An act to regulate the practice of law before any law or president judge of the inferior court of common pleas or county judge.

Approved March 25, 1895. P. L. 1895, p. 657.

Certain attorneys forbidden to practice before certain judges. 1117-368 R99-213

368. SEC. 1. That it shall not be lawful for any practicing attorney of this state, who shall be in the employ of or who shall occupy an office with any judge aforesaid, to practice before or transact any business whatever pertaining to said practice before said judge in any court where said judge shall preside alone or in conjunction with any other judge or judges.

Penalty.

369. SEC. 2. That any person violating the provisions of the first section of this act shall be deemed guilty of a misdemeanor, and shall for each offense be punished by a fine not exceeding one hundred dollars.

When act shall take effect.

370. SEC. 3. That this act shall take effect on the first day of December, one thousand eight hundred and ninety-five.

Criminal Procedure.

I. COMPLAINT, ARREST AND BAIL.

II. COURTS.

III. INDICTMENTS AND PROCEEDINGS THEREON.

IV. JUDGMENT AND ERROR.

I. Complaint, arrest and bail.

An act regulating proceedings in criminal cases.

R. S. 220, 223, 226, 257, 266, 293, 297, 302, 453, 470, 593, 999.

Revision—Approved March 27, 1874.

P. L. 1850, p. 360.
" 1851, p. 348, 435.
" 1852, p. 221.
" 1853, p. 367.
" 1855, p. 495, 648.
" 1857, p. 242.
" 1863, p. 311.
" 1864, p. 561.
" 1866, p. 257, 292, 535, 580.
" 1869, p. 771.
" 1870, p. 504.
" 1871, p. 120.
" 1872, p. 45.
" 1873, p. 18, 140.
" 1875, p. 91.

1119-1 RWS98-9 Rev98-86 33V-164

1119-1 *03-47

Justices to be conservators of the peace; their duties and powers.
R. S. 223, ¿ 1.
P. L. 1853, p. 367.

1. That the judges of the court of quarter sessions and justices of the peace, duly appointed or elected and commissioned in and for the several counties of this state, shall, jointly and severally, have full power to keep, and cause to be kept, all laws made or to be made for the conservation of the peace, and for the good government of the citizens and inhabitants of this state, within the said counties respectively, according to the force, form and effect of the said laws; and to apprehend, imprison and punish all persons offending against said laws or any of them in the said respective counties, in such manner as, according to said laws, shall be right and proper; and to cause to come before them, or any of them, all persons who shall break the peace, or have used, or shall use threats to any of the citizens or inhabitants of this state, concerning his or her body, or the firing, injuring or destroying of his or her house, barn, building or other property, or who are not of good fame where they are found, to enter into recognizance, with sufficient surety, for the peace, or their good behavior toward the people and inhabitants of the state; and if they enter not into such recognizance, then to cause them to be safely kept in prison until they do the same; *and further*, to perform and execute all such matters, acts and things as, by law, appertain to their office, and are or shall be enjoined upon them, and committed to their charge and execution, jointly and severally. (*a*)

Examination of offenders taken and sent up.
R. S. 223, ¿ 7.

2. That all and every such judges and justices of the peace, before whom any person shall be brought for treason, misprision of treason, murder, manslaughter, sodomy, rape, arson, burglary, robbery, larceny or forgery, or for suspicion thereof, shall, before he or they commit or send such offender to prison, take, in writing, the examination of such offender, and information of those who bring him or her, of the facts and circumstances thereof; which said examination and information shall be signed by such informant, and by the judge, justice or justices before whom the same shall be taken; and also by the examinant, if he shall be willing to sign the same; and the said judge, justice or justices shall deliver or transmit the said examination and information to the next court, in which such offender is or ought to be tried for such offense; and the said judges, justices and every of them, are hereby authorized and required to bind, by recognizance, with sufficient surety, all such persons as declare anything material to prove the said treason or other offense as aforesaid against such offender, to appear in the supreme court the term following, or at the next session of the court of oyer and terminer and general jail delivery for the county where the offense was committed, or in such other court where the said

(*a*) Neither the justice who issues the warrant nor the officer who executes it is liable to be sued by the party implicated for any acts done within their jurisdictions respectively. *Mangold* v. *Thorpe*, 4 *Vr.* 134. For powers of justices, see *Schroder* v. *Ehlers*, 2 *Vr.* 44. *Kerrigan's Case*, 4 *Vr.* 344. A magistrate is not liable to an action in consequence of a decision made by him in a matter which was colorably though not really within his jurisdiction. *Grove* v. *Van Duyn*, 15 *Vr.* 654. *Mowery* v. *Camden*, 20 *Vr.* 106. A justice is not liable to an action for false imprisonment who, from mistake in law, issues his warrant founded on an affidavit setting forth a private nuisance, dangerous to the prosecutor and many other persons, &c. *Booth* v. *Kurrus*, 26 *Vr.* 370. In cases of ordinary misdemeanors, a constable cannot arrest the offender without warrant, unless he is present at the time of the offense. *Webb* v. *State*, 22 *Vr.* 189. The fact that a warrant has issued, directed to any constable of the county, will not avail such officer unless such precept be in his possession at the time of the arrest. *Ib.*

offense is cognizable, then and there to give evidence against the said offender; and shall certify the said recognizance and recognizances taken before him or them to the said court, where such witnesses are bound to appear, on the first day of the term or session of the same court. (a)

Recognizances of witnesses taken and sent up.

Penalty on justice for neglect. Ib., § 8.

3. That if any such judge or justice shall refuse or neglect to take such examination or information as aforesaid, or to deliver or transmit the same as aforesaid, or shall refuse or neglect to bind the witnesses to appear as aforesaid, or to certify the recognizances by him taken as aforesaid, then the court, wherein such witnesses ought to be bound to appear, and to which such examinations, informations and recognizances ought to have been delivered, transmitted, or certified upon due proof thereof upon examination before them, shall, for every such offense or neglect, set such a fine upon the said judge or justice as the said court shall think fit and reasonable.

How offenders escaping or non-resident, to be apprehended. Ib., § 12.

4. That in case any person against whom a warrant shall be issued by any such judge, justice or justices of the peace of any county in this state, for any offense there committed or done, shall escape, go into, reside or be in any other county, out of the jurisdiction of the judge, justice or justices granting such warrant as aforesaid, it shall and may be lawful for, and it is hereby declared to be the duty of any judge of the quarter sessions or justice or justices of the peace of the county where such persons shall escape, go into, reside or be, upon proof being made upon oath or affirmation, of the handwriting of the judge, justice or justices granting such warrant, to indorse his or their name or names on such warrant, which shall be a sufficient authority to the person or persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant in such other county, out of the jurisdiction of the judge, justice or justices granting such warrant as aforesaid, and to apprehend and carry such offender before the judge, justice or justices who indorsed such warrant, or some other judge, justice or justices of such other county, where such warrant was indorsed; and in case the offense for which such offender shall be so apprehended as aforesaid, shall be bailable in law by a justice of the peace, and such offender shall be willing and ready to give bail for his or her appearance at the next court of oyer and terminer and general jail delivery, or general quarter sessions of the peace, to be held in and for the county where the offense was committed, such judge, justice or justices of such other county before whom such offender shall be brought, shall and may take bail of such offender for his or her appearance at the next court of oyer and terminer and general jail delivery or general quarter sessions of the peace to be held in and for the county where such offense was committed, in the same manner as the judge or justices of the peace of the proper county might have done; and the judge, justice or justices of such other county so taking bail as aforesaid, shall deliver the recognizance of bail and all other proceedings relating to the said offender and offense before him had, to the constable or other person or persons so apprehending such offender as aforesaid, who is and are hereby required to receive the same, and to deliver over such recognizance and other proceedings to the clerk of the court of oyer and terminer and general jail delivery, or of the court of general quarter sessions of the peace of the county where such offender is required to appear by virtue of such recognizance; and such recognizance and other proceedings shall be as good and effectual in law, to all intents and purposes, and of the same force and validity as if the same had been entered into, taken or acknowledged before a judge of the quarter sessions or a justice or justices of the peace in and for the proper county where the offense was committed, and the same proceedings shall be had thereon; and in case such constable or other person, to whom such recognizance or other proceedings shall be so delivered as aforesaid, shall refuse or neglect to deliver over the same to the clerk of such court as aforesaid, where the offender is required to appear by virtue

How bailed in another county.

Penalty on constable for neglect.

(a) The court, on application of the prisoner, will also bind his witness to appear. *State* v. *Zellers*, 2 *Hal.* 220.

of such recognizance, such constable or other person shall forfeit thirty dollars, to be recovered against him with costs, by action of debt, bill, plaint or information in any court of record having cognizance thereof, by any person who will prosecute or sue for the same; and in case the offense for which such offender shall be apprehended in any other county shall not be bailable in law by a justice of the peace, or such offender shall not give bail for his or her appearance at the next court of oyer and terminer and general jail delivery, or of general quarter sessions of the peace, to be held in and for the county where the offense was committed, to the satisfaction of the judge, justice or justices before whom such offender shall be brought in such other county, then the constable or other person so apprehending such offender, shall carry and convey such offender before one of the judges of the quarter sessions or justices of the peace of the proper county where such offense was committed, there to be dealt with according to law. (*a*)

What if offense not bailable.

5. That no action of trespass or false imprisonment, or information or indictment shall be brought, sued, commenced, exhibited or prosecuted by any person against the judge, justice or justices who shall indorse such warrant, for or by reason of his or their indorsing the same; but such person shall be at liberty to bring or prosecute his or her action or suit against the judge, justice or justices who originally granted such warrant, in the same manner as such person might have done in case this clause of this act had not been passed.

Justice indorsing warrant protected Ib., § 13.

6. That in all criminal complaints before a judge of quarter sessions, or justice of the peace, where, in his opinion, public justice would require that process to arrest the offender or offenders should be executed immediately, and no constable can be had in time, it shall be lawful for said judge or justice, by writing under his hand and seal, to appoint some fit person, being a citizen of this state, to execute the same, who shall have the same authority in the premises, in all respects, as a constable would have, and be subject to the same liability. (*b*)

Justice may appoint citizen to act as constable. P. L. 1852, p. 221

7. That when any person charged with any criminal offense shall have been committed to jail, it shall not [be] lawful for any judge of quarter sessions, or justice of the peace, other than he who shall have made such commitment, to admit such person to bail; *provided, however*, that in any such case the sheriff of the county wherein such commitment is made, upon receiving the approbation and consent in writing of any judge of the court of oyer and terminer in such county, may, at his discretion, admit such person to bail.

After commitment another justice may not bail. P. L. 1853, p. 367.

Sheriff may, with consent of judge.

8. That if any recognizor, who is or shall be bound to answer any charge of a criminal nature, be discharged from his recognizance for want of prosecution, he shall not be liable to pay costs for such discharge.

When recognizor not to pay costs. R. S. 292, § 3.

9. That the courts of oyer and terminer and general jail delivery and general quarter sessions of the peace in this state, shall have authority to direct their writs and process into any or all the counties of this state, if necessary, to arrest and bring before them any person or persons against whom any indictment may be pending in the said courts respectively.

Writs and process may be sent into any county. R. S. 220, § 12.

10. That the sheriff to whom any process is directed to arrest or take any defendant against whom any indictment is presented, shall be and he is hereby authorized to take the recognizance of the said defendant (and his sureties if required), for the appearance of the said defendant at the court in which the said process is returnable; which recognizance the said sheriff shall return with the said process, and it shall be filed by the clerk and be of the same force and effect, and in case of forfeiture, shall be prosecuted in the same manner as if the same had been taken by a justice of the peace of this state.

Sheriff may take defendant's recognizance. Ib., § 13.

(*a*) Where the accused is arrested in the county of the justice who indorses the warrant, it is the duty of the constable to take him before such justice or another justice of the same county; and if the constable take him before a justice of the county in which the warrant was issued, without first taking him before a justice of the county where he was arrested, it is an assault and false imprisonment, although no actual violence was used. *Francisco* v. *The State*, 4 *Zab.* 30.

(*b*) A private person is justified in making an arrest where a felony has actually been committed, and there is probable ground to suspect the person arrested. *Reuck* v. *McGregor*, 3 *Vr.* 70. But there must be reasonable and probable cause to suspect that he committed the offense complained of. *Spencer* v. *Annes*, 3 *Vr.* 100.

And recognizance of witnesses. Ib., § 14.

11. That in all cases where process shall be served by a sheriff to compel the attendance of any witness in any criminal proceeding in any court of this state, the sheriff so serving said process is hereby authorized to take the recognizance of said witness with surety if need be, in like manner as a justice of the peace is now authorized to take such recognizance in all cases where a recognizance is required; which recognizance shall be returned and be of the same force and effect, and in case of forfeiture shall be prosecuted in the same manner as if the same had been taken before a justice of the peace.

12. [Amended by Sec. 161, *post.*]

Power of quarter sessions to let to bail. P. L. 1870, p. 504.

13. That the court of general quarter sessions of the peace shall have power, at any session of said court, to let to bail or mainprise, for such time as in their discretion may seem just, all persons who may be arrested or imprisoned for any crime, by law triable before said court; and such proceedings shall be taken, in all cases in which bail should be forfeited in said court, as are now provided by law for forfeited recognizances in said court; and the provisions of any act inconsistent herewith are hereby repealed. (*a*)

Repealer.

Duties and liabilities of justices as to bailing parties and witnesses. R. S. 226, § 10.

14. That all and every judge of the quarter sessions, justice and justices of the peace, who shall let any offender to bail, shall certify, send or bring such recognizances of bail to the next court of general quarter sessions of the peace, or court of oyer and terminer and general jail delivery, to which the said offender shall be bound to appear; and it shall be the duty of all and every such judge, justice and justices of the peace to bind, by recognizance with surety, if need be, all such persons as can give testimony against any such offender, touching his or her offense, to appear at the next court of general quarter sessions of the peace or of oyer and terminer and general jail delivery, as the case may require, to be held within the county where the trial thereof shall be had, then and there to give evidence against such offender; and also to certify, send or bring such recognizance to the said court; *and further*, if any such judge or justice of the peace shall offend in anything against the true intent and meaning of this clause or section, then the court of oyer and terminer and general jail delivery, of the county where such offense shall be committed, upon due proof thereof, upon examination before them, shall, for every such offense, set such fine on the said judge or justice of the peace as the said court shall think fit and reasonable.

Witnesses to be examined and bound to appear. Ib., § 11.

15. That it shall be the duty of every such judge or justice of the peace who shall as aforesaid, bind, by recognizance, to the proper court, all persons who can bear testimony touching any offense committed against this state, whether the offender be arrested, imprisoned, bailed, or not, to take the examinations of such witnesses respecting the same; and the said recognizances and examinations to certify, send or bring to such court as aforesaid; and in case such justice of the peace shall offend herein, he shall be proceeded against and fined in the manner directed in the section immediately preceding.

Offender may be bailed for examination. P. L. 1866, p. 535.

16. That every justice of the peace, or other officer having power to examine and commit for trial offenders against the laws of this state, before whom any person is brought, charged with any crime except treason, murder, manslaughter, sodomy, rape, arson, burglary, robbery, forgery or suspicion thereof, may take the recognizance of such person, with surety or sureties, if he requires the same, in a reasonable sum for his or her appearance before said justice or officer for the examination at a future time, not exceeding ten days. (*b*)

(*a*) Bail denied by the supreme court in a case of mayhem where no circumstances were proved from which the innocence of the accused could be presumed. *State* v. *Mairs, Coxe* 335. So, in a case of rape where there were strong doubts as to innocence, and an attempt to escape had been made. *State* v. *Rockafellow*, 1 *Hal.* 332. Bail was required in forgery where, after a confinement of two years in jail, the indictment was quashed for a defect in summoning the grand jury. *Nicholls* ads. *The State*, 2 *South.* *544. But not where the defendant was acquitted by reason of a variance, although such variance was caused by the carelessness of the clerk of oyer and terminer. *State* v. *Jones*, 6 *Hal.* 289. How recognizance binds, see *State* v. *Stout*, 6 *Hal.* 124. *S. C.*, 6 *Hal.* 362. The recognizors will be discharged upon the acquittal of their principal. *State* v. *Saunders*, 3 *Hal.* 177. Or upon his death being satisfactorily shown. *State* v. *Crane*, 2 *Har.* 191. But after forfeiture of the recognizance such death cannot be pleaded to a *scire facias*. The remedy is by petition. *State* v. *McNeal and Crane*, 3 *Har.* 333. The court refused to issue a *scire facias* upon the statement of the district attorney that the defendant and all his bail were insolvent. *State* v. *Anonymous*, 1 *Har.* 437.

(*b*) A recognizance taken before the passage of this act by a justice of the peace for the appearance at a future day of a person charged before him with crime, was void. *State* v. *Cruise*, 3 *Vr.* 313.

17. That if any person thus recognized shall not appear before such justice or other officer at the time appointed for further examination as set forth in the recognizance, it shall be the duty of the said justice or other officer to note his or her default on the said recognizance, and to certify the said recognizance and default to the court of oyer and terminer and general jail delivery of the county where he is or hath been a justice or officer as aforesaid, and the same shall thereupon become a record of the said court, and shall be forfeited and proceeded on in all respects as in the case of recognizances for the appearance of persons at said court wherein a default has been recorded.

In case of default, justice shall certify recognizance to court. Ib.

18. That every justice of the peace who hath taken, or shall take any recognizance for the keeping of the peace, or good behavior, shall certify, send or bring such recognizance to the next court of general quarter sessions of the peace in and for the county where he is or hath been justice, that the party so bound may be called; and if the party so bound make default, the said default shall be then and there recorded, and the said recognizance prosecuted to effect in the manner directed by law.

Recognizances to be returned and proceedings thereon. R. S. 223, ¿ 5.

19. That it shall and may be lawful to and for the governor or person administering the government for the time being, to issue his proclamation for apprehending and securing any person or persons charged, on oath or affirmation of one or more credible witness or witnesses, with having committed murder, burglary, robbery, or other heinous crime, within this state, and in such proclamation to offer such reward as the said governor or person administering the government may think proper, according to the nature and aggravation of the crime, not exceeding six hundred dollars for any one offender; which reward shall be paid, on conviction of the party charged, to the person or persons entitled thereto, by the treasurer of the state, out of any public money in his hands, on a warrant or certificate, signed by the governor or person administering the government, for that purpose. (*a*)

Reward to be offered for offenders. R. S. 593, ¿ 1.

