

5. That all the laws of this state now in force in the case of the clerk of the common pleas of the county of Essex, shall apply to the said register of deeds and mortgages, so far forth as the same may be applicable to the business and duties of his said office of register of deeds and mortgages; and the record, and transcripts therefrom, shall have the same force and effect as they now have when made by the clerk of the court of common pleas of the county. Laws applicable to office.

6. That all the records of deeds, mortgages, assignments of mortgages, letters of attorney to convey lands, and other instruments of writing relating to the title to real estate, books, papers, indexes, and other things, pertaining to the business and duties herein devolved upon the said register of deeds and mortgages, which may be in the custody of the clerk of the court of common pleas of the county of Essex, at the close of his present term of office, shall be by him at that time placed in the custody of the said register of deeds and mortgages, who shall sign a receipt therefor according to law. Records, &c., to be delivered to register.

7. That it shall be the duty of the board of chosen freeholders of the county of Essex, without unnecessary delay, to provided a fit, and suitable fire proof place, separate and distinct from the office of the clerk of the court of common pleas of the county, in which the said register of deeds and mortgages may keep the records and papers of his office, and to furnish the same with proper book cases and furniture. Freeholders to provide office.

8. That all the necessary books and stationery for the business of said office shall be furnished by the county, and shall be the property of the county; and be public records, to which all persons shall have access at all reasonable hours. Books, &c., to be furnished by county.

9. That in case a vacancy shall occur in said office, it shall be filled in the same manner, as is now provided for by law in the case of the clerk of the county. Vacancies.

[A similar act applying to Hudson county was approved March 19, 1874, (P. L. 1874, p. 324), and for Camden county, March 16, 1875, (P. L. 1875, p. 285)].

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- P. L. 1855, p. 93.
- " 1860, p. 51.
- " 1864, p. 57.
- " 1865, p. 422.
- " 1866, p. 1051.
- " 1869, p. 589.
- " 1870, p. 44.
- " 1872, p. 50.
- " 1873, p. 147.
- " 1874, p. 94.
- " 1875, p. 32.
- " 1876, p. 228.
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R. S. 153, § 1.

P. L. 1876, p. 228.

Name certified and recorded.

Ib. § 2.

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### An act to incorporate trustees of religious societies.

Revision—Approved April 9, 1875.

1. That every religious society or congregation of christians, entitled to protection in the free use of their religion by the constitution and laws of this state, are hereby authorized to assemble at their usual place of meeting for public worship, at any time by them to be agreed upon, giving at least ten days' notice of the time and purpose of assembling, by an advertisement set up in open view at or near such place of meeting; when so assembled may by plurality of voices of such of the said society or congregation as are present, elect any number of the said society or congregation to be trustees; which said trustees and their successors in office, are hereby constituted a body politic and corporate in law, by whatever name they shall assume, agreeably to the directions of this act.(a)

2. The said trustees, when they take upon themselves a name, shall certify such name under their hands and seals, and transmit such certificate to the clerk of the court of common pleas of the county, whose duty it shall be instantly to record the same, for which he shall be entitled to receive one dollar; and thereupon the said trustees shall be known and distinguished in law by the name of incorporation so taken, certified and recorded.

3. The said trustees and their successors shall, by such name of incorporation, be able and capable to acquire, purchase, receive, have and hold any lands, tenements, hereditaments, legacies, donations, moneys, goods and chattels in trust for the use of said society or congregation, to an amount in value not exceeding two thousand dollars a year, and the same or any part thereof to sell, grant, assign, demise, alien and dispose of; to sue or be sued, implead or be impleaded, in any court of law or equity; to make and use a common seal, and the same to alter and renew at their pleasure.(b)

4. For perpetuating a line of succession in the trustees of every religious society or congregation, it shall and may be lawful for the members of the said society or congregation to assemble at any time they may think proper, giving notice thereof as hereinbefore is directed for the election of the first trustees, or for the election of any other trustee or trustees, in the stead of those or any of those before elected, in case they see cause for the removal of the said trustees; *provided*, such removal shall not be

(a) What shall constitute membership or what qualifications are necessary, is not specified, *State v. Crowell*, 4 Hal. 390, 411, 418. Religious societies, incorporated under the act, present a three-fold aspect: (1) The congregation which usually meets together for religious worship and instruction; (2) The church, strictly so called, composed of those entitled to full church privileges; and, (3) the trustees or corporation, *Miller v. Baptist Church*, 1 Har. 251, 253, *Ryerson, J.* An election of trustees of a Presbyterian church, by persons who are not contributors to the support of the church, (and therefore not qualified by their rules to vote), is void, *State v. Crowell*, 4 Hal. 390.

(b) The act does not, *proprio vigore*, do more than vest the legal title of the ecclesiastical property in such trustees, *Morgan v. Rose*, 7 C. E. Gr. 583. The statute was designed to create a simple trust, so that the trustees must hold and dispose of the property in conformity with the directions of their *cestuis que trust*, who may be, either the congregation, or certain officials, according to the rules or discipline of the particular church or society, *Ibid.* The common law right of alienation by religious corporations, has not been re-secured in this state by statute, *Van Houten v. First Reformed Dutch Church*, 2 C. E. Gr. 126.

in less than one year after his or their election into office; and also to fill up the vacancy which may be occasioned by the death or resignation of any trustee, or his moving out of the limits of the said society or congregation.(a)

5. Such corporation may elect, annually, or oftener if necessary or expedient, one of their number to be their president, who is hereby empowered to convene the said corporation as occasion may require; and preside at the meetings thereof, and execute all contracts, and in case of his absence, sickness, death, resignation, refusal to act, or moving out of the limits of the said religious society or congregation, then the said office of president shall devolve on the senior trustee, for the time being, who shall occupy the same until the return or recovery of the president, or the election of another.

President and his powers.  
Ib. § 5.

6. Such corporations may elect annually, or oftener if necessary or expedient, one of their own members to be secretary, who shall keep the minutes and enter the orders, acts and proceedings in a book, to be kept for that purpose, and who shall have the custody of the common seal, and the papers, deeds, writings, documents and books of or relating to the said corporation; and upon application to the secretary, any member of the said religious society or congregation shall have free access to all the papers, deeds, writings, minutes, documents and books of or belonging to the said corporation, and upon the death, resignation, removal or expiration of the office of secretary, or election of a new one, the common seal and all minutes, papers, deeds, writings, documents and books of or belonging to such corporation, shall be delivered to his successor in office, on the oath of the preceding secretary, or in case of his death, on the oath of his executors or administrators, under such pecuniary penalty as said corporation shall have previously fixed, to be recovered with costs by action of debt, in the name and for the use of the corporation.

