If any verdict of twelve men hath been or shall be given in any action, suit, bill, plaint or demand, in any court of record, the judgment

commissioner. *Meadow Co.* v. *Christ Church*, 3 *Gr.* 52. After judgment for the plaintiff on demurrer to several special pleas in bar, in an action for overflowing plaintiff's lands, another count was added alleging the destruction of his fishery. *Ten Eyck* v. *Delaware and Raritan Canal Co.*, 4 *Har.* 5. But not to add a count in ejectment stating a demise under a new title, *Gale* v. *Babcock*, 4 *Wash. C. C.* 199. Plaintiff having declared on a bond with special condition, and defendant having pleaded several pleas in bar, plaintiff was allowed to strike out the recital of the condition, so as to make the declaration general, as on a money bond. *Morris Canal* v. *Van Voorst*, 4 *Har.* 9.

Amendment of the *bill of particulars* allowed, if calculated to mislead. *Tillou* v. *Hutchinson*, 3 *Gr.* 178. *Bunting* ads. *Allen*, 3 *Har.* 300. *Stothoff* v. *Dunham*, 4 *Har.* 181. *Whitall* v. *Vaughn*, *Pen.* *636. The bill of particulars served, forms no part of the record, and it is not error that the name and style of defendant in the bill do not correspond with the name in the record. *State Street Methodist Church* v. *Gordon*, 2 *Vr.* 264.

Amendment of *plea* allowed, in the notice of special matter under a plea of the general issue. *Rosevelt* v. *Gardiner*, *Pen.* *694. A plea denying the assignment of a bond, *in modo et forma*, should conclude not with a verification, but to the country, and is bad on demurrer, but may be amended. *Stevens* v. *Bowers*, 1 *Har.* 16. Or it may be stricken out on motion. *Copperthwaite* v. *Dummer*, 3 *Har.* 258. On affidavit of a real defence after demurrer to declaration *Johnson* ads. *Rowan*, 1 *Har.* 266. *Hale* v. *Lawrence*, 2 *Zab.* 72. *Hall* v. *Snowhill*, 2 *Gr.* 9 But not if the demurrer be overruled as frivolous. *Allen* v. *Wheeler*, 1 *Zab.* 93. *Hogencamp* v. *Ackerman*, 4 *Zab* 133. Or the court is of opinion that the party demurring can not plead successfully. *Broadwell* v. *Denman*, 2 *Hal.* 278. See *Seeley* v. *Price*, 1 *Hal. Ch.* 231. Judgment opened but allowed to stand with the execution as security for plaintiff. *Halsey* ads. *Van Wagenen*, 1 *Har.* 350. Discretionary in the court, where defendant in trespass applied to add to the general issue, pleas of justification. *Bruch* v. *Carter*, 3 *Vr.* 554.

Amendment of *replication* allowed, where after a trial, verdict and judgment for plaintiff in common pleas, and reversal of that judgment in the supreme court on writ of error, by withdrawing a general replication and pleading payment on the bond within sixteen years. *Van Dyke* v. *Van Dyke*, 4 *Har.* 1. After verdict for *plaintiff* on a plea of *liberum tenementum* in trespass. *Budd* v. *Stille*, 1 *Har.* 264.

Amendment of *venire* allowed. *Caldwell* v. *West*, 1 *Zab.* 411.

Amendment of *verdict* allowed, where the jury find a general verdict of guilty, on a special issue joined in trespass. *Phillips* v. *Kent*, 3 *Zab.* 155. But not where the jury omits to find a verdict on one of the issues joined. *Middleton* v. *Quigley*, 7 *Hal.* 352. *The Church* v. *Gordon*, 2 *Vr.* 264.

Amendment of *postea* allowed where the entire verdict was for debt, and should have been debt and damages for the detention of the debt. *North River Meadow Co.* v. *Shrewsbury Church*, 2 *Zab.* 425. In an action of waste a verdict of guilty as to one part, is substantially a verdict of not guilty as to the residue, and the court will so amend the *postea*. *Morehouse* v. *Cotheal*, 2 *Zab.* 521. In the trial of an issue in a case of *mandamus*, where the jury find against the defendant, but are silent as to damages and costs, the omission may be corrected. *Ferguson* ads. *State*, 2 *Vr.* 284.