20. That it shall or may be lawful for the governor or person administering the government to issue his proclamation, offering a reward as aforesaid for apprehending and securing any person or persons charged, on oath or affirmation as aforesaid, with aiding, abetting, comforting, harboring or concealing any person or persons who hath or have committed any of the crimes above specified and described, knowing him, her or them to be guilty thereof; which reward, on conviction of the person so charged, shall be paid in the same manner as is above directed.

Or the abettors of such. Ib., ¿ 2.

21. That when any murder, burglary, robbery or other offense, as aforesaid, hath been or shall be committed by any person or persons unknown, it shall and may be lawful for the governor or person administering the government for the time being, on the oath or affirmation of one or more credible witness or witnesses, setting forth the fact, and that the same was perpetrated by a person or persons unknown, to issue his proclamation, offering a reward as aforesaid for apprehending and securing the person or persons who may have committed the same, and any person or persons who may have aided, abetted, comforted, harbored or concealed him, her or them, knowing him, her or them to be in such wise guilty; which reward shall, in every case, be paid on conviction of the party offending, as in manner aforesaid.

And so, though offender be unknown. Ib., ¿ 3.

22. That no person shall be committed to, or detained in the jail of any county for securing his or her appearance as a witness against any person charged with a crime or misdemeanor, except in cases punishable by imprisonment in the state prison; nor shall persons so detained be kept in the same apartment with, or provided with the same fare as persons charged with or convicted of crime, but the boards of chosen freeholders for each county shall take care that they be comfortably lodged and provided for, and no further restricted of their liberty than is necessary for such detention.

Witnesses not to be detained except in certain cases.

How provided for.

(*a*) In an action of debt for a reward offered for the apprehension and conviction of a criminal, the person claiming the reward must show not only that he caused the criminal to be arrested, but that he was also instrumental in procuring his conviction. *Furman* v. *Parke*, 1 *Zab.* 310.

II. Courts. (1)

Quarter sessions constituted; jurisdiction. R. S. 223, § 2. Act of April 9, 1875. Amended

23. That any two or more of the judges for the time being of the court of common pleas of any county in this state, shall constitute a court of general quarter sessions of the peace in and for such county; *provided*, that in those counties having a law judge as president judge, such judge shall be present as a member of said court; (*a*) which court shall be a court of record, and shall have cognizance of all crimes and offenses which, by law, are or shall be of an indictable nature, and which in such county have been done or perpetrated, or shall hereafter be done or attempted; and for that purpose shall have authority to inspect indictments taken or to be taken before them, to make and continue process thereupon, to hear and determine all such crimes and offenses as aforesaid; and to punish the persons convicted of the same, according to law; *provided always*, that indictments for treason, murder, and manslaughter, although the same be found in such court of general quarter sessions of the peace, shall be tried in the supreme court or court of oyer and terminer and general jail delivery, and not elsewhere; and for that purpose the said court of general quarter sessions of the peace shall cause all such indictments to be delivered to the next supreme court, or court of oyer and terminer and general jail delivery, to be held in such county. [See Sec. 142, *post.*]

What offenses not triable in sessions.

Indictments, where sent. Ib., § 6.

24. That the courts of general quarter sessions of the peace, shall send all their indictments to the courts of oyer and terminer and general jail delivery in their respective counties. (*b*)

(*a*) The caption of the indictment must show distinctly the names and style of office of the judges composing the court to which it is presented. *State* v. *Zule*, 5 *Hal.* 348. "Before the Hon. G. H. F., one of the justices, &c., and J. G., &c., their fellows," is sufficient. *State* v. *Price*, 6 *Hal.* 203. Or such justice and judges may be properly styled "the judges of the court of oyer and terminer," &c. *Berrian* v. *The State*, 2 *Zab.* 9, 679. A return to a *certiorari* directed to the chief justice and the two judges of the pleas, signed by the latter only, was held good. *State* v. *Gibbons*, 1 *South.* *45. Any justice of the supreme court may sign the judgment record, although he may not have been present at the trial. *Stone* v. *State*, *Spen.* 404. The record of a trial must show a quorum of judges to have been present. *Cruiser* v. *State*, 3 *Har.* 206. A justice of the supreme court and any one of the judges of the court of common pleas may lawfully hold the quarter sessions in counties in which there is a law judge of the common pleas. *Engeman* v. *State*, 25 *Vr.* 247. *Gardner* v. *State*, 26 *Vr.* 22.

(*b*) See *Randall* v. *State*, 24 *Vr.* 487.

(1) Numerous special acts to facilitate judicial proceedings have been passed for different counties in the state. They are as follows:

Essex county.—P. L. 1859, p. 421, provides for the appointment of a law judge of the courts of common pleas and quarter sessions; for the handing down of cases to the quarter sessions by the oyer; for appointment of a clerk of the grand jury and the duties of the clerk and the justices of the peace relative to complaints, &c. Supplement, P. L. 1867, p. 463, provides for the immediate trial of persons charged with offenses triable in the quarter sessions, upon written application and waiver of indictment, before the presiding judge and two judges of the quarter sessions, without a jury. Supplement, P. L. 1868, p. 873, provides for appointment of an interpreter. Supplement, P. L. 1869, p. 436, provides that the justice of the supreme court holding the circuit may perform duties of presiding judge, or may sit in order to constitute court of special sessions. P. L. 1870, p. 504, provides for manner of payment of costs and gives court power to hold to bail for any crime triable before the court.

Hudson county.—P. L. 1860, p. 495, provides for appointment of clerk of grand jury and defines duties of clerk and justices of peace. P. L. 1868, p. 363, provides for appointment of a presiding judge of common pleas, to be a counselor-at-law, and also provides for the immediate trial of persons charged with offenses, without a jury; authorizes prosecutor of pleas to employ assistants. Supplement, P. L. 1869, p. 1124, authorizes quarter sessions to try all indictments except for treason and murder. Supplement, P. L. 1870, p. 28, presiding judge to receive trial fee. Supplement, P. L. 1870, p. 1117, payment of taxed costs by state.

Passaic county.—P. L. 1855, p. 943, Hudson county act of 1860 (P. L., p. 495) extended to Passaic. P. L. 1871, p. 925, provides for appointment of presiding judge, and immediate trial of persons charged with offenses, without a jury. Supplement, P. L. 1873, p. 228, keeper of jail may, at request of prisoner, make out application for trial, to receive fifty cents for each application. Supplement, P. L. 1874, p. 299, common pleas judges reduced to two.

Mercer county.—P. L. 1867, p. 456, clerk of grand jury authorized, duties, &c. P. L. 1869, p. 306, provides for appointment of presiding judge and trials without a jury.

Bergen county.—P. L. 1868, p. 295, provides for appointment of presiding judge of common pleas.

Middlesex county.—P. L. 1868, p. 152, clerk of grand jury authorized, duties, &c. P. L. 1869, p. 105, provides for appointment of presiding judge and trials without jury, &c. Supplement, P. L. 1872, p. 1131, provides that presiding judge and one or more other judge or judges of county to constitute special sessions.

Union county.—P. L. 1868, p. 580, provides for appointment of presiding judge and trials without jury, &c. P. L. 1870, p. 771, defines powers of court of quarter sessions. Supplement, P. L. 1873, p. 617, repeals restriction as to holding special sessions in July and August; complaints before justices to be forwarded forthwith to prosecutor of pleas.

Camden county.—P. L. 1869, p. 288, provides for trials of persons charged with offenses, without jury, before quarter sessions, &c. Supplement, P. L. 1870, p. 534, provides for payment of costs and authorizes quarter sessions to admit to bail persons arrested and triable before said court. Supplement, P. L. 1872, p. 587, common pleas to consist of three judges, one of whom to be a counselor-at-law; provides that presiding judge shall approve all bills of costs. Supplement, P. L. 1874, p. 407, repeals so much of act of 1869 as provides that larceny can only be tried before quarter sessions or on regular indictment.

Monmouth county.—P. L. 1869, p. 681, provides for appointment of presiding judge and trial of persons, without a jury. Supplement, P. L. 1873, p. 428, prescribes number of judges necessary to constitute courts; authorizes presiding judge to practice in all courts but those of Monmouth county.

Sussex county.—P. L. 1871, p. 541, provides for appointment of presiding judge and trials without a jury, &c.

Warren county.—P. L. 1872, p. 662, provides that one of the three judges of the common pleas shall be an attorney-at-law and president judge, and also for trials without jury, &c.

Similar special acts to facilitate judicial proceedings have been passed as follows:

Morris county.—P. L. 1878, p. 533.

Hunterdon county.—P. L. 1880, p. 397.

Somerset county.—P. L. 1885, p. 414.

Cumberland county.—P. L. 1889, p. 492.

Atlantic county.—P. L. 1889, p. 495.

Gloucester county.—P. L. 1891, p. 547.

By act of May 1st, 1894 (P. L. 1894, p. 173), a general act was passed to facilitate judicial proceedings in counties of the second class. See title COURTS, *ante*, p. 1038.

Of writs and processes. Ib., § 4.

25. That all precepts, writs and process, issuing out of the court of general quarter sessions of the peace, shall be signed by the clerk, and sealed with the seal of the said court, and shall be tested the day on which the said court shall have adjourned, and in the name of the presiding judge of such court.

Oyer and terminer, how constituted; jurisdiction. R. S. 220, § 1. P. L. 1855, p. 495.

26. That the courts of oyer and terminer and of general jail delivery in and for each of the counties of this state, shall be deemed and taken to be one court, to be called the court of oyer and terminer and general jail delivery, which court shall possess, enjoy and exercise all the jurisdiction, powers, and authority heretofore belonging to the said courts respectively; and the justices for the time being of the supreme court, and the judges for the time being of the respective courts of common pleas, in and for the several counties of this state, or any one or more of them, of whom one of the justices of the supreme court shall always be one, shall, by virtue of this act and without any other commission, constitute the court of oyer and terminer and general jail delivery in and for the said counties respectively. (*a*)

When held. R. S. 220, § 2.

27. That the said court of oyer and terminer and general jail delivery shall be held in the respective counties of this state at the times of holding the circuit courts in the same, and at any other time that the chief justice or one of the justices of the supreme court shall think it necessary to appoint. (*b*)

If supreme court judge absent, quarter sessions may organize grand jury. Ib., § 3.

28. That if one of the justices of the supreme court shall not be present at the usual hour of opening the court of oyer and terminer and general jail delivery in any county in this state, on the day appointed by law for holding such court, then the court of general quarter sessions of the peace in and for such county may proceed to organize the grand jury for such county, in the same manner as the court of oyer and terminer and general jail delivery might do, if that court were in session; and all process returnable to, and all recognizances for the appearance of persons before the said court of oyer and terminer and general jail delivery shall be as valid and effectual as if the said court had been opened and in session; and may be proceeded on according to law in the said court of general quarter sessions of the peace; and all indictments pending in such county, and all indictments that may be found and presented by such grand jury, shall be as good and effectual as if the grand jury had been organized and sworn or affirmed before the court of oyer and terminer and general jail delivery, and shall be tried or otherwise determined, either in the court of general quarter sessions of the peace or the court of oyer and terminer and general jail delivery, as by law the same ought to be tried and determined. (*c*)

And proceed

Indictments good

Where tried.

Oyer and terminer, how long continued. Ib., § 4.

29. That the said court of oyer and terminer and general jail delivery may be held and continued for so long a time, at each session, as the business of and before such court shall render necessary.

Oyer and terminer shall have cognizance of all crimes. Ib., § 5.

30. That the said court of oyer and terminer and general jail delivery shall have cognizance of all crimes and offenses whatsoever, which, by law, are or shall be of an indictable or presentable nature, and which have been or shall be committed, done or attempted within the counties respectively for which such court shall be held, and shall have authority to deliver the jails in such counties of the prisoners therein, whether or not indicted before the court of general quarter sessions of the peace, doing in the premises what to justice doth or shall appertain according to the laws of this state.

(*a*) A justice of the supreme court, sitting with a judge of the court of common pleas, constitutes a court of oyer and terminer, although there is a vacancy in the number of common pleas judges in the county. *Patterson* v. *State*, 20 *Vr.* 256.

(*b*) Where it appears by the record that the trial was not had on the first day of the term, the record need not also show that it was continued from the first day to the day of trial. *Berrian* v. *The State*, 2 *Zab.* 9. So, the trial may be postponed after a part of the jury is sworn. *State* v. *Aaron*, 1 *South.* *231. And continued from term to term. *Francisco* v. *The State*, 4 *Zab.* 30. Where a trial is had before a special term it will be presumed to have been rightly called. *Dodge* v. *State*, 4 *Zab.* 456.

(*c*) If at the time fixed for opening a court of oyer and terminer, no justice of the supreme court is in attendance, and the court of common pleas thereupon orders an adjournment of the oyer to a future day, the court of general quarter sessions may, nevertheless, organize the grand jury under this section. *Randall* v. *State*, 24 *Vr.* 485. A grand jury organized under this section, proceeds as part of the quarter sessions and indictments presented by it for offenses within the jurisdiction of the sessions may be tried in that court without the intervention of a jury. *Ib.* There is nothing in the language of this section which by expression or implication impairs the right of the supreme court or a judge thereof to allow a *certiorari* to remove an indictment into that court on the application of the county prosecutor. *State* v. *N. J. Jockey Club*, 23 *Vr.* 494.

May send indictments to sessions. Ib., § 11.

31. That when any indictment or presentment, which the court of general quarter sessions of the peace of the county is competent to try and determine, shall be found in the court of oyer and terminer and general jail delivery in and for such county, it shall be lawful for such court at any time during their session if they think proper, to order the said indictment or presentment to be delivered to the clerk of the said court of general quarter sessions, who is hereby directed to file the same, and also to make entry thereof in the minutes at the then or subsequent session; and after such affiling, the said court of general quarter sessions shall have authority to issue process and proceed upon, and to hear and determine such indictment or presentment, in like manner as if the same had been originally found in the said court of general quarter sessions. (*a*)

Who shall try the same.

Indictments sent from sessions may be remanded. Ib., § 11.

32. That if any indictment or presentment found in the court of general quarter sessions of the peace, to the trial and determination whereof the said court is competent, be transmitted to the court of oyer and terminer and general jail delivery, then such court may, if they think proper, remand such indictment or presentment to the said court of general quarter sessions, there to be proceeded upon in like manner as if the same had not been sent to the said court of oyer and terminer and general jail delivery.

Fees to be allowed. Ib., § 15.

33. That the same fees shall be allowed to the court of oyer and terminer and general jail delivery as are allowed by law to the court of general quarter sessions; which fees shall be divided among the judges attending said court, other than the justice of the supreme court who may be present and presiding; and such justice shall be entitled to receive one dollar for every indictment found in either of said courts.

Clerk. Ib., § 16.

34. That the clerk of the court of common pleas in each county shall be the clerk of the court of oyer and terminer and general jail delivery.

35. [Amended by Sec. 160, *post.*]

Grand and petit jurors for oyer and terminer. R. S 220, § 6.

36. That the respective sheriffs of the several counties of this state shall cause to come before the said court of oyer and terminer and general jail delivery, at the times and places of holding their said respective courts, twenty-four good and lawful men to serve as grand jurors, and so many good and lawful men to serve as petit jurors as shall be necessary, and without any precept being issued for that purpose. (*b*)

Accused may be tried before two justices in counties not having special sessions. R. S. 266, § 34. Amended.

37. That every person accused of stealing any goods not exceeding in value twenty dollars, may be taken before any two of the justices of the peace of any county, where the offense was committed, who are hereby authorized and required to hear and determine the same, if the person accused shall consent thereto; and if on trial such person shall, from the evidence produced, appear to be guilty, the said justices shall sentence him or her according as directed for such offense in the "act concerning crimes." (*c*)

Procedure on request for trial before two justices. Ib., § 35.

38. That if any person shall be accused as aforesaid, and being committed to jail thereupon, for want of bail, shall request to be tried before two justices of the peace, in the manner prescribed in the next preceding section, such person shall and may by virtue of a warrant under the hands and seals of any two justices of the county, city, or town corporate, wherein such act was committed, addressed to the sheriff or constable of such county, city, or town corporate, be directed to be brought before the said justices, at such time and place as in the warrant shall be appointed; and such sheriff or constable shall attend the said justices with the prisoner, during such reasonable time as the said justices shall direct; the said justices shall then cause the clerk of the court of quarter sessions of the

(*a*) The quarter sessions have no power to try an indictment found in the oyer and terminer without an order from the latter. *Crusser* v. *State*, 3 *Har.* 206.

(*b*) The sheriff's return of a grand jury ought to show by what authority he summoned them, whether by writ or by statute. *Chase* ads. *The State, Spen.* 218. An indictment found by a grand jury summoned by a sheriff without process will be quashed. *Nicholls* ads. *The State*, 2 *South.* *539. Although the issuance of a precept by the court to the sheriff to summon a grand jury has fallen into disuse, the preceptal power of the court still exists. *In re Challenge to Grand Jury*, 3 *N. J. L. J.* 153. The duty of selecting a grand jury devolves upon the sheriff, and he has no right to delegate to anyone the power of completing or of altering his list. *Ib.*

(*c*) See CRIMES, Sec. 210. The constitutional rights of an accused are not infringed where two modes of preferring a criminal accusation and two modes of trial are provided by law—one by indictment and trial by jury, the other by a written accusation and trial by the court—and the option is given the accused to have the accusation submitted to the grand jury, with trial by jury, in case an indictment be found, or to submit to a trial under a written accusation and by the court without a jury. *Edwards* v. *State*, 16 *Vr.* 419.

county, city, or town corporate, or such other person as the said justices shall see fit to appoint and direct, to prefer to the said justices an accusation in writing, (*a*) alleging the time, place and nature of the offense of the prisoner so as aforesaid brought before them, which the said justices are hereby fully empowered and required to hear and determine; to which accusation, the said prisoner shall plead; and on refusal to plead, or on trial and conviction in manner aforesaid, shall suffer and incur, by order of the said justices, the punishment, penalty, and forfeiture prescribed and directed in the preceding section of this act, at the discretion of the said justices.

Accusation in writing to be preferred.