Election of secretary and his duties.  
P. L. 1870, p. 44.

7. At the said annual or other election it shall and may be lawful for such corporation to elect one of their own members to be treasurer, who shall have charge of the moneys of the said corporation, and keep a correct account of the receipts and disbursements of the same, and at each annual election for officers of said corporation, render to said religious society a true statement in writing of the receipts and disbursements of the said corporation for the preceding year, and upon the death, resignation, removal or expiration of the office of treasurer, or election of a new one, all the books, accounts, vouchers and documents in the hands of such treasurer, belonging to such corporation shall be delivered to his successor in office.

Election of treasurer and his duties.  
Ib. § 2.

8. It shall be lawful for any religious society in this state, however incorporated, to purchase and hold and also to convey and dispose of any real estate, which they may deem necessary and expedient; *provided*, that the same shall not be used by the religious corporation acquiring the same for any other purpose than the rendering and maintaining in any building now or hereafter erected upon such real estate, the worship of Almighty God, and the furtherance of religion according to the tenets and forms of worship of the religious denomination to which such religious society belongs, or for education, or the administration of charity to the bodies or souls of men; any conveyance or agreement by and between any religious corporations, intended for the purposes aforesaid by or under the authority of such corporations, now made or hereafter to be made, is hereby declared to be valid and effectual in law; the proceedings, orders and acts of a majority of all the members of the said corporation, but not of a less number, shall be valid and effectual in law.(b)

Power to sell and convey real estate.  
P. L. 1872, p. 101.

Conveyance or agreement to be valid.

(a) An election held after the incorporation, is to perpetuate or continue the society already organized, *Miller v. English*, 1 Zab. 317. The election must be held at the usual place of meeting, and no election for trustees can be held during the year unless such trustees have been legally removed. *Den, American Society v. Pulling*, 4 Zab. 653.

(b) The real and personal estate of a religious corporation is trust property, not to be controlled by the will of the *cestuis que trust*, much less by a bare majority of them, but by the trustees, the duly constituted guardians of the rights and interests of the congregation, *Van Houten v. First Reformed Dutch Church*, 2 C. E. Gr. 126. Matters of faith are not governed by the will of a majority, expressed at a regular meeting, *Miller v. English*, 1 Zab. 317. When a majority of an elective body protest against the election of a

proposed candidate, and do not propose any other candidate, the minority may elect him, *Hendrickson v. Decow*, *Sax*. 577, 621. It is no valid objection to the action taken at a meeting of a congregation, that members of the congregation were absent, or, being present, did not vote. Where a society is composed of an indefinite number of persons, a majority of those who appear at a regular meeting, constitute a body to transact business. The presumption is that all the members present who observe silence when a question is put, concur with the majority of those who actually vote—that is, if the question be put audibly and explicitly, *Worrell v. First Church*, 8 C. E. Gr. 96. When the usual place of meeting of a society has been changed by them, an election or trustees at the old place of meeting is invalid, *Miller v. English*, 1 Zab. 317.

Jews included.

JEWS.

P. L. 1860, p. 51.

9. The foregoing sections of this act shall be construed to apply to any religious society or congregation of Israelites, otherwise called Hebrews or Jews, within this state, anything therein to the contrary notwithstanding.

Sec. 8 only to extend to Reformed Dutch.

R. S. 153, § 9.

Act extended to singing classes.

P. L. 1866, p. 1051.

10. Nothing hereinbefore contained except the eighth section shall be construed to extend to or affect the Reformed, formerly the Reformed Dutch churches of this state.

11. The provisions of this act, with all the penalties, privileges and advantages thereof, shall be and hereby are extended to and for the benefit of all associations, corporations and classes, which now are or hereafter may be organized in this state, the object of which is or shall be the mutual improvement of their members in the science of vocal music.

Saving of charters granted by Great Britain.

R. S. 153, § 10.

12. Whereas, some religious societies have held property under charters of incorporation granted by the government of Great Britain, previous to the Revolution, and doubts may arise whether such estate, so held, will descend and vest in the corporation created under the laws of this state—*therefore be it enacted*, that all the estate, real and personal, held in fee or otherwise, in consequence of any charter granted as aforesaid, shall be vested in and held by the corporation that may have been created in the place thereof, in consequence of the act passed the sixth day of March, in the year of our Lord seventeen hundred and eighty-six, or the supplement thereto, passed the twenty-fifth day of November, in the year seventeen hundred and eighty-nine, although no transfer of such property shall have been made by the trustees incorporated by such charter, to the trustees of the corporation created under the said laws, any thing in such charter or in any law to the contrary notwithstanding.

## REFORMED DUTCH.

Reformed Dutch churches incorporated.  
Ib. § 11.

13. Whereas, it is represented, that, according to the constitution, usages and customs of the Reformed, formerly the Reformed Dutch churches, the ministers, elders and deacons thereof, for the time being, have the management of the temporalities of the said churches; that several charters have been heretofore granted to incorporate such ministers, elders and deacons for the purposes aforesaid; that some of the said churches have been incorporated together by charter, holding lands and tenements in common, which have since separated and divided by common consent and now desire to hold each its share or part in severalty; and that the said churches cannot avail themselves of the preceding sections of this act, because they prescribe a mode of electing trustees, repugnant to the constitution, usages and customs of the said churches; *and whereas*, the legislature is willing to grant relief in the premises, and to communicate equal privileges to every denomination of christians; *be it therefore enacted*, that the minister or ministers, elders and deacons, for the time being, or if there be no minister or ministers, the elders and deacons, for the time being, of every Reformed, formerly the Reformed Dutch congregation, shall be trustees of the same, and a body politic and corporate in law, by such name as the said trustees shall assume, in manner hereinafter directed.

Name certified and recorded.  
Ib. § 12.

14. The said trustees, when they take upon themselves a name, shall certify such name under their hands and seals, and transmit such certificate to the clerk of the court of common pleas of the county, whose duty it shall be instantly to record the same, for which he shall be entitled to receive one dollar; and thereupon the said trustees shall be known and distinguished in law by the name of incorporation so taken, certified and recorded.

Power to hold lands, etc.  
Ib. § 13.

15. The said trustees of such Reformed, formerly the Reformed Dutch congregation shall, by such name, be able and capable to acquire, purchase, receive, have and hold any lands, tenements, hereditaments, legacies, donations, moneys, goods and chattels, in trust for the use of the said congregation, and the same or any part thereof to sell, grant, assign, demise, alien

or dispose of; to sue or be sued, implead or be impleaded, in any court of law or equity; to make and use a common seal, and the same to alter and renew at their pleasure; but no deed or instrument of conveyance for any lands, tenements, hereditaments or real estate, shall be good and effectual in law, unless it be sealed with the common seal, and signed by a majority of the members of the said corporation.