Amendment of *judgment* allowed, after a term, by entry of judgment of seizin in dower, the omission being the clerk's error. *Dewey* v. *Ten Eyck*, *Pen.* *1023. By correcting the christian name of the plaintiff in a judgment twenty years old. *Probasco* v. *Probasco*, *Pen.* *1012. By entering a remittitur of the excess, where the judgment is for too large an amount. *Herbert* v. *Hardenbergh*, 5 *Hal.* 222. *New Jersey Flax Co.* v. *Mills*, 2 *Dutch.* 60. *Rafferty* v. *Bank of Jersey City*, 4 *Vr.* 369. So where judgment should have been entered for the penalty of a bond. *Webb* v. *Fish*, 1 *South.* *371(*b*). A judgment entered by mistake may be amended, or if procured by fraud, may at any time be set aside. *King* v. *Ruckman*, 7 *C. E. Gr.* 551.

Amendment of *execution* allowed, where endorsed in too large an amount. *Griffith* v. *Jones*, *Pen.* *932. So where an execution was tested out of term. *Den, Inskeep* v. *Lecony. Coxe* 111. So where by a mistake in plaintiff's affidavit as to the amount due on a bond, the judgment had been entered for too large a sum. *Fries* v. *Woodworth*, 2 *Vr.* 273. Where plaintiff endorses on writ one sum, including both damages and costs. *Ferguson* ads. *State*, 2 *Vr.* 283.

Amendment in *style of action* after trial and verdict, suit in trespass changed to case. *Price* v. *N. J. R R. Co.*, 2 *Vr.* 229, 3 *Vr.* 19. Suit in covenant changed to *assumpsit*. *United States Watch Co* v. *Learned*, 7 *Vr.* 429. Where, after *assumpsit* brought, plaintiffs obtained judgment in another state for the same claim, the action could not be transformed into debt. *Barnes* v. *Gibbs*, 2 *Vr.* 318.

Amendments are now entirely in the discretion of the court. *Ten Eyck* v. *Delaware and Raritan Canal Co.*, 4 *Har.* 5. *McCourry* v. *Suydam*, 5 *Hal.* 249. *Mayor of Hoboken* v. *Gear*, 3 *Dutch.* 265. *Bruch* v. *Carter*, 3 *Vr.* 554. *Crawford* v. *New Jersey R. R.*, 4 *Dutch.* 480. *United States Watch Co.* v. *Learned*, 7 *Vr.* 429.

The amendment will be considered as made whenever the objection is taken *Den, Inskeep* v. *Lecony, Coxe* 111. *Coxe* v. *Field*, 1 *Gr.* 216. *Price* v *New Jersey R. R.*, 2 *Vr.* 229. *Willis* v. *Fernald*, 4 *Vr.* 207. The party applying to amend must pay *costs*. *Condit* v *Neighbor*, 7 *Hal.* 320. *Lanning* v. *Shute*, 2 *South.* *778. *Rogers* v. *Phinney*, 1 *Gr.* 1. *Den* v. *Seagrave*, 1 *Har.* 357. *Den* v. *Ganoe*, 1 *Har.* 439. Except when the practice and law have been unsettled. *Williamson* v. *Updike*, 2 *Gr.* 270. See *Boggs* v. *Chichester*, 1 *Gr.* 209.

(*a*) A misrecital of a writ, as "summoned" instead of "attached," is no available error. *Bruen* v. *Ogden*, 3 *Har.* 124. So a variance between the affidavit to hold to bail and the writ, is not a sufficient reason to discharge bail. *Robeson* v. *Thompson*, 4 *Hal.* 97. *Aliter*, if the cause of action set forth in the declaration is substantially variant from that set forth in the affidavit *Ibid.* *Schenck* v. *Schenck*, 5 *Hal.* 274. The best method for the defendant to avail himself of a variance, is by motion to set aside the proceedings. *Bank of New Brunswick* v. *Arrowsmith*, 4 *Hal.* 284 The process being against defts. as executors, the declaration against them individually, and the evidence on the trial entirely against them as executors, constitutes a fatal variance. *Shangles* v. *Runk*, 2 *Har.* 372. A variance between the pleading and proof is immaterial, unless the party is misled or prejudiced by it. *Hullock* v. *Insurance Co.*, 2 *Dutch.* 268.