39. That it shall be the duty of the two justices before whom any person shall hereafter be tried as aforesaid to make under their hands and seals a full and complete record of all the proceedings had in every such case tried before them, which record shall contain the name of the person tried, a copy of the complaint made against such person, the time of trial, the names of all witnesses produced and sworn, the amount of fees paid to such witnesses, the finding of such justices, and in case of conviction the sentence pronounced, and the amount of costs and penalty (if any) paid by such person, which record it shall be the duty of such justices to file in the office of the clerk of the court of the general quarter sessions of the peace of the county where such trial is had, within ten days after such trial shall have been concluded, there to remain of record, and if said justices shall fail or neglect to make or file such record, they shall respectively forfeit and pay the sum of fifty dollars for each and every such failure or neglect, to be recovered against them and their sureties, respectively, by action of debt with costs in any court having cognizance of the same, and paid when recovered, to the collector of the county, who is hereby authorized and required to prosecute for the same; and the justices shall be entitled to receive the sum of twenty-five cents each, for each record made and filed by them in pursuance of this act, and the clerk of said court of general quarter sessions of the peace, the sum of ten cents for filing such record.

Duty of two justices. P. L. 1866, p. 292.

Penalty for neglect.

39 *a*. That whenever any person shall be charged with petit larceny, and brought for trial therefor before any two justices of the peace, in conformity with the thirty-seventh and thirty-eighth sections of this act, it shall be the duty of such justices to make inquiry whether such person has before that time been convicted of larceny of goods and chattels, either of or under the price or value of twenty dollars; and if it shall appear by the record of such conviction to said justices that such person hath been before so convicted, or that the larceny for which such person is so brought before them for trial was committed by taking the goods and chattels stolen, from the person of another, or that when they were by him or her stolen, such person had entered any house, store or other building, with intent to steal, it shall thereupon be the duty of said justices, and each of them forthwith to cease from further proceeding in such trial, and the jurisdiction of said justices in that behalf shall immediately terminate; and such person shall be thereupon remanded to jail, in default of bail to appear at the next court of oyer and terminer or general quarter sessions of the peace for such county, to answer such charge as shall then be brought against him or her; and the justice before whom such person was charged shall send the information and complaint made against such person to said court, stating therein the cause for which such proceedings were stayed, to the end that such person may be proceeded against and punished according to law, by imprisonment at hard labor or fine, according to the statutes in such cases made and provided.

Justices not to act if it shall appear that the person has before been convicted of petit larceny. P. L. 1866, p. 970.

(*a*) A prisoner cannot be tried by two justices of the peace on a charge for larceny, without "an accusation in writing." *State* v. *Quigg*, 1 *Gr.* 293.

III. Indictments and proceedings thereon.

Clerical errors, how taken advantage of. R. S. 293, § 13.

40. That no indictment, nor any process or return thereupon, shall be quashed, on the motion of the offender, or his or her counsel, for miswriting, misspelling, false or improper English, unless exception concerning the same be taken and made in the court where such trial shall be, by the offender or his or her counsel, before any evidence given in open court upon such indictment; nor shall any such miswriting, misspelling, false or improper English, after conviction on such indictment, be any cause to stay or arrest judgment thereupon, but, nevertheless, any judgment given upon such indictment, shall and may be liable to be reversed upon a writ of error, in the same manner as if this section had not been passed. (*a*)

Effect of plea of misnomer. Ib., § 14.

1128-41
33V-630

41. That no indictment shall be abated by reason of any dilatory plea or allegation of misnomer of the party offering such plea, but if the court shall be satisfied by affidavit or otherwise, of the truth of such plea or allegation, the court shall forthwith cause the indictment to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded.

What defects shall not vitiate an indictment. Ib., § 12.

Amended.

1128-42
29V-221
30V-469

42. That no indictment for any offense shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by record," or of the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the statute" instead of "against the form of the statutes," or vice versa, (*b*) nor for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation, instead of his proper name, nor for omitting to state the time at which the offense was committed, in any case where time is not the essence of the offense, nor for stating the time imperfectly, nor for stating the offense to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened, nor for want of a proper or perfect venue, (*c*) nor for want of a proper or formal conclusion, nor for want of or imperfection in the addition of any defendant, nor for want of the statement of the value or price of any matter or thing, or the amount of damage, injury or spoil, in any case where the value or price, or the amount of damage, injury or spoil, is not of the essence of the offense. (*d*)

Variance may be amended.

43. That whenever, upon trial of any indictment or other legal presentment for a criminal offense, there shall appear to be any variance between the statement therein and the evidence offered in proof thereof, in the name of any county, city, township or other place mentioned or described in such indictment or presentment, or in the name or description of any person or body corporate therein mentioned or alleged to own any property, real or personal, which shall form the subject of any offense charged therein, or in the name or description of any person or body corporate therein alleged to be injured, or intended to be injured, by the commission of such offense, or of any person whomsoever therein named or described, or in the ownership of any property, matter or thing named or described therein, it shall be lawful for the court before which trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defense on such merits, to order such indictment or legal presentment to be amended according to the proof, both in that part of the same where such variance

(*a*) See *ante*, AMENDMENTS, p. 30, notes (*a*) and (*b*). *Query*—Whether a misnomer of a corporation be amendable in an indictment. *State* v. *New Jersey Turnpike Co.*, 1 *Har.* 222. It is not a defect in an indictment that it purports to be made upon the "oaths" instead of "oath" of the grand inquest. *State* v. *Morris Canal Co.*, 2 *Zab.* 537. *State* v. *Dayton*, 3 *Zab.* 49. Nor that the name of one of the grand jurors in the caption is substantially different from his name in the panel, if in reality it is the same person. *State* v. *Norton*, 3 *Zab.* 33. *State* v. *Dayton*, 3 *Zab.* 49. It is a matter of discretion whether an indictment shall be quashed. *State* v. *Hageman*, 1 *Gr.* 314. *State* v. *Beard*, 1 *Dutch.* 384.

(*b*) See *Cruiser* v. *The State*, 3 *Har.* 206. *Townley* ads. *The State*, 3 *Har.* 312. *State* v. *Dayton*, 3 *Zab.* 49.

(*c*) See *Haase* v. *State*, 24 *Vr.* 36.

(*d*) Where an indictment charged an offense on August 25th, 1824, in the county of W., and the law creating the county of W. did not pass until November following, the indictment was quashed. *State* v. *Jones*, 3 *Hal.* 307. But see *S. C.*, 4 *Hal.* 357. An indictment against an overseer of the highways ought to state when he was elected, and that he was in office during the time complained of. *State* v. *Hageman*, 1 *Gr.* 314. It is not necessary in the record of a criminal conviction to state *where* the trial was had. In New Jersey the court can be held at but one place, that designated by the statute, and it will be intended that the trial was had there. *West* v. *The State*, 2 *Zab.* 212. *Aliter* in a *civil* case. *Duyckinck* v. *Clinton Insurance Co.*, 3 *Zab.* 279. *American Thread Co.* v. *Sheldon*, 2 *Vr.* 421.

occurs, and in every other part thereof which it may become necessary to amend, on such term as to postponing the trial, to be had before the same or another jury, as such court shall think reasonable; and in case such trial shall be had on an issue from the supreme court the order for such amendment shall be indorsed on the postea and returned together with the record, and thereupon all papers or records of the courts shall be amended accordingly, and in all other cases the order for the amendment shall be indorsed on or filed with such indictment or presentment among the records of the court; *further*, in case any error in form shall exist in said indictment, or in the manner of describing the offense intended to be charged, like amendment shall be made, on like terms; *provided*, that in case any trial shall be postponed on such amendment, the obligation of all recognizances shall continue as in case of postponement from day to day, or a new recognizance may be required at the discretion of the court; *and provided further*, that on any such new trial before another jury, the right of challenge shall remain as originally possessed by the state and the defendants. (*a*) Proviso.

44. That every verdict and judgment given after any amendment under any provision of this act shall be of the same force and effect as if the indictment or other presentment had originally been in the same form in which it was after the amendment was made; and the record, if formally drawn up after any such amendment for any purpose whatsoever, shall be drawn up in said amended form without taking any notice of the fact of such amendment having been made. Judgments on amended indictments good.

45. That in any indictment for murder or manslaughter it shall not be necessary to set forth the manner in which, or the means by which the death of the deceased was caused, but it shall be sufficient in every indictment for murder to charge that the defendant did willfully, feloniously, and of his malice aforethought, kill and murder the deceased; and it shall be sufficient in every indictment for manslaughter to charge that the defendant did feloniously kill and slay the deceased. (*b*) What sufficient in indictment for murder and manslaughter as to manner of death.

46. That in every indictment for perjury or for unlawfully, willfully, falsely, fraudulently, deceitfully, maliciously or corruptly taking, making, signing or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, or other writing, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and by what court, or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, or other writing was taken, made, signed or subscribed together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any proceeding, either in law or in equity, and without setting forth the commission or authority of the court or person before whom such offense was committed. (*c*) What sufficient in indictment for perjury. R. S. 257, § 25.

47. That in any indictment for forging, uttering, stealing, embezzling, destroying or concealing, or for obtaining by false pretenses, any instrument of writing, it shall be sufficient to describe the same by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile thereof or otherwise describing the same or the value thereof. (*d*) Form of indictment in cases of forgery, &c.

48. That in any indictment for engraving or making the whole or any part of any instrument, written matter, or thing whatsoever, or for using or having the unlawful possession of any plate or other material upon which the whole or any part of any such instrument, matter or thing whatsoever shall have been engraved or made, or for having the unlawful pos- In engraving plates.

(*a*) A variance between the indictment and evidence as to the instrumental cause of death is not material, provided the party is proved to have died the same kind of death as that charged in the indictment. *State* v. *Fox*, 1 *Dutch.* 566. *Donelley* v. *State*, 2 *Dutch.* 464, 602. Where the question of variance between a note set out in an indictment and that produced in evidence, is properly submitted to the jury, their verdict is conclusive. *State* v. *Potts*, 4 *Hal.* 26. See *State* v. *Startup*, 10 *Vr.* 431. *Larison* v. *State*, 20 *Vr.* 256.

(*b*) An indictment charging murder in the language of this section is constitutional and legal. *Grauss* v. *State*, 16 *Vr.* 203; affirmed, 16 *Vr.* 347. For form of indictment, see 16 *Vr.* 203. In an indictment for murder, where the fact that the killing was in the commission of rape is relied on to make such killing murder in the first degree, a count in the general form authorized by this section is sufficient. *Titus* v. *State*, 20 *Vr.* 36.

(*c*) Indictment for perjury on insolvent application need not set out the manner in which common pleas obtain jurisdiction. *State* v. *Ludlow*, 2 *South.* *772. It is not necessary in averring the authority of an officer to administer an oath in an indictment for perjury to aver that he "then and there" had such authority, if time and place have been added to the jurat. *State* v. *Dayton*, 3 *Zab.* 39. So the court will be presumed to have had authority to administer the oath on which the perjury is assigned. *Doyle* v. *State*, 4 *Zab.* 456. Perjury cannot be assigned on an affidavit taken before a justice of the peace in a cause pending before another justice. *Hunt* v. *Langstroth*, 4 *Hal.* 224.

(*d*) See CRIMES, Sec. 235, note (*a*).

session of any paper upon which the whole or any part of any such instrument, matter or thing whatsoever shall have been made or printed, it shall be sufficient to describe such instrument, matter or thing by any name or designation by which the same shall be usually known, without setting out any copy or fac-simile of the whole or any part of such instrument, matter or thing.

In other cases.

49. That in all other cases, wherever it shall be necessary to make any averment in any indictment as to any instrument of writing, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile of the whole or any part thereof.

General intent to defraud need only be alleged or proved in cases of forgery, &c.

50. That it shall be sufficient, in any indictment for forging, uttering, offering, disposing of, or putting off any instrument of writing whatsoever, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to be to defraud any particular person; and on the trial of any of the offenses in this section mentioned it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person, but it shall be sufficient to prove that the defendant did the act charged, with an intent to defraud.

Not necessary to name party intended to be defrauded.

51. That it shall be sufficient in any indictment for fraudulently obtaining or attempting to obtain any property by false token, counterfeit writing or other false pretenses, to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the chattel, money or valuable security; and on the trial of any such indictment it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud. (*a*)

Party indicted for felony or misdemeanor may be found guilty of an attempt and punished accordingly.

1130-52
29V-209

52. And whereas, offenders often escape conviction by reason that such persons ought to have been charged with attempting to commit offenses, and not with the actual commission thereof; for remedy thereof be it enacted, that if, on the trial of any person charged with any felony or misdemeanor it shall appear to the jury upon the evidence that the defendant did not complete the offense charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the said indictment; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried.

Not liable to prosecution again.

Formal objection to be taken before jury sworn.

Court may amend defects.

1130-53
33V-523

53. That every objection to any indictment, for any defect of form or substance apparent on the face thereof, shall be taken, by demurrer or motion to quash such indictment, before the jury shall be sworn, and not afterwards; and every court before which any such objection shall be taken for any such defect, or before whom any person may be tried, may, if it be thought necessary, cause the indictment to be forthwith amended in any particular by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared, or be postponed at the discretion of such court as hereinbefore provided in case of amendment for variance. (*b*)

(*a*) See CRIMES, Sec. 171, note (*a*).

(*b*) If an indictment fail to set out any crime, the court cannot amend it as to charge the crime which it is supposed they intended. *State* v. *Startup*, 10 *Vr.* 424. See *Larison* v. *State*, 20 *Vr.* 256. The objection of duplicity to the charge in an indictment must, by force of this section, be taken before the jury are sworn. *Noyes* v. *State*, 12 *Vr.* 418. *Moschell* v. *State*, 24 *Vr.* 498. *Oliver* v. *State*, 16 *Vr.* 46. *Gardner* v. *State*, 26 *Vr.* 25. *State* v. *Gedicke*, 14 *Vr.* 86. *Larison* v. *State*, 20 *Vr.* 258. The power of amendment may be applied to that class of cases where, on the face of the indictment, a specific criminal charge can be perceived, which fails to be effective only by means of an error which, looking at the charges and averments of the indictment, the court can clearly infer was a clerical error. *State* v. *Kern*, 22 *Vr.* 264. If no objection has been made to an indictment before the trial jury is sworn, the indictment cannot be questioned upon a motion in arrest of judgment. *Mead* v. *State*, 24 *Vr.* 602. An objection that the caption states that the jurors were sworn, affirmed and charged to inquire, and does not set out that those affirmed were conscientiously scrupulous of taking an oath, comes too late after the jury are sworn. *Engeman* v. *State*, 25 *Vr.* 247.

54. That in any plea of autrefois convict or autrefois acquit it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted, as the case may be, of the said offense charged in the indictment. (*a*)

Plea of autrefois convict or acquit.

1129-54
35V-100

1131-54
35V-102

55. That if, upon the trial of any person upon any indictment for robbery, it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob; and no person so tried, as is herein lastly mentioned, shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried.

On the trial of an indictment for robbery, the jury may convict of an assault with intent to rob.

Not liable to prosecution again.

56. That if upon the trial of any person for obtaining by color of any false token, counterfeit letter or writing, or any false pretense or pretenses, from any person, any money, chattels or other valuable thing, with intent to defraud any person or body corporate out of the same, or for embezzlement or fraudulent application or disposition of any money, goods or valuable security, it shall be proved that he obtained such property, or took the same in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of said misdemeanor, but is guilty of larceny, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny; and if upon the trial of any person indicted for larceny, it shall be proved that he took the property in question in such manner as to amount in law to embezzlement, or that he obtained the same by color of any false token, counterfeit letter or writing, or false pretenses as aforesaid, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement or of such misdemeanor of obtaining property by false token, counterfeit letter or writing, or false pretenses with intent as aforesaid, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement or such other misdemeanor aforesaid, as the case may be, and no person so tried for either of said misdemeanors or for larceny as aforesaid, shall be liable to be afterwards prosecuted criminally upon the same facts. (*b*)

Persons indicted for false pretense, embezzlement, or fraudulently disposing of property may be convicted of larceny and vice versa.

57. That for preventing difficulties in the prosecution of offenders in any case of embezzlement, it shall be lawful to charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement which may have been committed by him against the same master or employer, within the space of six months from the first to the last of such acts; and in every such indictment where the offense shall relate to any money or any valuable security, it shall be sufficient to allege the embezzlement, or fraudulent application or disposition, to be of money, without specifying any particular coin or valuable security, and such allegation so far as it regards the description of the property, shall be sustained if the offender shall be proved to have embezzled or fraudulently applied or disposed of any amount, although the particular species of coin or valuable security, of which such amount was composed, shall not be proved; or if he shall be proved to have embezzled or fraudulently applied or disposed of any piece of coin or any valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been

Several acts of embezzlement may be joined.

Accurate specification of property embezzled not required.

(*a*) If a judgment in a criminal case is reversed on error, in consequence of an error committed by the trial judge in charging the jury, the first trial will not be a bar to a retrial on the same indictment. *Smith and Bennett* v. *State*, 12 *Vr* 598. The modern English doctrine seems to be that nothing but an existing judgment, either of conviction or acquittal, so that a plea of *autrefois convict* or *autrefois acquit* can be pleaded, will have that effect. *Ib.* The constitution of this state goes no further than to forbid the retrial of a person who has been acquitted. *Ib.* See Constitution of New Jersey, Art. I., Sec. 10.

(*b*) As to origin of this section and the constitutional question suggested, see *Hagerman* v. *State*, 25 *Vr.* 110.

delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to some other person, and such part shall have been returned accordingly.

As to election in case of different larcenies.

58. That if upon the trial of any indictment for larceny, it shall appear that the property alleged in such indictment to have been stolen at one time, was taken at different times, the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed (except in cases in which the court shall so order) unless it shall appear that there were more than three takings, or that more than the space of six months elapsed between the first and the last of such takings; and in either of such last-mentioned cases, the prosecutor shall be required to elect to proceed for such number of takings not exceeding three, as appear to have taken place within the period of six months from the first to the last of such takings.

On indictment for jointly receiving, separately receiving punishable.

59. That if, upon the trial of two or more persons indicted for jointly receiving any property, it shall be proved that one or more of such persons separately received any part of such property, it shall be lawful for the jury to convict upon such indictment such of the said persons as shall be proved to have received any part of such property.