16. And whereas, some of the said Reformed, formerly the Reformed Dutch congregations, which have heretofore been incorporated by charter or otherwise, may see cause to renounce or forego such instrument or act of incorporation, and avail themselves of this law, *be it therefore enacted*, that it shall be lawful for the trustees of any Reformed, formerly the Reformed Dutch congregation, by whatever name incorporated, to renounce or forego such charter or act of incorporation and name, by writing under their hands and seals, and recorded as aforesaid, upon condition that the minister, elders and deacons, or elders and deacons, as the case may require, of such congregation, shall incorporate themselves pursuant to the directions of this act; and that upon such incorporation and recording of the said writing, their former incorporation and body politic shall cease and be dissolved, and all the estate, real and personal, held by virtue of the same, shall pass to and be vested in the body politic and corporate formed agreeably to this act, who shall be deemed to be the legal successors in office to the former body politic and corporate, and liable to their debts.

Reformed churches may renounce their charters and come under the general law.  
Ib. § 14.

17. Where two or more of the said Reformed, formerly the Reformed Dutch congregations, which have been united in one body politic, shall be disunited by renouncing or foregoing their former incorporation, and shall, each or any of them, become incorporated under this act, then such lands, tenements, hereditaments, moneys, goods and chattels as of right belong to each of the said congregations, separately considered, shall be and remain in the peaceable and quiet possession of the body politic and corporate of that particular church to which such real and personal estate doth of right belong; and all real and personal property acquired by such congregations, during their union as a body politic, shall be divided between such congregations in such manner as shall be agreed upon by the trustees of the said corporation.

Division of churches and property.  
Ib. § 15.

18. If the trustees of any two or more of the said Reformed, formerly the Reformed Dutch congregations, by whatever name known and distinguished in their respective charters or acts of incorporation, shall see cause to renounce or forego their separate corporations, and be formed into one joint corporation and body politic, it shall and may be lawful for such trustees, by mutual consent, to renounce or forego their separate charters or acts of incorporation by writing, under their hands and seals, which shall signify also their intention to become one joint corporation and body politic, and shall be recorded as aforesaid, upon condition that the said trustees shall form themselves into one corporation, agreeably to the directions of this act; and that upon recording the said writing, and after such joint incorporation under this act, their former separate corporations and bodies politic shall cease and be dissolved, and all the estate, real and personal, held by them separately, shall pass to and be vested in the trustees of such joint corporation and body politic, who shall be deemed to be the legal successors in office of the former separate bodies politic, and liable to their debts.

Churches may unite under the act.  
Ib. § 16.

19. For perpetuating a line of succession in the trustees of every Reformed, formerly the Reformed Dutch congregation, such minister or ministers, elders and deacons of such congregation, as shall take and record a name as aforesaid, shall be the first trustees of the same, and shall continue in office until others shall be duly elected, appointed or called, according to the manner, usages and customs of the Reformed, formerly the Reformed Dutch church; and every minister, elder or deacon, so constituting a trustee, shall continue in office until another person shall, in like manner, be elected, appointed or called in his stead, and so on as often as occasion may require; and if any dispute shall arise respecting the validity of the election, appointment, or call of the said trustees, the same shall be referred, for final decision, to the superior church judicature,

How board of trustees perpetuated.  
Ib. § 17.

President, his powers.  
Ib. § 18.

to which such congregation is subordinate, according to the customs and constitution of the said Reformed, formerly the Reformed Dutch church.

20. The person who is, according to the usage and custom of the Reformed, formerly the Reformed Dutch church, ordinarily to preside at the meeting of the minister, elders and deacons of the said congregation, shall be president of the said corporation, who is hereby empowered to convene the said corporation as occasion may require, and at the request of any two or more of the members, it is hereby made his duty to convene the same, in such manner, and under such regulations as the said corporation shall from time to time direct.

Custody of books, papers, &c.  
Ib. § 19.

21. The said corporation may, from time to time, appoint some fit person belonging to the said congregation, who shall have the custody of the common seal and the papers, deed, writings, documents and books of or relating to the said corporation, who shall keep the minutes, and enter the orders, acts and proceedings of the corporation, in a book to be kept for that purpose, and who shall deliver the said seal, minutes, papers, deeds, writings, documents and books, when demanded, to the said corporation, under such pecuniary penalty as they shall have previously fixed and ordained.

Access to books, papers, &c.  
Ib. § 20.

22. Every person of the said congregation who regularly contributes to the support of the gospel in the said congregation, shall have free access to all the papers, deeds, writings, minutes, documents and books, of or belonging to the said corporation.

Acts to be by majority.  
Ib. § 21.

23. The proceedings, orders and acts of a majority of all the members of the said corporation, but not of a less number, shall be valid and effectual in law.

Who not to vote.  
Ib. § 22.

24. No member of the said corporation shall be allowed to vote in any matter or thing which immediately affects himself, his private interest or emolument.

#### GERMAN REFORMED.

German Reformed churches incorporated.  
Ib. § 23.

25. And whereas, it is represented, that according to the constitution, usages and customs of the German Reformed churches, the minister, elders and deacons thereof, for the time being, have the management of the temporalities of the said churches, in like manner as the minister, elders and deacons of the Reformed, formerly the Reformed Dutch churches within this state; *now therefore, be it enacted*, that all the provisions of this act, relating as well to the incorporation as to the rights, privileges, and duties of the said Reformed, formerly the Reformed Dutch churches, shall be and they are hereby extended to all such German Reformed churches as may now or shall hereafter be constituted within this state.

#### EVANGELICAL LUTHERAN.

Act extended to Lutheran churches.  
P. L. 1855, p. 93.

26. The provisions hereof relating as well to the incorporation, as to the rights, privileges and duties of the Reformed, formerly the Reformed Dutch church, and also of the German Reformed churches, shall be and are hereby extended to all the Evangelical Lutheran churches as may now or shall hereafter be constituted within this state.

#### PROTESTANT EPISCOPAL.

Who trustees of Protestant Episcopal churches.

R. S. 153, § 24.

Wardens and vestry incorporated.  
Ib. § 25.

Certificate filed.

Notice of meeting to incorporate.  
Ib. § 26.

27. The wardens and vestrymen, for the time being, of every Protestant Episcopal church, not especially incorporated, shall be trustees of the same, and a body corporate and politic in law, by such name as the trustees shall assume, in manner mentioned in the second section of this act.