(*b*) A sheriff may amend a return to a venire after it has been actually returned, by adding the name of a juror summoned and present, but omitted in the panel. *Berry* v. *Williams*, 1 *Zab.* 423.

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

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

The court, on demurrer, to give judgment according to the right of the cause, without regarding defects not specially shown for cause of demurrer.

12. Where any demurrer hath been, or shall be joined and entered in any action or suit in any court of record of this state, the court shall proceed and give judgment, according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect, or want of form, in any writ, return, plaint, declaration, or other pleading, process, or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as causes of the same, notwithstanding that such imperfection, omission, or defect might have heretofore been taken to be matter of substance, so as sufficient matter appear in the pleadings, upon which the court may give judgment according to the very right of the cause;(*e*) and therefore no advantage or exception shall be taken of or for an immaterial traverse, or of or for the default of entering pledges upon any bill or declaration, or of or for the default of alleging the bringing into court any bond, bill, indenture, or other deed whatsoever, mentioned in the declaration or other pleading, or of or for the default of alleging the bringing into court letters testamentary or letters of administration,(*g*) or of or for the omission of the

(*a*) Pledges are unnecessary. *Bank of New Brunswick* v. *Arrowsmith*, 4 *Hal.* 290.

(*b*) Appearance and verdict cure omission of defendants' christian names. *Seely* v. *Boon*, *Coxe* 138.

(*c*) The want of a *similiter* is amendable after verdict. *Dickerson* v. *Stoll*, 4 *Zab.* 550.

(*d*) The assignment of errors, blending error in fact and in law, may be amended after demurrer. *Freeborn* v. *Denman*, 2 *Hal.* 190.

(*e*) An objection to the form of action is matter of substance and may be taken advantage of on general demurrer *Flanagan* v. *Camden Ins. Co.* 1 *Dutch.* 506. *Gregory* v. *Thompson*, 2 *Vr.* 166. In an action to recover the amount of subscription to the stock of an incorporated company, the charter must be set out or it will be fatal on demurrer. *Perdicaris* v. *Trenton City Bridge Co.*, 5 *Dutch.* 367. A supplement to the charter of a private corporation stating that "it shall be deemed and taken as a public act," will itself receive judicial recognition. *Stephens and Condit Trans. Co.* v. *Central R. R. of N. J.*, 4 *Vr.* 229. If one count be in debt another in *assumpsit*, it is a misjoinder. *American Linen Thread Co.* v. *Sheldon*, 2 *Vr.* 420. *Hinchman* v. *Rutan*, 2 *Vr.* 496. So if trespass and case are joined, *Harwood* ads. *Tompkins*, 4 *Zab.* 425. See *Green* v. *Morris and Essex R. R.*, 4 *Zab.* 486. *Dale Manuf. Co.* v. *Grant*, 5 *Vr.* 138. A count in the declaration for conversion by the testator, and another count for conversion by his executors, constitutes a fatal mis-joinder. *Terhune* v. *Bray*, 1 *Har.* 54 If the parties have taken issue on injuries not actionable, the judge at the circuit cannot exclude evidence of such injuries. *Potts* v. *Clarke*, *Spen.* 536.