Coin and bank notes may be described simply as money.

60. That in every indictment in which it shall be necessary to make any averment as to any money or any note of the United States of America, or of any national or state bank or any other bank, or any postal currency, it shall be sufficient to describe such money or currency or note simply as money, without specifying any particular coin or bank note, treasury note of the United States or postal currency thereof; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, treasury note, or postal currency, as aforesaid, although the particular species of coin of which such amount was composed, or the particular nature of such other notes shall not be proved; and in cases of embezzlement and obtaining money, treasury notes or postal currency aforesaid, or bank notes, by false pretenses, such allegation shall be sustained as aforesaid, by proof that the offender embezzled or obtained any piece of coin, or any such treasury note or postal currency aforesaid, or any bank note, or any portion of the value thereof, although such piece of coin, treasury note, postal currency or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person, and such part shall have been returned accordingly.

Any court, &c., may direct a person guilty of perjury in any evidence, &c., to be prosecuted.

61. That it shall and may be lawful for the judges or judge of any of the courts of law or equity of this state, or for any justice of the peace, or for any sheriff or his lawful deputy, before whom any writ of inquiry or writ of trial from any court shall be executed, or for any commissioner of the supreme court of this state, or any master or examiner of the court of chancery of this state, in case it shall appear to him or them that any person has been guilty of willful and corrupt perjury in any evidence given or in any affidavit, deposition, examination, answer or other proceeding made or taken before him or them, to direct such person to be prosecuted for such perjury, in case there shall appear to him or them a reasonable cause for such prosecution, and to commit such person so directed to be prosecuted until the next session of oyer and terminer or general or special sessions for the county within which such perjury was committed, unless such person shall enter into a recognizance with one or more sufficient surety or sureties, conditioned for the appearance of such person at such next session of said oyer and terminer or general or special sessions, and that he will then surrender and take his trial and not depart the court without leave, and to require any person he or they may think fit to enter into a recognizance conditioned to prosecute or give evidence against such person so directed to be prosecuted as aforesaid, and to give to the party so bound to prosecute a certificate of the same being directed, which certificate shall be given without any fee or charge, and shall be deemed sufficient proof of such prosecution having been directed as aforesaid; and upon the production thereof the costs of such prosecution shall and

And commit such person unless he enter into recognizance to appear, &c., and to bind witnesses, &c.

are hereby required to be allowed by the court before which any person shall be prosecuted or tried in pursuance of such direction as aforesaid, unless such last-mentioned court shall especially otherwise direct; *provided always*, that no such direction or certificate shall be given in evidence upon any trial to be had against any person upon a prosecution so directed as aforesaid. [See CRIMES, Secs. 17 and 18.]

And give certificate of prosecution, &c., which shall be evidence of the same.

62. That in every indictment for subornation of perjury, or for corruptly bargaining or contracting with any person to commit willful and corrupt perjury, or for inciting, causing or procuring any person unlawfully, willfully, falsely, fraudulently, deceitfully, maliciously or corruptly to take, make, sign or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer or other writing, whereupon such perjury or other offense aforesaid shall have been actually committed, it shall be sufficient to allege the offense of the person who actually committed such perjury or other offense in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully, willfully and corruptly did cause and procure the said person the said offense, in manner and form aforesaid, to do and commit; and whenever such perjury or other offense aforesaid shall not have been actually committed it shall be sufficient to set forth the substance of the offense charged upon the defendant, without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of willful and corrupt perjury.

Or for subornation of perjury and other like offenses

63. That it shall not be necessary, upon the trial of any indictment under the fifty-second and fifty-third sections of the act for the punishment of crimes, to prove the existence of any lottery in which any ticket, share, or part of a ticket purports to have been issued, or the actual signing of any such ticket or share, nor that any ticket, share or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager, or the existence of any lottery in which any number or numbers may be charged to have been issued; but in all cases proof of the sale, furnishing, bartering or procuring of any ticket, share or interest therein, or of any instrument purporting to be a ticket, or part or share of any ticket, shall be conclusive evidence that such ticket, share or interest was signed and issued according to the purport thereof; and one-half of every fine inflicted and collected under any of the provisions of this act shall, when collected, be paid to the person giving information by reason of which a conviction shall be had.

Existence of a lottery or actual signing of tickets need not be proved on trial.

64. That no more than two indictments shall be presented against any person at the same term of the court for offenses against the sixtieth, sixty-first, sixty-second and sixty-third sections of the act entitled "An act for the punishment of crimes;" *provided*, that nothing herein contained shall prevent any number of different offenses aforesaid from being included in said indictments, nor to prevent the court from imposing the fine of twenty dollars provided by law for each offense of which any person shall be convicted upon one indictment.

Only two indictments at one term for unlawful sale of liquor.
P. L. p. 1851, 435.
Amended.

65. That every indictment shall be tried the term or session in which issue is joined, or the term after, unless the court, for just cause, shall allow further time for the trial thereof; and if such indictment be not so tried as aforesaid, the defendant shall be discharged. (*a*)

Indictments when tried.
R. S. 292, § 1.

66. That any person who shall be accused and indicted of treason, shall have a copy of the indictment, and a list of the jury and witnesses to be produced on the trial for proving the said indictment, mentioning the names and places of abode of such jurors and witnesses, delivered unto him

When copy of indictments, &c., furnished prisoner.
R. S. 293, § 1.

(*a*) See *ante*, Sec. 27, note (*b*). A discharge under this section operates only to discharge the accused from imprisonment or from his recognizance, and not from the indictment or the legal consequence of his crime, and is not such a termination of the criminal prosecution as will enable the accused to bring an action for malicious prosecution. *Apgar* v. *Woolston*, 14 *Vr.* 57. At common law only the attorney-general could exercise the power to enter a *nolle prosequi* upon an indictment, and in this state, there being no statute upon the subject, this power is still reposed in the attorney-general or the several prosecutors of the pleas; but under the long-established practice in this state an indictment, after it passes under the control of the court, may not be discharged without the consent or under the advice of the court. *State* v. *Hickling*, 16 *Vr.* 152. The peremptory power of the court, where the common law prevails, is never exerted upon the representative of the state to discharge an indictment in whole or in part at the instance of the parties. This can only be done where such power is conferred upon the court by statute. *Ib.* A defendant should not be discharged on *habeas corpus* because he has not been tried the second term after issue joined, unless it appeared, first, that he has applied to the trial court and has been refused his discharge; and, secondly, that such refusal was so arbitrary and groundless as to amount to a clear abuse of discretion. *Patterson* v. *State*, 20 *Vr.* 826; affirmed, 21 *Vr.* 421.

at least three entire days before the trial; (*a*) and in murder and other offenses punishable with death, and also in misprision of treason, manslaughter, sodomy, rape, arson, burglary, robbery, forgery, perjury or subornation of perjury, shall have such copy of the indictment and list of the jury, two entire days, at least, before the trial. (*b*)

67. [Amended by Secs. 150 and 172, *post.*]

Evidence in treason. Ib., § 3.

68. That no evidence shall be admitted or given against any person of any overt act of treason, that is not expressly laid in the indictment.

Effect of plea of not guilty. Ib., § 4.

69. That as well in treason and murder as in all other offenses which are or may be committed against this state, when any person, on being arraigned, or called to answer the matter charged in the indictment against him or her, shall plead not guilty, every such person, so pleading, shall be deemed and taken to put himself or herself upon the inquest or country for trial, without any question being asked how he or she will be tried.

Proceedings if defendant stands mute. Ib., § 5.

70. That if any person be indicted for any offense whatever against this state, and shall, on being arraigned, or called to answer the matter charged in such indictment, stand mute, a jury shall forthwith be impaneled to try and say, whether the person so standing mute standeth mute obstinately and on purpose, or by the providence and act of God; and if they return their verdict that such person standeth mute by the providence and act of God, the court shall thereupon cause him or her to be remanded to prison and shall not proceed against him or her, until he or she shall have recovered therefrom; but if the jury shall return their verdict, that the person so standing mute, standeth mute obstinately and on purpose, then the court shall cause to be entered upon the indictment against such person, the plea of not guilty, and also shall cause the like plea of not guilty to be entered where any person, indicted as aforesaid, shall refuse to plead or answer to such indictment; and in all such cases shall proceed upon his or her trial, in like manner, in all respects, as if he or she had voluntarily pleaded the same plea thereto; except that such person, so standing mute obstinately and on purpose, or refusing to plead or answer as aforesaid, shall not be admitted to make any challenges to the jurors.

When right of challenge forfeited.

Defendant's right of challenge. Ib., § 6.

71. That every person who shall be indicted for treason, murder, or other crime punishable with death, or for misprision of treason, manslaughter, sodomy, rape, arson, burglary, robbery, forgery, perjury or subornation of perjury, and shall voluntarily and duly plead the plea of not guilty to such indictment, shall be admitted peremptorily to challenge twenty of the jury, and no more; and if any person, indicted as aforesaid, after having voluntarily and duly pleaded as aforesaid, shall peremptorily challenge a greater number of the jury than twenty, the court shall disallow all such challenges, over and above the said number of twenty; and the jury shall be charged, and the trial shall proceed in like manner in all respects, and the like judgment shall be given as would or ought to be had and given if the person so indicted as aforesaid, and having pleaded as aforesaid, had not peremptorily challenged a greater number of the jury than in and by this act he or she is admitted to challenge; *provided*, that nothing in this act respecting challenges shall apply to cases of struck juries. (*c*)

How panel to be selected. Ib., § 8.

72. That in all cases where any prisoner or defendant, in or upon any indictment, is or may be by law entitled to peremptory challenges, and to have a copy of the panel or a list of the jury delivered to him previous to his trial, it shall be the duty of the sheriff, or other proper officer, to select such panel or list of forty-eight jurors from the general panel or list of

(*a*) In treason alone is the prisoner entitled to have a list of the witnesses delivered to him in addition to a copy of the indictment and a list of the jurors, under the act of congress passed April 30th, 1790. *United States* v. *Wood*, 3 *Wash. C. C.* 440.

(*b*) On a trial for murder it is not a sufficient objection to the panel of jurors served upon the prisoner that it is not according to the statute. The particular objection should be pointed out. *State* v. *Brooks*, 1 *Vr.* 356. Where the panel has been exhausted and a *tales* awarded, the better practice would seem to be to adjourn the cause for two entire days, if the prisoner insists upon his right. *State* v. *Aaron*, 1 *South.* *242. See Sec. 73. *Query*—Whether the attorney-general is bound to furnish prisoners with a copy of the indictment and list of the jury before they request it? *State* v. *Mairs*, *Coxe* 453. It seems, if he has not applied for such copy and list it is no cause for a continuance. *United States* v. *Shire*, *Bald. C. C.* 510. In cases of manslaughter counsel may waive the prisoner's right to a copy of the indictment; in murder they cannot. *State* v. *Powell*, 2 *Hal.* 244. The prisoner himself may waive such right, or, if an infant under fourteen, his counsel may do so. *State* v. *Aaron*, 1 *South.* *242. Breaking and entering a storehouse at night with intent to steal is not, in this state, burglary, entitling the accused, at the trial, to a copy of the indictment and service of panel. *Connors* v. *State*, 16 *Vr.* 340.

(*c*) Breaking and entering a storehouse in the night-time, with intent to steal, is not, in this state, burglary, entitling the accused to the service of a panel and twenty peremptory challenges. *Connors* v. *State*, 16 *Vr.* 345. See *Moschell* v. *State*, 24 *Vr.* 502.

jurors that may have been drawn and summoned to attend as jurors, at the term at which such prisoner or defendant is to be tried; *provided*, a sufficient number of jurors shall have been so drawn and summoned to attend such court; but if forty-eight jurors have not been so drawn and summoned, then the said sheriff or officer shall add to the number so drawn and summoned, as many more [persons] of the body of his county, qualified to serve as jurors, as shall make up the number of forty-eight; which panel or list of jurors, if delivered by the sheriff or other proper officer, to the prisoner or defendant entitled to the same, prior to the first day of the court at which such trial is to be had, shall be as good and effectual as if the same had been delivered to the prisoner or defendant after the opening of the court; *provided however*, that such prisoner or defendant shall not be put upon his trial without his consent, deliberately expressed in open court, unless he has had such panel or list of jurors delivered to him as many days prior to his trial as by law he is or may be entitled to have the same. (*a*) [See Secs. 133 and 154, *post.*]

Deficiency supplied. P. L. 1875, p. 91.

Proviso.

73. That in case a tales de circumstantibus shall be awarded in any case in which the defendant shall be entitled to such peremptory challenges, the talesmen shall be taken from the general panel of jurors returned, for the term at which such defendant is to be tried; and if more talesmen should be required than the number of jurors remaining on the general panel, the sheriff or other proper officer shall forthwith summon from among the bystanders, or others, such additional number of [persons] qualified to serve as jurors, as may be necessary to complete the jury, and make return thereof immediately, and serve a copy thereof on the defendant who shall thereupon proceed to make his challenges to such talesmen, if he has any to make. (*b*)

Talesmen, whence taken. Ib., § 9. P. L. 1875, p. 91.

74. That the law relative to the peine forte et dure shall be, and hereby is abolished.

Peine forte et dure abolished. Ib., § 10.

75. That no indictor of any person, for any crime or offense whatsoever, shall be put upon the inquest for the trial of such person, if he be challenged for the same cause by him so indicted.

Indictor not to sit on inquest if challenged. Ib., § 11.

76. [Amended by Sec. 146, *post.*]

77. That where any murder or other offense shall be committed and done in one county, and other person or persons shall be accessory in any manner to any such murder, or other offense, in any other county, then an indictment, found and taken against such accessory or accessories, upon the circumstances of such matter, before the justices of the peace, or other justices or commissioners, having authority to inquire of such offenses, in the county where the offense of accessory in any manner or wise shall be committed or done, shall be as good and effectual in the law, as if the said principal offense had been committed or done within the same county where the same indictment against such accessory or accessories shall be found; and the justices of oyer and terminer and of general jail delivery, or any three of them, of or in such county where the offense of any such accessory shall be committed and done, upon suit to them made, shall write to the clerk or keeper of the records where such principal shall be attainted or convicted, to certify them, whether such principal be attainted or convicted, or otherwise discharged of such principal offense, who, upon such writing, to them or any of them directed, shall make sufficient certificate, in writing, under his or their seal or seals, to the said justices, whether such principal be attainted, convicted, or otherwise discharged of such offense or not; and after that the said clerk or keeper of the records do certify that such principal is attainted, convicted or otherwise discharged of such offense by the law, then the said justices of

Offense of principal committed in one county and accessory in another, indictment against accessory may be found in atter. Ib., § 2.

(*a*) The statute requires that the forty-eight jurors shall be summoned for service, and a list of them shall be served on the defendant. It does not require that all the jurors shall be present when the case is moved. *Patterson* v. *State*, 19 *Vr.* 381. When the defendant in a criminal case is not entitled to twenty peremptory challenges and a jury list of thirty-six names has been drawn, such list cannot be added to by the sheriff. *Evans* v. *State*, 23 *Vr.* 261. For reasonable cause a juror whose name is on the list of forty-eight jurors served upon the prisoner may be discharged by the court. *Aaronson* v. *State*, 27 *Vr.* 9.

(*b*) It is not necessary to select talesmen from those actually present in or about the court-room. The officer may go out into the county and summon them. *Patterson* v. *State*, 19 *Vr.* 381. It is not error in the trial court to order the sheriff to have present in court, on a future day, the requisite number of qualified jurors to serve as talesmen. *Ib.* A defendant is entitled to two days' service of the *tales*. The proper practice is, unless service is waived in open court, to adjourn the cause for the purpose of making proper service. *Ib.*

oyer and terminer, or of general jail delivery, or other justices thereunto authorized, shall proceed against any such accessory or accessories, in the county they or either of them became so accessory, in such manner and form as if both the principal offense and accessory had been committed and done in the said county, where the said offense of accessory was or shall be committed or done; *and further*, that every such accessory, and other offenders aforesaid, shall answer upon their arraignments, and have the like defenses, advantages and exceptions, and shall receive the like trial, judgment, order and execution, and suffer such forfeitures, pains and penalties, as if both the principal offense and accessory had been committed and done in one and the same county.

If a person die in this state of a stroke or poison given out of it, or if he die out of this state of a stroke or poison given in it, where indictment found. Ib., § 3.

78. That where any person shall be feloniously stricken or poisoned upon the sea, or at any place out of the jurisdiction of this state, and shall die of the same stroke or poisoning within the jurisdiction of this state, or where any person shall be feloniously stricken or poisoned within the jurisdiction of this state, and shall die of such stroke or poisoning upon the sea, or at any place out of the jurisdiction of this state, in either of the said cases an indictment thereof, found by jurors of the county within the jurisdiction of this state, in which such death, stroke or poisoning shall happen respectively as aforesaid, whether it shall be found before any coroner, upon view of such dead body, or before the justices of the peace, or other justices or commissioners who shall have authority to inquire of murders, shall be as good and effectual in the law, as well against the principal or principals in any such murder, as against the accessory or accessories thereto, as if such felonious stroke and death thereby ensuing, or poisoning and death thereby ensuing, and the offense of such accessory or accessories had happened in the same county where such indictment shall be found; and that the justices of oyer and terminer and of general jail delivery in the same county where such indictment shall be found, and also the supreme court, in case such indictment shall be taken or removed before them, shall and may proceed upon the same in all points, as well against the principal or principals in any such murder as the accessory or accessories thereto, as they might or could do in case such felonious stroke and death thereby ensuing, or poisoning and death thereby ensuing, and the offense of such accessory or accessories had happened in the same county where such indictment shall be found; and that every such offender, as well principal as accessory, shall answer upon their arraignments, and have the like defenses, advantages and exceptions, and shall receive the like trial, judgment, order and execution, and suffer such forfeitures, pains and penalties as they ought to do if such felonious stroke and death thereby ensuing, or poisoning and death thereby ensuing, and the offense of such accessory or accessories had happened in the same county where such indictment shall be found. (*a*)

Summons on indictment, &c., against corporations, how issued and served. R. S. 999, § 1.