28. It shall and may be lawful for the said Protestant Episcopal churches not incorporated under this act, or any of them, to avail themselves of the provisions of the next preceding section of this act, on the certifying their intention so to do, to the clerk of the court of common pleas of the county in which said church or churches may be situate; and it shall be the duty of said clerk instantly to record the same.

29. When any congregation of the Protestant Episcopal church, in this state, duly organized according to the constitution and usages of said church, desire to form themselves into a body corporate, notice shall be given of such intention ten days previously, by an advertisement set up

in open view, at or near the place where such congregation usually assemble for divine service, designating the day when and the place where they design to meet for that purpose.

30. The congregation having met at the time and place appointed, the rector or minister, or if there be no rector or minister, or if he be necessarily absent, one of the church wardens or vestrymen shall preside at the meeting and the secretary of the vestry shall record the proceedings of the meeting; the congregation shall then proceed, by a vote of the majority of those present, to designate the corporate name or title by which the church shall be known, which shall be in the manner and form as follows: "the rector, wardens and vestrymen of \_\_\_\_\_ church in \_\_\_\_\_;" the congregation shall then choose two wardens, and not more than ten nor less than five vestrymen; and also fix and determine the day, annually, on which new elections of officers shall take place; a certificate of these proceedings, under the hands and seals of the president and secretary of the meeting, shall be transmitted to the clerk of the court of common pleas of the county, whose duty it shall be to record the same for which he shall be entitled to receive the usual compensation for similar service.

Meeting to designate name and choose officers.  
Ib. § 27.

31. The rector, wardens and vestrymen, appointed as aforesaid, shall be a body corporate and politic, in law and in fact, to have continuance forever under the same restrictions, and with the same rights, powers and privileges, as are granted to and imposed on trustees in and by the first eight sections and the twelfth section of this act; *provided, nevertheless*, if at any time the church be without a minister or rector, the same rights and privileges shall be vested in the wardens and vestrymen.

Powers of rector and wardens, and vestrymen.  
Ib. § 28.

32. The rector, wardens and vestrymen, and their successors, or a majority of them, may make such rules, by-laws and ordinances, and do everything needful and requisite for the good government and support of the church; all of which shall be entered in a book to be provided and kept for that purpose; *provided*, that the said rules, by-laws and ordinances shall not be repugnant to the constitution and laws of this state or of the United States.

By-laws.  
Ib. § 29.

33. The qualification of voters at the annual elections shall be conformable to the constitution and principles of the Protestant Episcopal church in New Jersey.

Voters.  
Ib. § 30.

34. The rector, wardens and vestrymen shall choose a treasurer, who, when called upon for that purpose, shall render a true and just account to the corporation of all moneys by him received and expended, and pay over the balance which may remain in his hands at the time of settlement to his successor in office.

Treasurer and his duties.  
Ib. § 31.

35. When a vacancy shall occur in the office of minister or rector, by death, removal or otherwise, the said wardens and vestrymen (two-thirds of them concurring in the choice), may choose some fit person duly qualified to act as minister or rector of said church, agreeably to the constitution of the Protestant Episcopal church of the United States of America; and the minister or rector so chosen shall preside at all meetings of the wardens and vestrymen, and have a casting vote, except the business or question to be decided has relation to the personal interests of said minister or rector; *provided*, in the absence of the president the wardens and vestrymen may choose a president *pro tempore*.

Rector, how chosen.  
Ib. § 32.

36. It shall and may be lawful for any Protestant Episcopal church in this state heretofore incorporated to embrace the privileges of this act by compliance with and adopting its provisions.

Churches already incorporated may come under the act.

37. Whereas, the legislature of New Jersey, by an act passed on the seventeenth of February, anno domini eighteen hundred and twenty-nine, granted to Episcopal congregations the privilege of becoming incorporated according to the "constitution, usages and customs of the Protestant Episcopal Church," in this state, and did not require any oath to be taken or subscribed by the wardens and vestrymen of such churches; *and whereas*, under the present revised statutes, doubts have arisen whether the wardens and vestrymen of Episcopal churches are not required to take and subscribe the oaths specified in the act to incorporate religious societies, which provision would occasion great inconvenience, and be entirely "inconsistent with the constitution, usages and customs of the

Episcopal churches exempt from oaths of trustees.

Protestant Episcopal Church in this state;" therefore, the wardens and vestrymen of the Protestant Episcopal churches now incorporated, or hereafter to be incorporated in this state, shall not be required to take or subscribe the oaths specified in the thirty-fourth section of the act entitled "An act to incorporate trustees of religious societies," approved April seventeenth, eighteen hundred and forty-six; and that the acts and proceedings of the wardens and vestrymen of such Episcopal churches as have omitted to take and subscribe such oaths shall be, and are hereby declared to be as valid and effectual in law as if such oaths had been previously taken and subscribed; all the provisions of this act relating to the Protestant Episcopal church shall be equally applicable to the church now designated "The Reformed Episcopal Church."

P. L. 1875, p. 32.

Power to hold  
landswherechar-  
ter restricted it.  
Ib. § 35.

38. It shall be lawful for every religious corporation which has been created by act of the legislature, or by letters patent, to acquire, purchase, receive, have and hold any lands, tenements, hereditaments, legacies, donations, moneys, goods and chattels, of the yearly value of two thousand dollars, although such act or letters patent contain a restrictive clause, limiting the annual revenue and income of the said corporation to a less sum.

#### ROMAN CATHOLIC.

Roman Catholic  
churches.

P. L. 1864, p. 57, § 1.

Filing of certifi-  
cate, who to be  
corporators.  
Ib. § 2.

P. L. 1874, p. 94, § 1.

39. It shall be lawful for any Roman Catholic church or congregation now existing or which may hereafter exist in this state, to be incorporated under and by virtue of the provisions hereinafter stated:

The Roman Catholic bishop of the diocese in which such church or congregation may be, the vicar-general of such diocese, or, during a vacancy in such offices, the administrator of the diocese for the time being, and the pastor of such church or congregation for the time being, or a majority of them may elect two lay members of such church or congregation, and may with said laymen, sign a certificate, setting forth the name by which they and their successors shall be known and distinguished as a body corporate, and transmit the said certificate to the clerk of the court of common pleas of the county in which such church or congregation may be located, whose duty it shall be forthwith to file and record the same, for which he shall be entitled to receive one dollar, and thereupon such church or congregation shall be a body corporate by the name or title so taken, certified and recorded.