(*g*) The omission to crave oyer of letters testamentary constitutes no ground of demurrer. *Hill* v. *Smalley*, 1 *Dutch* 374. Pleading the general issue admits the plaintiff's probate. *Jones* v. *Decker*, *Pen.* *231. *Reid* v. *Crawford*, *Pen.* *622. *Gulick* v. *Van Arsdalen*, *Pen.* *746. Where oyer of letters testamentary is craved, it is sufficient to give a copy of the letters without annexing a copy of the will. *Beach* v. *Pears*, *Coxe* 288. Probate of will must be set out in a bill in chancery by the executor. *Pelletreau* v. *Rathbone*, *Sax.* 331.

words, "with force and arms," or, "against the peace," or either of them, or of or for want of the averment or words, "and this he is ready to verify," or, "and this he is ready to verify by the record," or of or for not alleging, "as appears by the record;" but the court shall give judgment according to the very right of the cause as aforesaid, without regarding any such imperfections, omissions, or defects, or any other matter of like nature, except the same shall be specially and particularly set down and shown for cause of demurrer; and that no judgment shall be reversed, by any writ of error, for any such imperfection, omission, defect, or want of form as aforesaid, except such only as are before excepted; and every court of record of this state shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects, and wants of form as are before mentioned, other than those only which the party demurring shall specially and particularly express and set down, together with his demurrer, as aforesaid, and may, at any time, permit either of the parties to amend any defect in the process or pleadings, upon such terms and conditions as the said court shall, in their discretion, direct and prescribe.

Defects in process and pleadings amendable on terms.

This act to extend to judgments on confession.

13. This act shall extend to all judgments which have been or shall be entered upon confession, nihil dicit, or non sum informatus, in any court of record; and no such judgment shall be reversed, nor any judgment, upon any assessment or writ of inquiry of damages, made or executed thereon, be stayed or reversed for or by reason of any imperfection, omission, defect, matter, or thing whatsoever, which would have been aided and cured by this act, in case a verdict of twelve men had been given in the said action or suit, so as there be an original writ or bill duly filed according to law.

Variance in writs of error from the original record to be amended.

14. All writs of error, wherein there shall be any variance from the original record, or other defect,(*a*) may and shall be amended and made agreeable to such record by the respective courts, where such writ or writs of error shall be made returnable.

Judgment after verdict not to be reversed for want of form or substance in any writ.

15. Where any verdict hath been or shall be given in any action, suit, bill, plaint, or demand, in any court of record, the judgment thereupon shall not be stayed or reversed for any defect or fault, either in form or substance, in any bill, writ original or judicial, or for any variance in such writ from the declaration or other proceedings.

Act shall extend to suits for debts due to the state.

16. This act shall extend to all suits, in any court of record, for the recovery of any debt due to this state, or for any debt, duty, or revenue belonging to the same; and also to all writs of mandamus, and informations in nature of quo warranto, and proceedings thereon.

All judicial proceedings to be in the English language, except,&c.

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

Act to be liberally construed.

18. This act shall be taken and construed, in all courts of justice, in the most ample, beneficial, and liberal manner, for the ease and benefit of the parties, and to prevent frivolous and vexatious delays.

Not to extend to indictments, etc.

19. No part of this act, except that which directs proceedings to be in the English language, shall extend to any indictment or presentment for any criminal matter, or process upon the same; nor to any writ, bill, action, or information, upon any popular or penal statute, nor to any outlawry, or process thereupon, or in order thereunto.(*c*)

(*a*) Court may amend a *scire facias*, so as to conform to the record. *Condit* v. *Gregory*, 1 *Zab.* 429. See *Greenway* v. *Dare*, 1 *Hal.* 305. *Apgar* v. *Hiler*, 4 *Zab.* 808.

(*b*) The omission of a letter in a word will not vitiate, unless the meaning is thereby changed. *State* v. *Jay*, 5 *Vr.* 368. *United States* v. *Hinman*, *Bald. C. C.* 292. Nor will the return of a road be set aside because one course is not actually delineated on the map, *State* v. *Miller*, 3 *Zab.* 383. If the term at which an indictment is found is stated in the caption in figures, instead of words, it is no ground of reversal. *Johnson* v. *The State*, 5 *Dutch.* 453. But see *Berrian* v. *The State*, 2 *Zab.* 9.

(*c*) After a writ of error, the supreme court cannot amend or order an amendment below in a criminal case. *Cruiser* v. *The State*, 3 *Har.* 206.

See CRIMINAL PROCEEDINGS, § 43, 44, 53.