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

(*a*) Applies to murder only and not manslaughter. Thus, an indictment charging a felonious assault and battery in another state, and that the party injured came into and died from its effects in New Jersey, charges no crime against this state. *State* v. *Carter*, 3 *Dutch.* 499. Where a mortal blow is given within the jurisdiction of this state and the death of the victim occurs within the jurisdiction of another state, the courts of this state have cognizance of the crime by force of this section. *Hunter* v. *State*, 11 *Vr.* 495.

within the said county, then a copy of said summons or notice may be served on the clerk, cashier or secretary of the said corporation or township, if any there be in the said county in which the said indictment shall have been found or information filed, and if there be no clerk, cashier or secretary of said corporation or township found in said county, then on one of the directors of the said corporation, or left at his usual place of abode six entire days before the commencement of the said term to which the said summons or notice shall be returnable.

Proceedings after return "served," &c. Ib., § 2.

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

Process "not served." Ib., § 3.

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

Order for publication.

Proof.

Proceedings.

Offenders tried separately when indicted jointly. P. L. 1864, p. 561.

82. That when two or more persons are or shall be jointly indicted for the same offense, except for conspiracy, and such indictment, before the trial thereof, hath been or shall be removed into the supreme court of this state, by certiorari or otherwise, any one of the said persons, on application to said supreme court, upon affidavit that some one or more of said persons so jointly indicted with him, whom he shall name, is or are, as he is advised by his counsel, whom he shall also name, and verily believes, a material witness or witnesses for him on the trial of said indictment, and

(*a*) If a corporation appears to indictment by an attorney of the court, it is not necessary to take proceedings under this statute to secure an appearance. *State* v. *Passaic County Agricultural Society*, 25 *Vr.* 260.

without whose testimony he cannot safely proceed to trial, shall, by order of said supreme court, be allowed a trial separate from the person or persons whom he shall so name as such material witness or witnesses. (*a*) [See Sec. 64, *ante*.]

IV. Judgment and error.

Writs of error in criminal cases—of right, of grace. R. S. 293, § 16.

83. That writs of error in all criminal cases not punishable with death, shall be considered as writs of right, and issue of course; and in criminal cases punishable with death, writs of error shall be considered as writs of grace, and shall not issue but by order of the chancellor for the time being, made upon motion or petition, notice whereof shall always be given to the attorney-general or the prosecutor for the state. (*b*)

When defendant shall not pay costs. R. S. 292, § 2.

84. That if an indictment be quashed, or a verdict pass, or judgment be given for the defendant in the said indictment, then no costs shall be awarded against such defendant.

Costs on joint indictment. Ib., § 4.

85. That if several persons are or shall be jointly indicted for one and the same offense, and shall be thereof convicted, the costs, except caption fees, shall amount to no more than on an indictment against one person only. (*c*)

How fines and costs collected. P. L. 1851, p. 348.

86. That whenever judgment shall be rendered upon any indictment in the supreme court, or any of the courts of oyer and terminer and general jail delivery, or courts of quarter sessions of the peace, of this state, such proceedings may be had thereupon, for the purpose of obtaining satisfaction of the fine and costs, or costs adjudged, by writ or writs of fieri facias, in the like manner and to the same effect as in civil cases; but such execution or executions shall not have the effect to discharge the defendant or defendants from imprisonment, pursuant to the judgment of the court, until such judgment shall be satisfied. (*d*)

Defendant may be placed at labor in jail until fine and costs are paid. Ib.

87. That when on any indictment for crime or misdemeanor, judgment shall be given in any of the courts of this state for fine or imprisonment and costs, or costs to be paid, it shall be lawful to place the person or persons against whom such judgment shall be rendered, at labor in said jail, until such fines and costs, or costs, are paid by the proceeds of such labor or otherwise.

Writs of error stay execution. Ib.

88. That in case a writ of error shall be brought and allowed, upon any such judgment, it shall have the effect to stay proceedings upon the execution issued thereon, pending the prosecution of such writ of error.

Judgment upon indictment not reversed for formal error. P. L. 1855, p. 648, § 2.

1138-89
31V-31
290
30V-437
494

89. That no judgment given upon any indictment shall be reversed for any imperfection, omission, defect in, or lack of form, or for any error, except such as shall or may have prejudiced the defendant in maintaining his defense upon the merits. (*e*)

90. [Repealed by Sec. 120, *post*.]

91. [Amended by Sec. 121, *post*.]

(*a*) See *State* v. *Carr*, *Coxe* 1. *The State* v. *Brien*, 3 *Vr.* 414.

(*b*) When an *allocatur* is necessary. *Anonymous*, 1 *Har.* 271. The second section of the act respecting errors (*post*, ERROR, Sec. 2) applies to criminal cases, and such writ must be sued out within three years. *State* v. *Holmes*, 7 *Vr.* 62. For form of return, see *State* v. *Price*, 6 *Hal.* 204; and, also, *McCourry* v. *Swydam*, 5 *Hal.* 245. The presence of the party convicted is not necessary. Errors may be assigned by his counsel. *State* v. *Donnelly*, 2 *Dutch.* 463, 601.

(*c*) Where two defendants jointly indicted are convicted, and the sentence is that one pay a fine of $250, and the other $100, "and that they stand committed until the fine and costs of prosecution be paid," the judgment is substantially correct, both defendants being liable for the costs and each for his fine. *Johnson* v. *The State*, 5 *Dutch.* 453.

(*d*) If a defendant, after conviction and sentence to be imprisoned until the fine and costs are paid, be suffered to escape by the sheriff, a *fi. fa.* may still issue to make the fine and costs. *State* v. *Dodge*, 4 *Zab.* 671. A conveyance of lands made in apprehension of a prosecution will be set aside as to the state, after conviction. *Tantum* v. *Miller*, 3 *Stock.* 551.

(*e*) An allegation in an indictment that a burglary was committed "by night," even if erroneous, is not such a defect as prejudices the defense of the accused. *State* v. *Robinson*, 6 *Vr.* 71. So, where there were four counts in an indictment for murder, each one setting out a different instrument with which the murder was committed, a general verdict of guilty was held good. *Donnelly* v. *State*, 2 *Dutch.* 493. The exclusion of the testimony of a husband as to the credibility of his wife (who had been an eye-witness of a murder), was held to be such error. *Ware* v. *State*, 6 *Vr.* 557. An indictment under a statute making it a criminal offense to "*send or convey*" an insulting, indecent, lascivious, disgusting, offensive or annoying letter or communication to any female, which charges that the accused did "*send and convey*," is technically defective; an objection not having been taken until after verdict, the court will not reverse, as the defect was such as would not have prejudiced the defendant in maintaining his defense on the merits. *Larison* v. *State*, 20 *Vr.* 256. The omission to aver in an indictment that the Oxford Iron Company was a corporation under the laws of this state, is not such a defect as could have prejudiced the defendant in maintaining his defense. *Fisher* v. *State*, 11 *Vr.* 169. See *Hunter* v. *State*, 11 *Vr.* 495. *Connors* v. *State*, 16 *Vr.* 212. *Freeholders of Bergen* v. *State*, 13 *Vr.* 263. *State* v. *Wheeler*, 15 *Vr.* 88. *Patterson* v. *State*, 19 *Vr.* 381. *Haase* v. *State*, 24 *Vr.* 34. *Randall* v. *State*, 24 *Vr.* 485. This section does not apply to the misconduct of a juror which might materially have affected the rights of the party. *State* v. *Vansciver*, 7 *N. J. L. J.* 268.

V. Proceedings on recognizances.

When sheriff to pay over moneys collected on recognizances, &c. R. S. 301, ¿ 5.

92. That every sheriff shall annually, at the close of his office, or within one month thereafter, pay into the treasury of this state such sums of money as he shall have collected or received in virtue of executions issued against recognizors, or arising from fines and amercements awarded by any court against any offender or offenders, excepting fines received by him on conviction upon any indictment, or which may be imposed by any two justices, retaining after the rate of five per centum for his trouble in collecting, receiving and paying the same; and every sheriff who shall neglect or refuse to pay all such sums of money agreeably to the direction of this act, shall forfeit for every offense two hundred dollars, to be recovered by and in the name of the treasurer of the state for the time being, in any court of record where the same shall be cognizable, with costs of suit, and applied to and for the use of the state, and shall also be subject to an action of debt or trespass on the case, at the suit of the said treasurer on behalf of the state, for recovery of the whole sum so by him received, with interest and cost of suit, and the right to such percentage shall extend and apply to all fines received by any sheriff on convictions, whether upon indictments or other proceedings before any court of criminal jurisdiction, and whether such fines are payable to the treasurer of this state, or to the collector of the county where the conviction is had.

Compensation.

Forfeit for neglect or refusal. Percentage given to sheriffs shall extend to fines received by him on convictions. P. L. 1873, p. 140.

VI. Costs.

Taxation of costs in criminal cases. R. S. 470, ¿ 6.

93. That all bills of costs in criminal cases shall be taxed by the clerk of the court in which the judgment is had, in the manner provided by law in civil causes; and the said clerk shall in no case allow on such taxation, either for himself or others, any item or charge for any service or proceedings, unless the same shall have been required by law, in the regularly conducting such case, and unless the same shall have been actually performed, and shall so appear upon the minutes or records of the court; and such clerk shall not allow any charge for more than one service, for taking and entering the recognizances of several persons who appear and enter into recognizance together at the same time, nor shall any charge be allowed for more than one process of subpœna for the appearance of all the witnesses in the same case, residing in the same county, at the same term. (*a*)

Penalty for illegal allowance. Ib., ¿ 7. P. L. 1868, p. 1189.

94. That if any clerk, in the taxation of any bill of costs in a criminal case, shall willfully, knowingly and fraudulently allow any item, fee or charge, contrary to the provision of the preceding section, and tax the bill of costs accordingly, he shall for every such offense forfeit and pay the sum of thirty dollars, to be recovered by action of debt, with cost of suit, by any person who shall sue for the same, the one-half to the use of the county wherein such clerk shall reside, the other half to the use of the person who shall sue for and prosecute the same to effect; but no more than one penalty shall be recovered in any case upon one bill of costs.

Witnesses to be paid. R. S. 453, ¿ 1. Amended.

95. That when a trial shall be concluded in any of the courts of this state, on any indictment, it shall be the duty of the sheriff of the county where the verdict shall be rendered, to pay the witnesses who shall have been sworn or affirmed to testify in behalf of the state, their legal fees before they leave the court.

96. [Amended by Sec. 169, *post.*]

Fees for transportation. Ib., ¿ 2.

97. That the several sheriffs or their deputies shall transport to the state prison, at the same time, all offenders sentenced as aforesaid, during any one term of the court pronouncing such sentence; and for transporting, sustaining and securing such offenders, they shall be entitled to receive the following and no other compensation, to wit:

(*a*) See *Essex Board of Freeholders* v. *Smith*, 14 *N. J. L. J.* 267.

For a single offender, thirty cents per mile;
For two offenders, twenty-five cents per mile, each;
For three offenders, twenty cents per mile, each; and
For four or more offenders, fifteen cents per mile, for each one;

How certified and paid.

Which sums shall be certified by the keeper of said prison, and said certificate shall be delivered to the treasurer of this state, who shall, upon the same and the order of said keeper and warrant of the comptroller, pay the said sheriffs the amount so certified out of any moneys in his hands not otherwise appropriated. [See Sec. 207, *post.*]

Costs of conviction taxed and paid. Ib., ¿ 3.

98. That the costs of conviction of every offender sentenced to hard labor and imprisonment in the state prison, shall hereafter be paid on warrant of the comptroller of this state, on a certificate of the taxed bill of costs, signed by the clerk of the court where such conviction shall be had, and countersigned by the keeper of the prison; *provided*, that if the comptroller aforesaid shall have reason to believe that any such bill of costs is improperly taxed, it shall be his duty to return the same to the court where such conviction was had, that the same may be re-examined and retaxed by the court. (*a*) [See Sec. 207, *post.*]

Proviso.

Costs of prosecution how paid. R. S. 453, ¿ 2.

99. That in case the offender or offenders shall be sentenced to pay a fine, or to imprisonment in the county jail, and he, she or they are unable to pay the costs of prosecution, it shall be the duty of the county collector of said county, and he is hereby directed to pay the same to the sheriff of the said county, on the bills of costs duly taxed being shown him; and in case the offender or offenders shall happen to escape after verdict against him, her or them, or for any other cause, no sentence should be passed upon such offender or offenders, it shall in like manner be the duty of the said county collector to pay to the sheriff all the fees which he shall have paid to the witnesses as aforesaid, and to the attorney-general or prosecutor, on a statement in writing by the sheriff, under oath or affirmation, of the sums paid in each and every case; and for such sum or sums, so paid as before directed, it shall be the duty of the said county collector to take a receipt of the said sheriff; which sum or sums shall be allowed the said collector in the settlement of his accounts; and when on any indictment there is an acquittal, the sheriff shall pay the witnesses' and constables' fees; and the said bill of fees, on proper vouchers produced, shall on demand be repaid to the said sheriff by the county collector, from any moneys in his hands belonging to the county, and be allowed to him in the settlement of his accounts.

Sheriff reimbursed.

Fees, how paid on acquittal.

Prosecutors of the pleas faithfully to prosecute.

100. That it shall be the duty of the prosecutor of the pleas for each county to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the laws; and all necessary expenses incurred thereby, verified to and approved under his hand, by the presiding judge of the oyer and terminer or general quarter sessions of the peace for any county, shall be paid by the board of freeholders thereof. (*b*)

Extra expenses payable by freeholders.

Fees on acquittal before justices, how paid. R. S. 453, ¿ 3.

101. That when there shall be judgment of acquittal before any court of justices of the peace, in cases where by law they may try persons charged with any crime against the state, the said justices shall make out a bill of the fees by law allowed to said justices, witnesses for the state and constables, and certify the said bill to be just and true to the court of general quarter sessions, at their lawful stated term, to be by them approved, and by their order certified by the clerk of the county, who shall deliver the same to one of the said justices, to be by him recorded in his docket, and then delivered to the constable, who shall draw on the county collector for the same, and make return of the said money to said justice, to be by him paid to the person entitled thereto.

(*a*) Where an offender is convicted on indictment and sentenced to the state prison, the costs of conviction are payable by the state, and cannot be collected from the county. *Freeholders of Morris* v. *Freeman*, 15 *Vr.* 631.

(*b*) Under this section the prosecutor of the pleas has power, with the concurrence of the presiding judge of the court of oyer and terminer, to employ associate counsel to assist in the trial and preparation of a homicide case. *Lindabury* v. *Freeholders of Ocean*, 18 *Vr.* 417. The judge's certificate of approval of compensation is conclusive. *Ib.* See *Knight* v. *Freeholders of Ocean*, 19 *Vr.* 70. A bill for expenses for detection of offenders, verified and approved by the prosecutor of the pleas and approved and certified by the presiding judge of the oyer and terminer, must be paid by the board of freeholders. *Irving* v. *Applegate*, 20 *Vr.* 377.

Sheriff to pay over fines. Ib., § 4.

102. That all fines received by any sheriff on conviction upon any indictment, or which may be imposed by any justice or justices, shall be by him paid over to the county collector and carried to the credit of the county; and the sheriff of each county for the time being shall annually render to the county collector an account of all fines imposed within any year in which he is in office; and on neglect or refusal so to do, shall forfeit and pay five hundred dollars above the amount of fines imposed, to be recovered with costs of suit, in the name of the county collector for the time being, to and for the use of the county; and the clerk of the county shall make return of said fines to the board of chosen freeholders at their annual meeting, as a check against the county collector.

How costs, fines, and expenses recovered out of convict's estate. Ib., § 5.

103. That in all cases in which any offender shall be convicted of an offense for which he or she shall be sentenced to imprisonment, for such length of time as by law requires that he or she be imprisoned in the state prison, and he or she shall have any estate, real or personal, or both, the same shall be bound by the judgment against such offender, from the time of rendering thereof, and shall be liable for the payment of the fine (in case any fine be adjudged), cost of prosecution and expenses of sustaining, securing and transporting such offender to the state prison, and finding and providing clothing and other necessaries, during the term of imprisonment; for the recovery of which, it shall be the duty of the clerk of the court by whom such judgment was rendered, or sentence pronounced, on the application of the attorney-general or prosecutor of the pleas, to transmit, under the seal of said court, a certified copy of the record of said judgment or sentence, and bill of costs, to the supreme court; whereupon it shall and may be lawful for the supreme court, on motion of the attorney-general, to award a writ of scire facias against such offender, to show cause why execution should not be awarded against him or her, in behalf of the state, for the fine, cost, and expenses aforesaid, and to cause further proceedings to be had, as in cases of forfeited recognizances is by law allowed and directed; and in case the offender shall be imprisoned in the state prison, at the time of issuing the said scire facias, it shall be the duty of the said attorney-general to cause a copy of the said scire facias to be served on the keeper of the state prison, at least ten days before the return thereof, whose duty it shall be forthwith to deliver the same to such offender; and in case such offender shall be unable to procure counsel, the court shall thereupon appoint counsel to appear on his or her behalf.

Scire facias to issue.

When collectors not to pay sheriff. P. L. 1850, p. 306.

104. That when on any indictment there is an acquittal, the county collector shall not pay or allow to the sheriff any constables' or witnesses' fees, except the sheriff shall produce a receipt therefor from the constables and witnesses, unless the sheriff shall make an oath that he has paid such fees.

When collector to pay court, &c. P. L. 1866, p. 257, § 3.

105. That in all criminal cases upon indictment, on the acquittal of the defendant, the fees of the court, clerk and sheriff shall be paid by the county collector, upon the taxed bill, certified to be correct by the prosecutor of the pleas.

Additional fees to sheriff, &c., going beyond limits of his county. P. L. 1866, p. 580.

106. That in all cases where any sheriff, coroner, constable or special deputy shall execute any bench warrant, state warrant, capias ad testificandum, or other compulsory process whatever, issued by any court of record or justice of the peace of this state, and in the execution thereof it shall become necessary for such officer to go beyond the limits of his county, the said officer shall receive by way of compensation for the service of such process, in addition to the fees now allowed by law in lieu of mileage, his traveling and other expenses necessarily incurred in such service, a particular statement of which expenses shall be made out and sworn to by such officer, and when certified to as reasonable by the prosecutor of the pleas of the county from which such process issued, shall be included in the taxed bill of costs and collected and paid as other fees in criminal cases.