Trustees and  
powers of the  
corporation.  
Ib. § 3.

40. The persons so signing said certificate shall be the trustees of such corporation, and they and their successors shall by such name of incorporation be able and capable to acquire, purchase, receive, have and hold any lands, tenements, hereditaments, legacies, donations, moneys, goods and chattels in trust for the use of such church or congregation to an amount not exceeding three thousand dollars a year, exclusive of the church edifices, school houses and parsonages, and the lands whereon the same are or may be erected, and burying places, and the same or any part thereof to sell, grant, assign, demise, alien and dispose of; to sue and be sued, plead and be impleaded, in any court of law or equity; to make and use a common seal, and the same to alter and renew at their pleasure.

Succession in  
office.  
Ib. § 4.

41. In order to perpetuate a line of succession in the trustees of every such church or congregation, the successor in office for the time being of such bishop, vicar-general and pastor respectively shall by virtue of his office be the trustee of such church or congregation in place of his predecessor, and such lay members shall hold their office for one year, and the office of any such layman shall become vacant by his removal out of the limits of such church or congregation, and whenever the office of any such layman shall become vacant by death, removal, resignation or otherwise, his successor shall be appointed in the manner herein provided for the selection of the original lay members of such board of trustees.

President and  
duties.  
Ib. § 5.

42. Such corporation may elect annually, or oftener if necessary or expedient, one of their own members to be president, who shall keep the minutes and enter the orders, acts and proceedings of the corporation in a book to be kept for that purpose; shall have the custody of the common seal and the papers, documents, deeds, writings and books of or relating to such corporation, and who is hereby authorized and empowered to convene such corporation as occasion may require.

43. The proceedings, orders and acts of a majority of all the members of such corporation, but not of a less number, shall be valid and effectual in law; *provided*, that the same receive the sanction of the bishop, or in the absence of the bishop, of the vicar-general, or in case of a vacancy in that office, of the administrator of the diocese for the time being.

Acts of a majority valid with sanction of bishop.  
Ib. § 6  
P. L. 1874, p. 94.

44. If any corporation created under or by virtue of the provisions of this act shall be dissolved by failure to continue the succession of the trustees thereof, it may be revived and the church or congregation re-incorporated under this act, in the mode herein prescribed, at any time within six years from the date of such dissolution; and thereupon all the property, real and personal, belonging to such dissolved corporation at the time of its dissolution shall vest in such new corporation.

Re-incorporation after failure of succession.  
Ib. § 7.

45. Any religious association incorporated under or by virtue of any law of this state, shall be, and they are hereby authorized to organize under the provisions last aforesaid, relating to the incorporation of Roman Catholic churches or congregations; and upon the filing of a certificate according to the same, together with a certificate signed by the trustees of such association, consenting to such organization, all the right, title and interest of such association, in any estate, real or personal, shall, with all its franchises and chartered rights, be vested in said body corporate and politic, so created, subject to all legal liabilities of said association, and the original incorporation of such association shall be null and void.

Religious associations now incorporated authorized to organize under foregoing provision.

P. L. 1865, p. 422.

#### YOUNG MEN'S CHRISTIAN ASSOCIATIONS.

46. The provisions of this act, with all the penalties, privileges and advantages thereof, shall be and hereafter are extended to and for the benefit of associations known as Young Men's Christian associations in the state of New Jersey.(1)

Act extended to Y. M. C. Asso'ns.  
P. L. 1869, p. 589.

47. The Young Men's Christian associations of this state are hereby authorized, by a majority of the votes cast at a meeting of the association, held in their regular place of meeting, called by them, by ten days' notice in writing, set up at such place, in plain view, to adopt a name, constitution and by-laws, and be a board of directors, not to exceed fifteen, and declare themselves incorporated by such name; a copy of such resolution, with the names of said directors, together with a copy of the official seal of the said association, certified to be correct, under oath, by the officers of the meeting or meetings when said resolution was adopted, directors elected and seal adopted, shall be filed in the office of the clerk of the county in which said association is located and resided, and such association shall thereupon be incorporate, with all the powers authorized by this act.

How such incorporation effected.  
P. L. 1872, p. 50, § 6.

#### BAPTIST.

48. Whereas, it is represented that it is in accordance with the customs and usages of the Baptist churches that such churches should possess the right to determine as to the acquisition, use and disposition of their property, and that the trustees of the same should be elected by the members of such churches, and that in other respects the foregoing provisions of this act are not in accordance with the usages and customs of the said churches; therefore, when the members of any Baptist church in this state, now or hereafter to be organized, according to the usages and customs of Baptist churches, into a Baptist church, shall desire and intend to form themselves into a body corporate, notice shall be given of such intention by an advertisement signed by the clerk, or clerk *pro tempore*, of such church, and set up in open view, at least ten days previous to the day named therein, at or near the place where the members of such church usually assemble for public worship, and designating the day and hour when, and the place where they design to meet for such purpose; upon the day and hour so named in said notice the members of said church shall assemble at such place so named, and by a majority of the votes of such members so present may adopt a corporate name, and may also, by a similar vote, elect any number of persons, not less than three nor more than seven, being members of such church or of the congrega-

Baptist churches, how incorporated.  
P. L. 1873, p. 147.

(1) See act of March 26, 1872, (P. L. 1872, p. 50), applying to the Young Men's Christian Association of the city of Elizabeth.

tion meeting therewith for public worship, to be a board of trustees of the said church; at such meeting the pastor, or any member of said church called to the chair, shall preside, and the clerk of such church shall be the secretary of said meeting, and shall record the proceedings of the same; in the absence of any regulation upon the subject previously adopted by such church, five of the members thereof shall constitute a quorum at such meeting, but a smaller number may adjourn the same from time to time and where such regulation exists, the number of members necessary to constitute a quorum shall be determined by such regulation.

Certificate of incorporation to be filed in office of the county clerk.

P. L. 1876, p. 323.

49. After the aforesaid proceedings shall have been had, a certificate of the same in writing, under the hands and seals of the president and secretary of said meeting, shall be transmitted to the clerk of the court of common pleas of the county, whose duty it shall be to file and record the same, for which service the said clerk shall be entitled to receive the sum of one dollar, and upon the filing of said certificate with said clerk, the members of said church and their successors shall be and thereafter continue to be a body politic and corporate, in fact and in law, by the name so adopted, and expressed in such certificate, and shall by such name of incorporation be capable of acquiring by gift, grant, purchase, or other manner, and of having and holding any lands, tenements, hereditaments, legacies, donations, moneys, goods and chattels to an amount not exceeding the yearly value of two thousand dollars, and the same or any part thereof to sell, grant, assign, demise, alien and dispose of, but any conveyance of lands or interest in lands, or other written contract made by said corporation shall be executed under the hand of the president of the board of trustees, and the common seal of said corporation; and such corporation shall have the powers and be subject to all the liabilities of the corporations named in the first eight sections of this act, and any devise or bequest to any such corporation, shall not be defeated by reason of any misnomer, if the intention of the testator can be ascertained.

Duties of the trustees.

P. L. 1873, p. 147,

§ 3.

50. The trustees of every such corporation shall as soon as practicable after their election, organize for business by appointing one of their number as president, who shall have the custody of the deeds and muniments of title of the property of said corporation; the said board shall keep and report to the church annually, and oftener, if required, a full and accurate account of their transactions, and the financial condition of the church; all proceedings, acts and orders of said board shall be by a majority vote of all the members thereof.

Trustees to have the care of church property.  
Ib. § 4.

51. The board of trustees shall have the care, custody and oversight of the property of the church so incorporated, except moneys raised for the support of the pastor or for benevolent objects, but they shall not have power to alienate, sell or encumber such property, close the house of worship to the business or religious meetings of such church, or permit the same to be used for other than such meetings, buy, build or otherwise involve the church in expense aside from the ordinary expenditures incurred by the proper care, repairs and preservation of its property, without express authority from the church itself for so doing.

Term of office of trustees.

Ib. § 5.

52. The term of office of said trustees may be regulated by by-law or resolution of such church, adopted before their election; and, in the absence of such regulation, the said trustees shall continue in office one year from the date of their election and until their successors are chosen.

Election of officers.

Ib. § 6.

53. For perpetuating a line of succession in the trustees of any such church so incorporated, it shall be lawful for the members of such church so incorporated, to assemble at any time they may think proper, giving notice thereof as hereinbefore is directed, for the election of the first trustees, or may so assemble for the election of any other trustee or trustees in the stead of those or any of those before elected, in case they see cause for the removal of any of the said trustees, and also to fill any vacancy occasioned by the death or resignation of any trustee or by his removing out of the limits of the congregation worshipping with said church, and when so assembled may fill such vacancies, or elect such new trustees, or elect such new board of trustees by the same vote herein required for the election of the first trustees.

Vacancies, how filled.

54. If any Baptist church, the trustees of which are now incorporated under the provisions of the first eight sections of this act, shall desire to become incorporated under the provisions of this act, and shall comply with the requirements of the forty-eighth and forty-ninth sections of this act, the said church, upon taking the proceedings prescribed in section forty-eight of this act, and filing the certificate thereof as provided in section forty-nine of this act, shall thereupon become a corporation in fact and in law, with all the privileges granted, and subject to all the liabilities imposed by the forty-eighth, forty-ninth, fiftieth, fifty-first, fifty-second, fifty-third, fifty-fourth, fifty-fifth and fifty-sixth sections of this act, and thereupon the corporation composed of the trustees thereof shall be dissolved, and the title to all property, real and personal, held by the same, shall instantly vest in the new corporation so created.

How Baptist churches already incorporated may obtain privilege of this act.

P. L. 1876, p. 323.

55. No election of trustees of the Baptist church under this act, except the first election, shall be deemed invalid by reason of failure to give the notice hereinbefore required, in any case where the time of election of trustees is regulated by a rule or standing resolution of the church so failing to give such notice.

Elections not to be invalid for want of notice.

P. L. 1872, p. 147, § 8.

56. Any Baptist church incorporated according to the provisions of this act shall have power to make such rules and regulations for the transaction of its business, number and election of its officers, the support of public worship, the calling to and dismissal from the pastoral office and the regulation of the proceedings of the board of trustees and the defining of the duties and power of such board, as may be deemed from time to time necessary or expedient.

Powers of Baptist churches incorporated under this act.

Ib. § 9.

57. That the provisions of the first eight sections of this act shall be applicable and so continue to apply to such Baptist churches as do not avail themselves of the special provisions contained in this act from the forty-eighth to the fifty-seventh sections thereof inclusive.

Provisions of general act may be used.

P. L. 1876, p. 323.

#### SUNDAY SCHOOLS.

58. The provisions of this act, with all the rights, privileges and advantages thereof, are hereby extended to and for the benefit of all associations which now are, or hereafter may be, organized in this state, the object of which is or shall be to establish and maintain what are commonly known as Mission Sunday Schools.

Provisions of act extended to mission Sunday schools.

P. L. 1874, p. 113.

59. That no provision of this act shall be deemed to exempt any property, real or personal, or any fund, or endowment, from the taxes now imposed by law, and this act shall not be construed to extend the exemption from taxation already provided for by law.

Act not to be taken to exempt from taxation.

#### SOCIETY OF FRIENDS.

##### **An act relative to the property of the unincorporated society of Friends in this state.**

Passed February 11, 1836. R. S. 782.

60. SEC. 1. That the rights, estates, property and privileges, of the members of the unincorporated society of Friends in this state, shall not be hurt, endamaged, or in any way affected by the division, secession or separation which has occurred in the said society, and that the rights, estate, property and privileges of the members of the unincorporated society of Friends, in this state, shall be held and enjoyed according to the constitution and laws of this state.

Rights of Friends not to be affected by separation.

61. SEC. 2. That the division, secession or separation now existing in the said unincorporated society of Friends in this state, on conscientious grounds, where both parties profess to adhere to the faith, system of discipline, constitution and government of the said society, when in unity; the personal estate of whatever kind of the said society, held or possessed by said society, when in unity, or by any other person or persons, body politic or corporate, for or to its use, or in any way in trust for them, shall be divided between the parties, in such division, secession or separation, equally and ratably, in proportion to the number of members of the said society who have joined or attached themselves to either of the said parties, in such division, secession or separation, in the same manner as if

Mode of division of personal estate.

they had been equal partners in the said personal estate; and in case the said members of the said society cannot, in such division, secession or separation, agree on the division of the said personal estate of the said society, by them possessed when in unity, that then, and in such case, it shall and may be lawful for any member or members of either party, for and in behalf of himself and themselves, and his and their associates in such division, secession or separation, to exhibit a bill in chancery against any member or members of the other party in such division, secession or separation, and their associates, for a division of such personal estate so held or possessed by the said society, when in unity, in the same manner as if they were partners; and thereupon the same proceedings may be had, and relief given, and decree made, as in justice and equity, and according to the course and practice of the court of chancery, ought to be made; always having regard to the relative number of the members belonging to the said parties in such division, secession or separation, and the continuance and preservation of the same trusts, uses, and purposes, upon and for which such personal estate was theretofore held and possessed; and that the members of the said party in such division, secession or separation, to whom the same, or any part thereof, shall be decreed, shall hold the same upon the same trusts, and for the same uses and purposes, so far as regards the members of the said society, connected with them in the said division, secession or separation, as the same was held by the said society when in unity.