107. [Amended by Sec. 151, *post.*]

108. [Amended by Sec. 153, *post.*]

Duties of justices in certain cases.

1142-109
31 V-192

1142-109
39v-204

109. That in case a person is convicted before a justice or justices of the peace, under the act entitled "An act to describe, apprehend and punish disorderly persons," passed tenth of June, one thousand seven hundred and ninety-nine, or any of the supplements thereto, or the "act concerning disorderly persons," and sentenced to imprisonment; or in case an offender is convicted of any offense before two justices, and sentenced to imprisonment or to pay a fine and costs, and committed till fine and costs are paid, it shall be the duty of the justice or justices before whom any such conviction is had, to make a bill of the particulars of the costs in such case, attached to the commitment, and also certify and send up a copy of said bill of particulars of costs, with the conviction in said case, to the county clerk, who shall review and correct the same, if necessary, and shall certify the correct amount to the county collector, who thereupon shall pay the amount so certified to the said justice or justices, and the county collector shall be allowed for the same in the settlement of his accounts, and the said justice or justices shall refund to the informer or complainant so much of said costs as shall have been paid by the said informer or complainant to said justice or justices. (*a*)

County collector shall pay.

Justice shall refund to informer.

Sheriff shall keep account of fines, &c., collected, and pay to county collector and report to freeholders.
P. L. 1871, p. 120.

110. That the sheriff of each county shall keep a suitable book, into which he shall enter or cause to be entered a true account of all costs, fines or forfeitures by him collected from all prisoners committed to his custody in the common jail or workhouse in his county, an annual report of which, verified under oath, he shall furnish to the board of chosen freeholders of the county at least ten days before their annual meeting; and all such costs, fines or forfeitures collected by him shall be paid over monthly by him to the county collector, except in cases where the forfeiture is required by law to be paid to the overseer of the poor, and in such cases the sheriff shall pay the forfeiture and costs to the justice before whom the conviction was had, said forfeitures to be paid over by the justices as required by law.

VII. Words defined.

Construction of terms.

111. That in the construction of this act the word "indictment" shall be understood to include "inquisition" and "presentment" as well as indictment, and also any "plea," "replication," or other pleading, and any nisi prius record; and the terms "finding of the indictment," shall be understood to include "the taking of an inquisition," and "the making a presentment;" and wherever in this act, in describing or referring to any person or party, matter or thing, any word importing the singular number or masculine gender is used, the same shall be understood to include and shall be applied to several persons and parties as well as one person or party, and females as well as males, and bodies corporate as well as individuals, and several matters or things as well as one matter and thing; and the word "property" shall be understood to include goods, chattels, money, valuable securities, and every other matter or thing whether real or personal, upon or with respect to which any offense may be committed.

VIII. Capital punishment.

Mode of inflicting capital punishment.
R. S. 257, § 96.

112. That the manner of inflicting the punishment of death shall be by hanging the person convicted by the neck until dead; and the said punishment shall be inflicted either in the prison where the convict shall be confined, or within an inclosed yard of such prison, if there be one, or within an inclosure erected for the purpose, adjoining such prison, at the discretion of the sheriff, whose duty it shall be to inflict the same; and the necessary expense attending an execution shall be ascertained by the board of chosen freeholders of the county in which the same shall take place, and be paid upon their order by the county collector.

Expenses of same.

(*a*) See *Shumar* v. *Applegate*, 22 Vr. 117.

IX. Limitation and miscellaneous.

113. [Amended by Sec. 130, *post.*]

114. That no conviction or judgment for any offense against this state, shall make or work corruption of blood, disinherison of heirs, loss of dower, or forfeiture of estate. (*a*)

No forfeiture of estate, &c. Ib., ¿ 98.

The benefit of clergy is abolished and forever done away.

The suit or action of appeal for murder, manslaughter, rape, arson, larceny, mayhem, or other offense or wrong whatsoever, is abolished and forever done away.

Appeal abolished. Ib., ¿ 100.

115. That any person offending against the seventy-fifth section of the act entitled "An act for the punishment of crime," prohibiting attempts to cause the miscarriage of a pregnant woman, shall be a competent witness, and compellable to testify against any other person charged with so offending, but the testimony of such person given in any such case shall not be used in any prosecution, civil or criminal, against such person so testifying.

Persons jointly committing abortion compellable to testify. P. L. 1872, p. 45, ¿ 2.

116. That where any court having criminal jurisdiction in any county wherein a penitentiary or workhouse has been or shall hereafter be established shall sentence any person convicted before them, of misdemeanor to imprisonment at hard labor in the state prison, it shall be lawful for them to change the place of such imprisonment for all or any part of the term imposed, to such penitentiary or workhouse; *provided*, that in such case the costs of conviction of such offender shall be paid on warrant of the comptroller, upon certificate of the bill of costs, signed and countersigned, as by law provided, in the same manner as if such change in sentence had not been made.

Court may change place of imprisonment.

Proviso as to costs.

117. That nothing in this act shall be construed to repeal or alter any acts or parts of acts which, by their terms, are made applicable only to particular counties or other locality.

Local acts not affected.

118. That all acts of treason against this state, which shall be committed or done upon the land, out of this state, or upon the sea, shall and may be inquired of, heard and determined in the supreme court of this state, by good and lawful men of the same county where the said court shall sit, in like manner and form, to all intents and purposes, as if the said treason had been committed or done within the same county.

Treason, how tried, and where. R. S. 293, ¿ 15.

X. Supplements.

Supplement.

Approved March 8, 1877. P. L. 1877, p. 97.

119. SEC. 1. That in every county in this state having a population of over one hundred thousand inhabitants, the prosecutor of the pleas for said county may appoint some suitable person to act as a special officer for the detection, arrest, indictment and conviction of offenders against the law; such person so appointed shall possess all the powers and rights, and be subject to all the obligations of constables and police officers in any county of this state; and before such person shall enter upon his duties as said officer his appointment shall be approved by a majority of all the judges of the court of general quarter sessions of the peace of said county, and said person so appointed shall receive the same per diem allowance and compensation, and no more, as is by law allowed for the same services to constables in the respective counties where said persons shall be appointed; *provided*, that said per diem allowance and compensation shall be paid only for the time such officer shall be actually employed, which time shall be certified to the county collector by the said prosecutor or the sheriff of said county. [See Sec. 147, *post.*]

Prosecutor of the pleas in certain counties may appoint a special officer.

To have powers and rights of constables and police officers.

Proviso.

(*a*) Dower is not barred by an inquest and judgment against the husband under the revolutionary confiscation acts. *Cozens v. Long, Pen.* *764. See *Coxe v. Gulick*, 5 *Hal.* 328.

Supplement.

P. L. 1877, p. 138.

Approved March 9, 1877.

Repealer of certain sections.

120. SEC. 1. That the ninetieth section of the act to which this is a supplement, and which as amended by the act entitled "An act to amend certain errors in the revised laws passed last session" (which act was passed April ninth, eighteen hundred and seventy-five), is in these words [see Rev. p. 284], be and the same is hereby repealed.

1144-121
31V-84

121. SEC. 2. That the ninety-first section of the act to which this is a supplement, and which as amended by said act of April ninth, eighteen hundred and seventy-five, now reads as follows [see Rev. p. 284], shall be and the same is hereby amended so that it shall be enacted and read as follows:

Judge to settle, sign and seal bill of exceptions.

[That if on the trial of any indictment in any court of this state, for any crime or misdemeanor, any exception shall be taken to any decision of the court during the trial of such indictment, to the prejudice or injury of any defendant in the same indictment, it shall be the duty of the judge to settle a bill of such exceptions, and to sign and seal the same bill, to the end that the same be returned with a writ of error to the court having cognizance thereof, and to the end that speedy justice may be done.] [See Secs. 157 and 170, *post.*]

Proceedings when the judge or judges of the court shall have died without sealing the bill of exceptions.

122. SEC. 3. That when such exceptions shall have been taken and the judge or judges of the court aforesaid shall have died without having sealed the same, the cause shall be heard in the court to which the writ of error is returnable, upon such exceptions being stated and agreed to in writing by the attorney-general or prosecutor of the pleas on the one side, and the attorney of the defendant on the other; or if such attorneys cannot agree thereto, the said exceptions shall be settled and sealed on five days' notice by any justice of the supreme court, as the same shall be found by him to have been in fact taken, and shall be returned with the writ of error.

What bill of exceptions shall contain.

123. SEC. 4. That the bill of exceptions taken under this act shall contain only so much of the evidence as may be necessary to present the questions of law upon which exceptions were taken at the trial, and it shall be the duty of the court or judge upon the settlement of the bill to strike out of the same all the evidence and other matters which shall not have been necessarily inserted.

Supplement.

P. L. 1878, p. 65.

Approved March 12, 1878.

Justices of peace and police justices shall transmit complaints, &c., to the prosecutor of his county.

124. SEC. 1. That every justice of the peace and police justice in this state shall, on or before the first day of each term, transmit to the prosecutor of the pleas of his county every complaint, warrant, recognizance and all other papers in every criminal case and in every case arising under an act entitled "An act concerning disorderly persons," approved April ninth, eighteen hundred and seventy-five, when complaint has been made before said justice at least ten days before the first day of each term; and every justice who shall fail to put in the possession of the prosecutor of the pleas of his county all such papers at least on the day before the first day of each term, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding fifty dollars, or imprisonment not exceeding three months, or both.

Penalty for non-compliance.

1144-124
32V-8

Supplement.

P. L. 1878, p. 386.

Approved April 5, 1878.

Any two judges of court of quarter sessions in county where justice of supreme court does not reside, may let to bail or mainprise.

125. SEC. 1. That in all counties of this state wherein a justice of the supreme court shall not permanently reside, any two judges of the court of quarter sessions in and for such county are hereby authorized, at their discretion, to let to bail or mainprise unto the next court of oyer and terminer and general jail delivery, to be held in and for the said county, all persons who are or may be arrested or imprisoned in such county upon any charge founded upon the committing of, or attempting to commit in

such county, rape, arson, burglary, robbery, forgery or suspicion thereof; *provided*, this act shall not apply to any county containing, according to the last state census, more than forty thousand inhabitants.

Supplement.

Approved February 6, 1879. P. L. 1879, p. 18.

Court to appoint proper persons to be present at executions of capital punishment.

126. SEC. 1. That in all cases in which judgment of death shall be given in any of the courts of this state against any person or persons, it shall be the duty of the court in which such judgment shall be given, and immediately after giving such judgment, to appoint and designate in writing from among the persons liable to duty as grand jurors in the county in which such judgment is to be executed, twelve respectable persons, two of whom shall be physicians, whose duty it shall be to present at the time and place of the execution of such judgment, and to attend upon and witness the same.

Persons so appointed to take an oath or affirmation and make a report in writing.

127. SEC. 2. That each of the persons so appointed as aforesaid shall, before entering upon the duty required of them by such appointment, take an oath or affirmation before the clerk of the court making such appointment, faithfully to execute and perform the duty required of them by such appointment, and truly to report and make known in writing, under their hands to the court by which they were appointed, the time, place and manner of the execution of such judgment, and the names of all persons present thereat; and immediately after the execution of such judgment of death, the said several persons appointed to witness the same as aforesaid shall unite in a report in writing under their hands, to be addressed to the court by which they were appointed, in which shall be fully and particularly stated and set forth the time, place and manner of the execution of such judgment of death, and the names of all persons present thereat, which report shall on the same day be filed with the clerk of the court in which such judgment was given.

Sheriff to appoint special deputies to attend execution.

128. SEC. 3. That it shall be lawful for the sheriff of the county in which such judgment is to be executed, not less than ten days before the time fixed for the execution of such judgment, to appoint and designate from among the residents and citizens of such county who are liable to serve as jurors therein, twelve reputable persons to serve as special deputies of such sheriff at the time and place fixed for the execution of such judgment; but nothing herein contained shall prevent such sheriff from appointing as many deputies to serve on the day fixed for the execution of such judgment as may, in his opinion, be necessary to preserve the peace; *provided*, that only twelve deputies to be appointed and designated as hereinbefore provided shall be present at or witness the execution of such judgment of death; *and provided further*, that nothing herein contained shall prevent members of the family of the person or persons against whom judgment of death shall have been given, not exceeding three in number, or any ministers of the gospel, not exceeding two in number, all of whom shall be designated by such person or persons, from being present at and witnessing the execution of such judgment of death.

Proviso.

Proviso.

Penalty for admitting persons other than those appointed and designated by law.

129. SEC. 4. That if any sheriff, under sheriff, deputy sheriff or jailer shall procure, permit or suffer any other person or persons than those hereinbefore designated to be present at or witness the execution of any judgment of death, such sheriff, under sheriff, deputy sheriff or jailer shall be liable to punishment as for a contempt of the court in which such judgment of death was given.

Supplement.

Approved March 14, 1879. P. L. 1879, p. 183.

130. SEC. 1. That section one hundred and thirteen of the act to which this is a supplement, which section reads as follows, viz. [see Rev. p. 288], be and the same is hereby amended so as to read as follows, viz.:

1146-130
30V-470
36V-193

Limitation in criminal cases.

[That no person or persons shall be prosecuted, tried or punished for treason or other offense punishable with death (murder excepted) unless the indictment for the same shall be found by a grand jury within three years next after the treason or offense punishable with death shall be done or committed; nor shall any person be prosecuted, tried, or punished for any offense not punishable with death, unless the indictment shall be found within two years from the time of committing the offense or incurring the fine or forfeiture aforesaid; *provided*, that any person holding or having held, or who may hereafter hold any public office or employment, or exercise the functions of such office or employment, either under this state, or any county, city, borough, town or township therein, whether elective or appointive, may be prosecuted, tried and punished for any fraud, malfeasance or other misconduct committed whilst in such office or employment, where the indictment has been or may be found within five years from the time of committing the offense aforesaid; *and provided further*, that nothing herein contained shall extend to any person or persons fleeing from justice.] (*a*)

Proviso.

Supplement.

P. L. 1880, p. 22.

Approved February 10, 1880.

County collectors to pay expenses of printing testimony on writ of error in certain cases of persons convicted of murder.

131. SEC. 1. That if any person convicted of murder in the first degree shall make application to the justice who presided at the trial, or, in his absence, to the presiding justice of the court of common pleas of the county in which such trial was had, showing to such justice that he or she is about to apply for a writ of error, and is unable, by reason of poverty, to provide the means necessary to defray the expenses of printing the testimony for presentation, upon the application for such writ it shall be the duty of such justice, being satisfied of the facts stated and of the sufficiency thereof, to certify the same to the county collector of the county in which such trial and conviction were had, who shall thereupon pay the necessary expenses as aforesaid of the person convicted, the amount having first been approved by the justice who granted the application.

Supplement.

P. L. 1880, p. 104.

Approved March 3, 1880.

Preamble.

WHEREAS, In carrying out the judgment of the court in capital cases, it may happen that the sheriff of the county in which the judgment is to be executed can more appropriately and efficiently perform his duties in executing such judgment by having the assistance of persons skilled in the mechanical duties connected therewith; therefore,

Sheriff may call persons to assist him at executions.

132. SEC. 1. That in all cases in which judgment of death is or may be given, the sheriff to whom the execution of the judgment is committed may call in to assist him in such execution one or more persons in addition to the number now allowed by law to be present, without reference to their places of residence, not exceeding three; *provided*, he shall deem their skill useful to him in the proper carrying out of such execution.

Proviso.

Supplement.

P. L. 1881, p. 49.

Approved March 1, 1881.

How jurors drawn in certain cases.

133. SEC. 1. That in cases requiring a list of the jury to be served on the defendant, the names of the jurors so served shall be placed in and drawn from the jury-box in the ordinary way. (*b*) [See Sec. 72, *ante*, and Sec. 154, *post*.]

(*a*) This act extended the limitation for the prosecution of public officers from two to five years. It has been construed to apply to offenses as to which, at the time of its passage, the statute of limitations had completely run. Adopting such construction, the act is so far unconstitutional as an *ex post facto* law. Adopting the same construction, it is, *pro tanto*, invalid as being in conflict with vested rights. *Moore* v. *State*, 14 *Vr.* 203, 256, reversing 13 *Vr.* 208.

(*b*) This act required that the forty-eight names selected by the sheriff, at discretion, from the general panel, should be placed in and drawn from the jury-box in making up the trial jury. *Peak* v. *State*, 21 *Vr.* 179, 215. Since this decision the act of February 6th, 1889, has been passed (*post*, Sec. 154), which requires the list to be served to be drawn by the sheriff from the box in the presence of a judge or the clerk, doing away with the selection, at discretion, by the sheriff.

Supplement.

Approved March 9, 1881. P. L. 1881, p. 88.

Writs of error in criminal actions to stay all proceedings upon judgments, &c.

134. SEC. 1. That in case a writ of error shall be brought to remove any judgment rendered in any criminal action or proceeding, in any court of this state, and such writ of error shall be presented to such court, the said writ of error shall have the effect of staying all proceedings upon the said judgment, and upon the sentence which the court or any judge thereof may have pronounced against the person or persons obtaining and prosecuting the said writ of error, pending and during the prosecution of such writ of error. [See Sec. 144, *post.*]

Court may require party prosecuting writ to give bail, &c.

135. SEC. 2. That pending the prosecution of such writ of error, the court in which such judgment shall have been rendered may, if deemed necessary, require the party prosecuting the same to give bail, during the prosecution of such writ of error, in such sum and with such conditions as the court or any judge thereof, in which the said conviction was had, or any justice of the supreme court may deem reasonable; and it shall be the duty of the said court, and of the said judges, to admit such persons to bail, when application is made for the same and proper and sufficient bail is offered; *provided*, that this section of this act shall not apply to capital cases.

Proviso.

Supplement.

Approved March 17, 1881. P. L. 1881, p. 131.

136. SEC. 1. [Amended by Sec. 148, *post.*]

Certain indictments to be delivered to oyer and terminer.

137. SEC. 2. That such indictments so received as aforesaid as are not triable in the courts of general quarter sessions of the peace, shall be delivered by said courts to the courts of oyer and terminer and general jail delivery in their respective counties.

Supplement.

Approved March 1, 1882. P. L. 1882, p. 38.

Press representatives shall be admitted to execution.