Property to be held on same trusts as formerly.

Disposition of real estate.

62. SEC. 3. That in case of any division, secession, or separation, now existing in the said unincorporated society of Friends in this state, on conscientious grounds, where both parties profess to adhere to the faith, system of discipline, constitution and government of the said society when in unity, that then and in such case, the real estate, of whatsoever kind (except burial grounds) of the said society, held, possessed, or owned by the said society when in unity, or by any other person or persons, body politic or corporate, for or to its use, or in trust for them, shall be divided between the parties in such division, secession, or separation, equally and ratably in proportion to the number of members of the said society who have joined or attached themselves to either of the said parties in such division, secession or separation, in the same manner as if they were tenants in common of the said real estate; and in case the said members of the said society cannot, on such division, secession or separation, agree on the division or partition of the said real estate, so as aforesaid held, possessed, or owned by them when in unity, that then and in such case, it shall and may be lawful for any member or members of either party, for and in behalf of himself and themselves, and their associates, in such division, secession or separation, to exhibit his or their bill in the court of chancery, against any member or members of the other party in such division, secession or separation, and their associates, for a division or partition of such real estate so held, possessed, or owned by the said society when in unity, in the same manner as if the members of the said society were tenants in common of the said real estate; or in case that the said real estate is so circumstanced, that division or partition thereof cannot be made, without great prejudice to the owners, for a sale thereof, or a decree that the same may be held and owned by the one party, on their paying to the other, their proportion of the value thereof, to be ascertained according to the course and practice of the said court, as to the said court shall appear equitable and just; and thereupon, the same proceedings may be had and relief given and decree made, as in justice and equity, and according to the course and practice of the court of chancery ought to be made, always having regard to the relative number of members belonging to said parties in such division, and the continuance and preservation of the same trusts, uses, and purposes upon, or for which such real estate was theretofore held, possessed, or owned; and the members of the party in such division, secession or separation, to whom the said real estate, or any part thereof, or the proceeds of the sale thereof, shall be decreed, shall hold, possess, and enjoy the same, upon the same trusts and the same uses and purposes, so far as regards the members of

the said society connected with them in such division, secession or separation, as the same was held, possessed or owned by the said society when in unity.

63. SEC. 4. That the burial ground or grounds of the said society when in unity, shall forever remain free and common for the burial of the members of either party, and their descendants, the same as if no such division, secession or separation had been made.

Burial grounds to be held in common.

64. SEC. 5. That the said complainant or complainants in any such bill of complaint, shall make his or their affirmation, to be annexed to the said bill of complaint, that the division, secession or separation stated in the said bill, so far as respects the said complainant or complainants, was made on conscientious grounds, and not for the purpose of appropriating the real or personal estate of the said society of Friends to any other trusts, uses or purposes than those originally intended in its creation, or to destroy the faith, constitution, system of discipline and government of such association, but in truth and good faith for the causes set forth in such bill of complaint; and that it shall not be necessary to name all the parties associated with the complainants or defendants in the said bill, but that it shall be sufficient to designate them as the associates of the said respective parties, and that a copy of the subpoena issued in the said cause, shall be served upon the clerk of the said society or meeting with whom the defendant or defendants in said cause may be connected or acting, together with a copy of the said bill, at least ten days before the returning thereof, or left at his residence; and that any of the members of the said society may appear and defend the said suit; and if in the course of the said proceedings it should become expedient to ascertain the number of members of the said society connected with the said parties respectively, any member thereof shall be under the age of twenty-one years, such infant shall be counted with the party to which his or her father belongs, if he is living, and if not, to that which his or her mother, if living, belongs; and if she also be dead, with the party to which his or her guardian belongs.

All persons associated as complainants or defendants need not be named.

How infants are to be counted in case of division.

#### Miscellaneous acts.

##### An act to enable churches to change their corporate names or titles.

Approved March 11, 1874. P. L. 1874, p. 32.

65. SEC. 1. That any church incorporated under and by the laws of this state, may change its corporate name or title and assume another name or title, by resolution passed at a meeting of its trustees; such resolution shall be certified under its corporate seal, and proved in the same manner as deeds for lands are required to be proved, and when filed in the office of the clerk of the county in which such church is situated, such corporation shall be thereafter known, and may bring and defend actions and suits at law or in equity by such new name; *provided*, that nothing herein contained shall be construed to relieve any such corporation from any of its legal contracts, obligations, debts or other liabilities, or release any legal existing obligations, debts or other liabilities or rights due to, held by, or belonging to such corporation.

Churches may change their corporate name, by the resolution of their trustees; and on filing such resolution in the county clerk's office. *Proviso.*

66. SEC. 2. That it shall be the duty of the clerk of the county within which such church is situated, to file the resolution changing the corporate name or title, in the same manner as certificates of incorporation are required to be filed, and to endorse on the original certificate of incorporation the change of the corporate name or title, and for these services he shall be entitled to receive the sum of one dollar.

County clerk shall file the resolution.

##### An act to authorize the incorporations of theological seminaries in this state to increase the number of their trustees.

Approved April 20, 1876. P. L. 1876, p. 235.

67. SEC. 1. That whenever by the charter of any theological seminary of this state, the number of trustees thereof is limited, it shall be lawful for the said corporation, or the trustees thereof, to increase the number of such trustees by appointing at least six additional trustees, dividing them into classes in the same manner as provided in such charter.

Number of trustees may be increased when limited by charter.

**An act to incorporate trustees of conferences or other associations composed of representatives of religious societies.**

P. L. 1877, p. 89.

Approved March 8, 1877.

Election of trustees.

68. SEC. 1. That every association of persons composed of representatives from religious societies or congregations of christians, be and they are hereby authorized at any regular meeting of such association by a majority of votes, by ballot or otherwise, according to the constitution or by-laws of such association, to appoint any number, not exceeding seven, of the said association to be trustees of the same; which said trustees and their successors are hereby constituted a body politic and corporate, by whatever name they shall assume agreeably to the directions of this act.

Certificate of corporate name to be filed with county clerk.

69. SEC. 2. That the said trustees, when they take upon themselves a name, shall certify such name under their hands and seals, and transmit such certificate to the clerk of the court of common pleas of the county in which such association shall have holden their meeting at which said trustees shall have been elected, whose duty it shall be to record the same, and for which he shall be entitled to receive one dollar; and thereupon the said trustees shall be known and distinguished in law by the name of incorporation so taken, certified and recorded.