138. SEC. 1. That in cases where the death penalty is inflicted, the sheriff shall admit to the execution, in addition to the persons now admitted by law, the accredited representative of the New York associated press, the accredited representative of the national associated press, and the accredited representatives of the local press of the county, not to exceed three in number. [See Sec. 165, *post.*]

Stenographer may be present.

139. SEC. 2. That the stenographer of the court of oyer and terminer may be present for the purpose of furnishing information to members of the press concerning the execution.

Repealer.

140. SEC. 3. That all acts and parts of acts inconsistent herewith be and the same are hereby repealed, and that this act shall take effect immediately.

Supplement.

Approved March 27, 1882. P. L. 1882, p. 178.

Operation of nolle prosequi as to one or more defendants on indictment for conspiracy.

141. SEC. 1. That neither the entry of a nolle prosequi as to one or more defendants, who now are or hereafter may be jointly indicted with another or others for conspiracy, nor the discharge of such defendant or defendants, shall operate as a nolle prosequi, acquittal or discharge of such other defendant or defendants, but such indictment may be proceeded on as against him or them to trial and conviction; and this, whether the indictment charge his or their conspiracy as only with the defendant or defendants discharged, or as to whom a nolle prosequi may be entered as aforesaid, or otherwise.

Supplement.

Approved March 8, 1883. P. L. 1883, p. 87.

Indictments for manslaughter may be tried by quarter sessions having law judge.

142. SEC. 1. That indictments for manslaughter may be tried by the courts of general quarter sessions of the peace in all counties of this state having a law judge as president judge, and that the same proceedings may be had thereon, as to trial and judgment, as if said indictments were tried in the courts of oyer and terminer of this state.

Supplement.

P. L. 1883, p. 124.

Approved March 22, 1883.

Costs to be taxed by clerk of court in which judgment is had.

143. SEC. 1. That all bills of costs in criminal cases shall be taxed by the clerk of the court in which the judgment is had, and in case the defendant shall be sentenced by the court to hard labor and imprisonment under the laws of this state in the state prison, it shall be the duty of such clerk to furnish a certified copy of the taxed bill of costs in such case to the sheriff of the county within five days after the sentence shall have been pronounced; and within ten days after receiving such copy every such person so sentenced shall be transported by the said sheriff, or by his lawful deputy, to the state prison, together with all other persons so sentenced by the court or courts of the county within the same period; *provided*, that at least forty-eight hours, exclusive of Sundays and other legal holidays, shall have elapsed between the time of his sentence and removal as aforesaid.

When defendant transported to prison.

Proviso.

Supplement.

P. L. 1883, p. 230.

Approved March 23, 1883.

Writ of error not to stay proceedings when person pleads guilty

144. SEC. 1. That in no case hereafter in this state, in which a person shall have pleaded guilty to any indictment or accusation, shall a writ of error have the effect of staying the proceedings upon the judgment and sentence which the court or any judge thereof may have pronounced against the person or persons obtaining and prosecuting such writ of error. (*a*)

Repealer

145. SEC. 2. That all acts and parts of acts inconsistent with this act are hereby repealed, and that this act shall take effect immediately.

Supplement.

P. L. 1884, p. 125.

Approved April 2, 1884.

146. SEC. 1. That section seventy-six of the act to which this is a supplement be and the same is hereby amended so as to read as follows, viz.:

Proceedings where person shall be feloniously stricken or poisoned in one county and shall die in another. R. S. 297, ¿ 1.

[That where any person hereafter shall be feloniously stricken or poisoned in one county and shall die of the same stroke or poisoning in another county, then an indictment thereof, found by jurors of the county where such person shall be feloniously stricken or poisoned, whether it shall be found before the coroner upon the view of such dead body, or before the justices of the peace, or other justices or commissioners who shall have authority to inquire of such offenses, shall be as good and effectual in the law as if the stroke or poisoning had been given, committed or done, and the death had happened all in one and the same county and where such indictment shall be found; and further, that the justices of oyer and terminer and of general jail delivery in the same county where such indictment shall be taken, and that justices of the supreme court where such indictment shall be taken or removed before them, shall and may proceed upon the same in all points as they might or could do in case such felonious stroke and death thereby ensuing, or poisoning and death thereby ensuing, had been committed and had happened all in one and the same county.]

Supplement.

P. L. 1887, p. 77.

Approved March 31, 1887.

Prosecutors of the pleas of certain counties may appoint special officers.

147. SEC. 1. That the prosecutors of the pleas in the several counties having a population according to the last census of over eighty thousand inhabitants may appoint suitable persons, not exceeding two in any county, to act as special officers for the detection, arrest, indictment and conviction of offenders against the law; such persons so appointed shall possess all the powers and rights, and be subject to all the obligations of constables and police officers in any county of this state, and before such person shall enter upon his duties as said officer his appointment shall be approved by

Appointment to be approved by judges of court.

(*a*) A plea of *nolo contendere* is equivalent to a plea of guilty, and where such plea is made a writ of error will not have the effect of staying the proceedings upon the judgment. *Peacock v. Hudson Quarter Sessions*, 17 *Vr.* 112.

a majority of all the judges of the court of general quarter sessions of the peace of said county, and said person so appointed shall receive a per diem allowance and compensation not exceeding four dollars per day, to be fixed by a majority of said judges at the date of such approval; *provided*, that said per diem allowance and compensation shall be paid only for the time such officer shall be actually employed, which time shall be certified to the county collector by the said prosecutor. [See Sec. 119, *ante*.] Proviso.

A supplement to an act entitled "A further supplement to an act entitled 'An act regulating proceedings in criminal cases,'" approved March seventeenth, one thousand eight hundred and eighty-one.

Approved January 31, 1888. P. L. 1888, p. 15.

148. SEC. 1. That section one [see Sec. 136, *ante*] of the act to which this is a supplement be amended to read as follows:

[That if one of the justices of the supreme court shall not be present at the court-house in any county of this state on any day when said grand jury desires to make presentments or to be discharged, then the court of general quarter sessions of the peace in and for such county may receive such indictments and presentments as may be presented by said grand jury, and may also discharge the grand jury, the same as the court of oyer and terminer might do if said justice of the supreme court were personally present.] When court of general quarter sessions may receive indictments and discharge the grand jury.

1149-148
32V-614

Supplement.

Approved March 1, 1888. P. L. 1888, p. 121.

149. SEC. 1. That it shall be lawful for the president judge of the court of common pleas in any county, when in his judgment the administration of justice will be facilitated thereby, to call upon the stenographer of the circuit court to attend, either in person or by proxy, in the court of general quarter sessions of the peace, or in the court of special quarter sessions of the peace of such county; for which service the stenographer shall be entitled to the same compensation as for like services in the circuit court. When stenographer of circuit court to attend court of quarter sessions.

Amendatory act.

Approved March 1, 1888. P. L. 1888, p. 126.

150. SEC. 1. [This section, amending Sec. 67, *ante*, is amended by Sec. 172, *post*.]

Supplement.

Approved March 23, 1888. P. L. 1888, p. 221.

151. SEC. 1. That section one hundred and seven of the act to which this is a supplement be amended so as to read as follows:

[That in any case where a person charged in this state with any crime shall flee from justice and be found in another state, and the attorney-general or the prosecutor of the pleas for any county where such person is so charged shall recommend to the governor or person administering the government of this state to demand the said fugitive, so that he may be brought into this state for trial; and the said fugitive shall, on the demand of the executive authority of this state, be delivered up and removed to this state, the expense of such removal being first ascertained to the satisfaction of the prosecutor of the pleas of the county where such person is so charged, and being approved by the president judge of the court of oyer and terminer of said county, shall be paid by the county collector of said county out of the funds of said county.] Expense of removal of fugitive from justice, how paid.

152. SEC. 2. That all acts and parts of acts inconsistent herewith be and they are hereby repealed, and that this act shall take effect immediately Repealer.

Amendatory act.

P. L. 1888, p. 459.

Approved April 23, 1888.

1150-153
31V-192

153. SEC. 1. That the one hundred and eighth section of the act of which this act is amendatory be and the same is hereby amended to read as follows:

Justices to send up bills of costs to clerk of grand jury or prosecutor of the pleas.

County clerk to review and certify, and collector to pay.

Justice not to receive fee or reward.

[That every justice of the peace shall make a bill of particulars of the costs in each criminal case before him, and send up the same with the papers in the case to the clerk of the grand jury in his county, if there be such clerk, and if there be none, then to the prosecutor of the pleas in such county, and if an indictment be found in the case, said bill shall be handed by such clerk or prosecutor, as the case may be, to the county clerk, who shall review and correct the same if necessary and shall certify the correct amount to the county collector, who thereupon shall pay the amount so certified to the justice; and if no indictment be found in any case, and in the judgment of the prosecutor of the pleas the proceedings in such case were taken by the justice of the peace honestly, in good faith, and were calculated to promote the administration of justice, and the costs therein ought to be paid out of the county treasury and he shall so certify on the bill of particulars of costs in the case, said bill shall be paid by the county collector in the same manner as other bills of justices of the peace in criminal cases, and no justice of the peace shall ask, demand or receive from any complainant any fee or reward for the performance of any service in any criminal case.] (*a*) [See Sec. 156, *post.*]

Supplement.

P. L. 1889, p. 13.

Approved February 6, 1889.

Panel or list of jurors to be served on defendant to be drawn from box by sheriff.

1150-154
R98-940

154. SEC. 1. That in all cases where, by the law of this state, the defendant or prisoner is entitled to the service of a panel or list of the jury, it shall be the duty of the sheriff to draw said panel or list of forty-eight jurors, so to be served, from the box in the presence of one of the judges of the court of common pleas of the county, or in the presence of the clerk of said court, from the general panel or list of jurors that may have been drawn and summoned to attend as jurors at the term at which such prisoner or defendant is to be tried. [See Secs. 72 and 133, *ante.*]

Repealer.

155. SEC. 2. That all acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and that this act shall take effect immediately.

Supplement.

P. L. 1889, p. 343.

Approved May 6, 1889.

Fees of justices of the peace and constables, and how paid.

156. SEC. 1. That the following and no other fees shall be allowed to the justices of the peace and constables in this state, to justices and constables in criminal cases, and that no fees be demanded from parties applying to justices or constables for their services, but shall be paid out of the funds of the county in which such services were rendered, provided the prosecutor of the pleas shall approve of such payment:

For drawing complaint and taking affidavit, when not exceeding one sheet or folio, thirty-five cents, and for all excesses of one folio, at the rate of fifteen cents per folio;

For issuing every warrant, forty cents;

For drawing conviction, forty cents;

For drawing commitment, forty cents;

For drawing each recognizance, forty cents;

For warrant to jailer to discharge prisoners, forty cents;

For issuing every subpœna, ten cents;

For taking examination in writing, when required by law, fifteen cents per folio;

For examination in a case where not required to be taken in writing, fifty cents;

(*a*) See *Lane* v. *State*, 20 *Vr.* 673.

For swearing each witness, ten cents;
For making and certifying bill of items of costs in each case, fifteen cents;
For drawing, certifying and sending to the judge of the circuit court, a copy of complaint and commitment, in a case where a boy under fourteen years of age is charged with crime, he is considered a fit subject to be sent to the state reform school, one dollar;
In cases arising under the act for suppressing vice and immorality, justices and constables shall be entitled to the same fees as for like services in other criminal cases:
For a trial before two justices under the supplements to the act entitled "An act to describe, apprehend and punish disorderly persons," one dollar and fifty cents;
For making every decree or order required under the supplements to said act to be made by two justices, one dollar.

FEES IN CASES OF TRIAL FOR PETTY LARCENY, BEFORE TWO JUSTICES.

For issuing warrant to bring the accused before two justices, forty cents;
For trial before two justices, one dollar and fifty cents;
For drawing and preferring charges to prisoners, one dollar;
For drawing conviction, fifty cents;
For commitment, fifty cents;
For making and certifying each copy of bill of items of costs, fifteen cents.

CONSTABLES' FEES IN CRIMINAL CASES.

For serving every warrant against one or more persons, for each person eighty cents;
For serving every commitment, one dollar;
And the constable shall be entitled to mileage at the rate of four cents per mile (to be computed as hereinbefore provided) for the service of all warrants or commitments:
For attending prisoners under trial for petty larceny, or under examination before a justice, fifty cents;
For serving every subpœna, where the distance is over one mile, thirty-five cents;
But where the distance is not over one mile, twenty cents;
For all services not enumerated in this act, justices and constables shall be entitled to receive fees as now fixed or may hereafter be provided by law.

Supplement.

Approved March 4, 1890. P. L. 1890, p. 26.

157. SEC. 1. That upon the trial of any indictment in any court of this state, for any crime or misdemeanor, it shall be lawful to take a general exception to the charge of the court to the jury, without specifying any particular ground or grounds for such exception, and without specifying what portions of said charge are excepted to, and it shall be the duty of the judge to settle a bill of such exception, and to sign and seal the same, to the end that the same may be returned with a writ of error to the court having cognizance thereof, and to the end that speedy justice may be done. [See Sec. 170, *post.*]

A general exception to the charge to the jury may be made.

Bill of exception to be signed by judge.

1151-157 31V-31

158. SEC. 2. That it shall be lawful where such general exception has been taken, to assign any error or errors of law upon any portion of such charge excepted to; *provided, however*, that for every misdirection on matters of evidence, a special exception thereto shall be taken at the time of the trial, in order to assign any error or errors of law thereon.

Assignment of errors.

Proviso.

159. SEC. 3. That if, upon the hearing of the cause upon a writ of error, it shall appear to the court that any error of law has been committed in

Upon hearing, court may reverse judgment.

any part of the charge so excepted to, to the prejudice or injury of any defendant, it shall be the duty of the court having cognizance thereof, to reverse the judgment.

Supplement.

P. L. 1891, p. 327. Approved April 4, 1891.

160. SEC. 1. That the thirty-fifth section of the act regulating proceedings in criminal cases is hereby amended to read as follows:

When verdict valid. P. L. 1857, p. 242.

[That pleas and recognizances taken and verdicts rendered before the presiding judge only of the court of oyer and terminer and general jail delivery, or the law judge only of the court of general quarter sessions of the peace, shall be valid equally as if taken before said judge and one of the other judges of either of said courts.]

Amendatory act.

P. L. 1892, p. 76. Approved March 9, 1892.

161. SEC. 1. That section twelve of an act entitled "An act regulating proceedings in criminal cases" [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four, be and the same is hereby amended to read as follows:

Bail may be taken, except in what cases. R. S. 223, ¿ 9.

[That the court of general quarter sessions of the peace, and the justices of the peace and each and every of them, in and for every county of this state, are hereby authorized at their discretion to let to bail or mainprise, unto the next court of general quarter sessions of the peace, or court of oyer and terminer and general jail delivery, to be held in said county, all persons who are or may be arrested or imprisoned in their respective counties for any offense or crime therein done or attempted, except such as, are or shall be charged with treason, murder, manslaughter, sodomy, rape, arson, burglary, robbery, forgery or suspicion thereof, and no person or persons charged with the offenses of any of them so excepted as aforesaid shall be admitted to bail or mainprise by the said court of general quarter sessions of the peace, except where now by law otherwise provided, or by the said justices of the peace or any of them; if any person arrested for any crime or offense for which a justice of the peace may let to bail or mainprise as aforesaid shall request that he be taken before a justice of the peace residing in the city, town, township or village in which such arrest is made and elected in such city, town, township or village, it shall be the duty of the officer making such arrest to take the person so arrested before such justice of the peace, at his office, in order that the person so arrested may be admitted to bail as aforesaid; *provided*, that when an arrest is made within any building or inclosure wherein the party arrested is charged with keeping a disorderly house or otherwise violating the law, it shall not be lawful for any justice of the peace or other officer to take bail within such building or inclosure.]

Officers shall take prisoners to a justice of the peace in the city, town, township or village in which the arrest is made.

Proviso.

Supplement.

P. L. 1892, p. 253. Approved March 24, 1892.

162. SEC. 1. That it shall be the duty of every police justice, recorder, justice of the peace and other committing magistrate in this state to keep a book to be known as a "complaint docket," in which he shall enter the name of every person against whom he may issue any warrant, the name of the complainant in each case, with his or her address, the names of the witnesses in each case, with their respective addresses, the nature of the charge against the accused, and, whenever bail is taken in any case, the name of the bondsman and his address; and each of said police justices, recorders, justices of the peace and other committing magistrates shall at least within ten days before the opening of each term of the court of oyer and terminer present the docket so kept by him together with all papers in his possession relating to criminal business, to the prosecutor of the pleas of his county, for the purpose of enabling said prosecutor of the pleas to inspect the said docket and compare the entries therein with the papers trans-

Every police justice, recorder and justice of the peace to keep a complaint docket, in which shall be entered every warrant issued.

1152-162 32V-8

Docket to be presented to prosecutors of the pleas.

mitted to him by the magistrate keeping said docket; *provided, however,* that this act shall not apply to any police justice or police court in any city of the first class in this state. Proviso.

163. SEC. 2. That any police justice, recorder, justice of the peace or other committing magistrate who shall fail or neglect to comply in every respect with the provisions of the first section of this act shall be guilty of a misdemeanor, and, on conviction thereof, shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding two hundred dollars, or both. Penalty for failure.

1153-169
32V-262

164. SEC. 3. That all acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and that this act shall take effect immediately. Repealer.

A further supplement to the act entitled "An act regulating proceedings in criminal cases," approved February sixth, one thousand eight hundred and seventy-nine.

Approved March 25, 1892. P. L. 1892, p. 278.

165. SEC. 1. That in cases where the death penalty is inflicted, the sheriff shall admit to the execution, in addition to the persons now admitted by law, the accredited representative of the New York associated press, the accredited representative of the united press, and the accredited representative of the local press of the county, not to exceed three in number. [See Sec. 173, *post.*] Sheriffs to admit certain accredited representatives of the press to executions.

166. SEC. 2. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed. Repealer.

A supplement to an act entitled "A supplement to an act entitled 'An act regulating proceedings in criminal cases,' approved March twenty-seventh, one thousand eight hundred and seventy-four," which supplement was approved February sixth, one thousand eight hundred and seventy-nine.

Approved March 16, 1893. P. L. 1893, p. 348.

167. SEC. 1. [Amended by Sec. 173, *post.*]

168. SEC. 2. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed. Repealer.

Supplement.