May receive and dispose of real and personal property.

70. SEC. 3. That the said trustees and their successors, shall, by such name of incorporation, be able and capable to acquire, purchase, receive, have and hold, any lands, tenements, hereditaments, legacies, donations, moneys, goods and chattels in trust for the use of said association to an amount in value not exceeding two thousand dollars a year, and the same or any part thereof to sell, grant, assign, demise, alien and dispose of; to sue or be sued, implead or be impleaded, in any court of law or equity; to make and use a common seal, and the same to alter and renew at their pleasure; the proceedings, orders, acts and resolutions of a majority of all the trustees of the said corporation, but not of a less number, shall be valid and effectual in law.

Election of trustee or trustees in case of vacancy.

71. SEC. 4. That for perpetuating a line of succession in the trustees of such association, it shall and may be lawful for the members of said association assembled at any regularly appointed meeting, to elect a trustee or trustees in manner aforesaid, in the stead of those or any of those before elected, in case they see cause for the removal of the said trustees or trustee; *provided*, such removal shall not be in less than one year after their or his election into office, and also to fill the vacancy which may be occasioned by the death or resignation of any trustee.

Proviso.

Election of president.

72. SEC. 5. That such corporation may elect annually, or as often as they shall deem it necessary or expedient, one of their number to be their president, who is hereby empowered to convene the said corporation as occasion may require, and preside at the meetings thereof, and execute all contracts, and in case of his absence, sickness, death, resignation or refusal to act, then the said office of president shall devolve on the senior trustee, for the time being, who shall occupy the same until the return or recovery of the president, or the election of another.

Election of secretary.

73. SEC. 6. That such corporation may elect annually, or as often as they shall deem it necessary or expedient, a secretary, who shall keep the minutes and enter the acts, orders and proceedings in a book to be kept for that purpose, and who shall have the custody of the common seal, and the papers, deeds, writings, documents and books of or relating to the said corporation; and upon application to the secretary, any member of said corporation or of the association shall have free access to all the papers, deeds, writings, minutes, documents and books of or belonging to the said corporation; and upon the death, resignation or expiration of the office of secretary, or election of a new one, the common seal, and all minutes, papers, deeds, writings, documents and books of or belonging to such corporation, shall be delivered to his successor in office, on the oath of the preceding secretary, or in case of his death, on the oath of his executors or administrators.

Election of treasurer.

74. SEC. 7. That such corporation may elect annually, or as often as they shall deem it necessary or expedient, one of their number to be treasurer, who shall have charge of the moneys of the said corporation,

and keep a correct account of the receipts and disbursements of the same, and whenever required by the said corporation or by the association, to render a true statement, in writing, of the receipts and disbursements of the said corporation; and upon the death, resignation, removal or expiration of office of treasurer, or election of a new one, all the books, accounts, vouchers and documents in the hands of such treasurer, belonging to such corporation, shall be delivered to his successor in office.

## Replevin.

### I. WHEN ACTION LIES.

1. For a wrongful taking.
2. For any unlawful detainer.
3. Does not lie in case of distress for tax or fine.

### II WRIT OF, HOW EXECUTED.

4. Out of what court to issue.
5. May be executed by coroners.
6. Bond by plaintiff.
7. Bond may be assigned to defendant.
8. Bond to coroner to be approved. Sureties to justify.
9. Goods delivered, unless claimed and bond given by defendant.
10. Sheriff and coroners return if defendant gives bond.
11. Penalty for unlawful delivery.
12. Officer may break open building.

### III. PARTIES.

13. Who may be joined.
14. Action not to abate by reason of death.
15. Remedy of executors and administrators.

### IV. PLEADING AND PRACTICE.

16. Pleadings when to be filed.
17. Plaintiff to bring on trial.
18. If plaintiff non-suit, court may award a return.
19. Defendant claiming property in himself shall not claim property in another.
20. Pleadings therein.
21. Avowry by landlord in case of distress.
22. Defendants may avow generally.
23. Non-suit in cases of distress, writ of inquiry, etc.
24. Judgment on demurrer in cases of distress.
25. In other cases except distress for rent.
26. Restitution.
27. When defendant to recover damages and costs.
28. Demand and refusal when necessary that plaintiff may recover damages and costs.
29. Costs assessed on replevin bonds.
30. Bond when assignable by sheriff or coroner's successor.
31. Writs of second deliverance.
32. Repealer.

## An act to regulate the action of replevin.

R. S. 116, 449.

Revision—Approved March 27, 1874.

P. L. 1849, p. 311.  
 " 1857, p. 296.  
 " 1862, p. 111.  
 " 1863, p. 5.  
 " 1871, p. 32.  
 " 1877, p. 14.

### I. When action lies.

1. That if the goods or chattels of any person be taken and wrongfully detained, the sheriff, by a writ of replevin, shall cause the same goods or chattels to be replevied and delivered, and shall summon the person who took them, to appear at the return of the said writ, and answer the plaintiff of the taking and unjust detention of the same.

For a wrongful taking.

R. S. p. 116, § 1.

2. Any unlawful detention of goods and chattels from their lawful owner, or the person entitled by law to the possession of the same, shall be deemed an unlawful taking for the purpose of supporting an action of replevin.

For any unlawful detainer.

P. L. 1862, p. 111.  
 Amended.

3. No replevin shall lie in case of distress for any tax, assessment or fine, to be collected or levied in pursuance of any law of this state; and if any person or persons shall hereafter sue out or prosecute a replevin, in any such case, he or they shall forfeit one hundred and fifty dollars, to be recovered, with costs of prosecution, by any person, who shall sue for the same, by action of debt, in any court of record having cognizance thereof; the one moiety of the said forfeiture to the person who shall sue for the same and the other moiety to the state.

Does not lie in case of distress for tax or fine.

R. S. 116, § 20.

### II. Writ of—how executed.

4. All writs of replevin shall issue out of the supreme court, or out of the circuit court, or court of common pleas<sup>(a)</sup> of the county where the property was taken or is detained, and the said writs shall be made returnable to the court out of which they were issued; and may be made returnable in term time or in vacation; and the summons therein shall be served and returned in the manner prescribed for the service and return of writs of summons in personal actions, in case such service can be made;

Out of what court to issue

R. S. 116, § 3.  
 Amended.

(a) Before 1795, the writ issued out of chancery, *Snedeker v. Quick*, 6 Hal. 179, 180.