Approved March 17, 1893. P. L. 1893, p. 404.

169. SEC. 1. That section ninety-six of the act to which this is a supplement be amended to read as follows:

[That every person sentenced to hard labor and imprisonment under the laws of this state, for any time not less than six months, shall, within twenty days after such sentence, be transported, at the expense of the state, by the sheriff of the county where such conviction may be had or by his lawful deputy, to the state prison and there delivered into the custody of the keeper of said prison, together with a copy of the sentence of the court ordering such punishment, and of the taxed bill of costs of prosecution against such offender, certified under the hand and seal of the clerk of the court where such conviction was had, and said person so delivered to the keeper of said prison shall be safely kept therein until the time of his or her confinement shall have expired and the fine or fines and cost of prosecution be paid or remitted, or until he or she shall be otherwise discharged according to law; and every person sentenced to imprisonment for any time less than six months shall be confined in the common jail of the county where the conviction was had, or the county workhouse, or the county penitentiary, in the discretion of the court, and there safely kept until the term of his or her confinement shall expire and the fine and costs of prosecution be paid, or until he or she shall be discharged by due course of law.] [See Sec. 207, *post.*]

Convicts to be conveyed to state prison. R. S. 302, § 1. P. L. 1869, p. 771.

And safely kept.

For less than six months, in county jail, or county workhouse or penitentiary.

1154-170
30V-458
489
497
543
445
31V-31
554
32V-18
218
260
563
33V-239
34V-45
318
364
35V-412
31V-256

A supplement to an act entitled "A further supplement to an act entitled 'An act regulating proceedings in criminal cases,' approved March ninth, one thousand eight hundred and eighty-one."

P. L. 1894, p. 246.

Approved May 9, 1894.

Entire record of trial in a criminal cause may be returned with writ of error.

170. SEC. 1. That the entire record of the proceedings had upon the trial of any criminal cause may be returned by the plaintiff in error therein with the writ of error, and when so returned shall form a part thereof, and on the argument such entire record shall be considered and adjudged by the appellate court; and if it appear from such record that the plaintiff in error on the trial below suffered manifest wrong or injury, whether by rejection of testimony or in the charge made to the jury, or in the denial of any matter by such court, which was a matter of discretion, or upon the evidence adduced upon the trial, the appellate court shall remedy such wrong or injury and give judgment accordingly, and order a new trial.

Appellate court shall remedy wrong or error.

1154-170
38V-226

Fees for record.

171. SEC. 2. That the fees to be paid for such record when so required shall not exceed the sum of eight cents per folio of one hundred words, and when so required in writing from such court it shall by said court be forthwith ordered for said plaintiff in error.

A supplement to an act entitled "An act to amend an act entitled 'An act regulating proceedings in criminal cases,' approved March twenty-seventh, one thousand eight hundred and seventy-four," which supplement was approved March first, one thousand eight hundred and eighty-eight.

P. L. 1894, p. 401.

Approved May 17, 1894.

172. SEC. 1. That section one of said supplement, which is in these words [see P. L. 1888, p. 125, also Secs. 67 and 150, *ante*], be and the same is hereby amended so as to read as follows:

Court shall assign counsel in certain cases.
R. S. 293, § 2.

[That the court before whom any person shall be tried upon indictment is hereby authorized and required to assign to such person, if not of ability to procure counsel, such counsel, not exceeding two, to whom such counsel shall have free access at all reasonable hours; and for services rendered by counsel so assigned, in cases of homicide, a reasonable compensation may be fixed and allowed by the presiding judge of the court before which such trial shall be had, and that the sum so fixed and allowed shall be paid by the collector of the county wherein such indictment is found, upon presentation of the certificate of the presiding judge of said court, fixing and allowing such compensation.]

Counsel shall be paid for services.

An act to amend an act approved March sixteenth, eighteen hundred and ninety-three, entitled "A supplement to an act entitled 'An act regulating proceedings in criminal cases,' approved March twenty-seventh, one thousand eight hundred and seventy-four, which supplement was approved February sixth, one thousand eight hundred and seventy-nine."

P. L. 1895, p. 461.

Approved March 22, 1895.

173. SEC. 1. That section one [see Sec. 167, *ante*] of the act to which this act is amendatory be and the same is hereby amended to read as follows:

Certain representatives of the press shall be admitted to witness execution of death penalty.

[That in cases where the death penalty is inflicted the sheriff shall admit to the execution, in addition to the persons now admitted by law, the accredited representative of the united press and the accredited representative of the standard news association or its successor.] [See Sec. 165, *ante*.]

Repealer.

174. SEC. 2. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately.

XI. Miscellaneous acts.

An act for the confinement of prisoners, under the authority of the United States, in the jails of this state.

Passed June 6, 1799. R. S. 314.

Preamble.

WHEREAS, It hath been recommended by congress to the legislatures of the several states to pass laws, making it expressly the duty of the keepers of their jails, to receive and safe keep therein all prisoners committed under the authority of the United States, until they shall be discharged by due course of the laws thereof, under the like penalties as in the case of prisoners, committed under the authority of such states respectively; the United States to pay for the use and keeping of such jails, at the rate of fifty cents per month for each prisoner that shall, under their authority, be committed thereto, during the time such prisoner shall be therein confined; and also to support such of said prisoners as shall be committed for offenses; therefore,

Sheriff to receive prisoners committed by authority of United States.

175. SEC. 1. That the sheriff and keeper of every jail, in any county of this state, shall be, and he is hereby authorized and commanded to receive all prisoners committed to his custody, by the authority of the United States, and to keep them safely, until discharged by the due course of the laws of the same; and if any sheriff or jail-keeper shall neglect or refuse to perform the services and duties required of him by this act, or shall offend in the premises, he shall be liable to the like penalties, forfeitures, and actions, as if such prisoners had been committed under the authority of this state; *provided always*, that every prisoner, who shall be committed for any offense, by the authority of the United States, shall be supported by the same during his confinement in the said jail.

1155-175
RWS98-935

Supplement.

Approved April 11, 1867. P. L. 1867, p. 922.

Names and cost of subsistence to be transmitted to the United States marshal semi-annually.

176. SEC. 1. That the sheriff or keeper of every jail in any county of this state shall, on or before the first days of April and October, semi-annually, make out the names of all prisoners who, since the last settlement, shall have been committed to his custody, under the authority of the United States, and the time they shall have been respectively confined, with an account of the amount thereof, at fifty cents per month for the use and keeping of such jail, for every person so committed, together with an account of their subsistence, at the rate established by law for state prisoners, and transmit the same to the United States marshal for this district, for payment, instead of to the treasurer of this state, as now required.

An act regulating proceedings on forfeited recognizances, and appropriating the moneys arising from the same, and from fines and amercements.

Approved April 15, 1846. R. S. 300.

Recognizances, how prosecuted in supreme court and quarter sessions.

177. SEC. 1. That if any person hath been or shall be bound by recognizance to the state of New Jersey, or to the governor, for the use of the state, with condition for his or her appearance at the supreme court, or at the general quarter sessions of the peace, to be held in and for any county within the state, and if such person hath not appeared, or shall not appear agreeably to the condition of such recognizance, then the court in which such recognizor may be bound to appear, shall be and they are hereby empowered and directed, on motion of the attorney-general, prosecutor of the pleas, or attorney appointed by the court to prosecute the pleas in his absence, to award a writ of scire facias against such recognizor, to show cause why the recognizance ought not to be forfeited, judgment to be entered against the recognizor, and execution to issue thereon; and if such recognizor shall appear at the return of such writ, and not show or allege

1155-177
RWS98-936

any matter sufficient to discharge him or her from his or her recognizance or the said writ having been returned served, or if no service thereof can be made, having been published as prescribed by law, shall make default,

Forfeiture and judgment.

thereupon the recognizance shall be forfeited, judgment final shall be given against the said recognizor as in case of debt, and execution shall issue thereon accordingly; and in every such action, suit, or writ of scire facias, against every such recognizor, costs shall be awarded and allowed. (*a*)

How prosecuted in oyer and terminer.

178. SEC. 2. That if any person hath been or shall be bound by recognizance to the state of New Jersey, or to the governor for the use of the state, with condition for his or her appearance at the sessions of oyer and terminer and general jail delivery, to be held in any county of this state, and if such person hath not appeared, or shall not appear, agreeably to the condition of such recognizance, and his or her default hath been or shall be recorded in the minutes of said court, then it shall and may be lawful for the supreme court, or the circuit court of the county in which such forfeiture hath been or may hereafter be had, the same being certified to such court, on motion of the attorney-general, prosecutor of the pleas, or attorney appointed to prosecute the pleas in his absence, to award a writ of scire facias against such recognizor to show cause why the recognizance should not be forfeited, judgment be entered against the recognizor, and execution issue thereon; and to cause such further proceedings to be had thereupon with costs, as are mentioned and directed in the first section of this act.

Duty of attorney-general, &c.

179. SEC. 3. That it shall be the duty of the attorney-general, prosecutor of the pleas, or attorney appointed to prosecute the pleas of the state in his absence, to move the court having jurisdiction of such forfeited recognizance, for one or more writ or writs of scire facias, and the same, if awarded, to prosecute to judgment and execution; and if such attorney-general, prosecutor of the pleas or attorney shall neglect or refuse to move in proper time and place for such writ or writs of scire facias, or to prosecute the same to effect, he shall be deemed guilty of a misdemeanor in office.

Penalty for refusal or neglect to prosecute.

180. SEC. 4. That if on return of the amount of any debt, fine, penalty or forfeiture, due or belonging to this state, made agreeably to any law of the state to the attorney-general by the treasurer or other officer for prosecution, such attorney-general shall refuse, or for the space of three months neglect to prosecute any person or persons for such debt, fine, penalty, or forfeiture so to him returned, he shall be deemed guilty of a misdemeanor in office.

Supplement.

Passed May 4, 1886.

P. L. 1886, p. 337.

Judgments on forfeited recognizances may be rendered for penalty or part thereof.

181. SEC. 1. That the several courts of this state having jurisdiction of forfeited recognizances may render judgment for the whole of such penalty with interest, or, on application of the defendant, for any part thereof, according to the circumstance of the case and the situation of the party, and upon such terms and conditions as the court deems just and reasonable, and are hereby empowered to cause such recognizances to be levied, moderated or remitted, and judgments entered thereon, to be satisfied according to their discretion.

Supplement.

Approved February 12, 1889.

P. L. 1889, p. 14.

Forfeiture of recognizances to be certified into supreme court or circuit.

182. SEC. 1. That hereafter it shall be lawful for the court of general quarter sessions of the peace in which any recognizance has been or may be forfeited, to certify such forfeiture into the supreme court of the circuit

(*a*) A recognizance binds (1) to appear to answer; (2) to stand to and abide the judgment of the court, and (3) not to depart without leave of the court. *State* v. *Stout*, 6 *Hal.* 124. The recognizance binds the land from the time of its acknowledgment. *State* v. *Stout*, 6 *Hal.* 362. If the recognizors can show that their principal was tried and acquitted, they will be discharged on payment of costs. *State* v. *Saunders*, 3 *Hal.* 177. So, the death of the principal before forfeiture will relieve them, although it cannot be pleaded to the *scire facias*, but must be shown to the court by petition. *State* v. *Crane et al.*, 2 *Har.* 191, 3 *Har.* 333. *State* v. *Traphagen*, 16 *Vr.* 134. *Van Valen's Petition*, 17 *Vr.* 527. If the recognizors are all insolvent a *scire facias* will be refused. *State* v. *Anonymous*, 1 *Har.* 437. On an allowance of a *certiorari* to the sessions in a bastardy case, proceedings on the *scire facias* will be stayed. *State* v. *Bidleman*, 1 *Har.* 267. A suit on recognizance of bail may be instituted in a court other than that in which such recognizance was taken. *Van Winkle* v. *Alling*, 2 *Har.* 446. In *scire facias* upon an alleged forfeiture of a recognizance, entered into before a justice of the peace, for the appearance of a criminal at the oyer, it must be averred that the so-called recognizance was filed in the court where the appearance was to be made. *Stape* v. *State*, 15 *Vr.* 264.

court of the county in which such forfeiture hath been or may hereafter be made, to be therein prosecuted in the manner and with the costs provided in the second section of the act to which this is a supplement. (*a*)

Repealer.

183. SEC. 2. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and this act shall take effect immediately.

Supplement.

Approved March 29, 1892. P. L. 1892, p. 357.

Moneys received on forfeited recognizances may be refunded on appearance of person bound within thirty days after forfeiture.

184. SEC. 1. That whenever any person hath been or shall be bound by recognizance to the state of New Jersey, with condition for his or her appearance at the court of general quarter sessions of the peace, held or to be held in and for any county within this state, and said person hath not appeared, or shall not appear, for any cause agreeably to the condition of such recognizance, and said recognizance hath been or shall be forfeited and the amount thereof paid into the county treasury of said county and in accordance with law, and said person so bound by said recognizance has appeared or shall appear before said court to answer unto the charge or indictment pending against him within thirty days after said recognizance shall have been declared forfeited, it shall and may be lawful for the court of general quarter sessions of the peace in and for said county, in its discretion, to direct and order the return of the moneys so paid or to be paid upon such forfeited recognizance, and thereupon it shall be the duty of the county collector or treasurer of such county to repay the amount of such recognizance, without costs to the recognizor or recognizors who shall have paid the same into the county treasury; *provided*, application shall be made to said court within one year after said recognizance shall have been declared forfeited. (1)

Proviso.

A further supplement to an act entitled "A supplement to an act entitled 'An act regarding proceedings on forfeited recognizances and appropriating the moneys arising from the same and from fines and amercements' [Revision], approved April fifteenth, one thousand eight hundred and forty-six," which supplement was approved March twenty-ninth, one thousand eight hundred and ninety-two.

Approved March 22, 1895. P. L. 1895, p. 632.

On appearance of person bound to answer indictment, money paid on forfeited recognizance may be refunded.

185. SEC. 1. That whenever any person hath been or shall be bound by recognizance to the state of New Jersey, with condition for his or her appearance at the court of general quarter sessions of the peace, held or to be held in and for any county within this state, and said person hath not appeared or shall not appear for any cause, agreeably to the condition of such recognizance, and said recognizance hath been or shall be forfeited and the amount thereof paid in the county treasury of said county and in accordance with law, and said person so bound by said recognizance has appeared or shall appear before said court to answer unto the charge or indictment pending against him, after such recognizance shall have been declared forfeited, it shall and may be lawful for the court of general quarter sessions of the peace in and for said county in its discretion to direct and order the return of the moneys so paid or to be paid upon said forfeited recognizance, and thereupon it shall be the duty of the county collector or treasurer of such county to repay the amount of such recognizance, less the taxed costs on the proceedings to forfeit said recognizance, to recognizor or recognizors who shall have paid the same unto the county treasury, provided application shall be made to said court within two years after such recognizance shall have been declared forfeited.

(*a*) This act is not unconstitutional, it is complete in itself, and its reference to the act to which it is a supplement, with respect to the manner of its prosecution, does not invalidate it. *State* v *Hancock*, 25 *Vr.* 393.

(1) This act appears to be repealed by implication by Sec. 185 following, approved March 22d, 1895. By the latter act the limitation of time, thirty days, for the appearance of the person bound is omitted, and in the proviso the application may be made within two years.

An act relative to costs in proceedings on forfeited recognizances.

P. L. 1873, p. 43.

Approved March 11, 1873.

1158-186 R98-936

When state to pay costs.

186. SEC. 1. That in suits brought by the state of New Jersey upon forfeited recognizances, when the sheriff shall be unable to find property of the defendant whereof to make the amount of the judgment and costs of suit, the said costs shall be paid out of the treasury of this state.

An act respecting recognizances.

P. L. 1876, p. 88.

Approved April 6, 1876.

1158-187 RWS 98-936

187. SEC. 1. [Amended by Sec. 191, *post.*]

Clerk of court to record names of persons entering into recognizance, &c.

188. SEC. 2. That it shall be the duty of the clerk of every court before which any recognizance shall be entered into, to immediately record, in alphabetical order in a book to be provided for that purpose, the names of the persons entering into said recognizance, the amount thereof, and the date of the acknowledgment of the same; which book shall be kept in the clerk's office of the county in which said court shall be held, and be open for the inspection of all persons at all proper times.

Forfeited recognizance.

189. SEC. 3. That when any recognizance shall be forfeited, it shall be the duty of the clerk of the said court in which the same shall be, to enter in the book provided for in the last preceding section of this act, at the end of the record of such recognizance the word "forfeited," together with the date of such forfeiture; and when any recognizance shall be discharged by order of the court or by reason of the judgment in any cause, to enter the word "discharged," together with the date of such discharge at the end of the record of such recognizance.

Supplement.

P. L. 1877, p. 149.

Approved March 9, 1877.

Court to order entry of discharge of recognizances.

190. SEC. 1. That upon satisfactory proof before any court where any recognizance shall be taken, that the conditions thereof have been fully complied with, it shall be the duty of the said court to order the clerk thereof to enter the same "discharged," in the book kept by the clerk for that purpose.

Supplement.

P. L. 1886, p. 267.

Passed April 22, 1886.

191. SEC. 1. That the first section [see Sec. 187, *ante*] of the act entitled "An act respecting recognizances," be and the same is hereby amended so that the same shall read as follows, viz.:

Recognizances to remain in force until cause is determined.

Proviso.

[That every recognizance entered into before any court having criminal jurisdiction in this state, shall remain in full force and effect until the cause in which said recognizance shall be entered into shall be finally determined or the same discharged by order of the court; *provided, however*, that every recognizance shall be void and of no effect after four years from the date of the forfeiture thereof.] (*a*)

Supplement.

P. L. 1888, p. 353.

Passed March 30, 1888.

Officers to pay moneys collected on forfeited recognizances to treasurer or collector of county within ten days after collection.

Penalty.

192. SEC. 1. That every sheriff, officer prosecuting the pleas, or clerk of any court who shall collect or receive any moneys on recognizance, before or after execution, and which now belong to the state, shall pay over the same to the treasurer or county collector of the county wherein the forfeiture of the same shall have been had, for the use of the said county, within ten days after their collection or receipt; and every such officer refusing or neglecting to pay over such moneys as aforesaid within the time herein allotted, shall be liable to the same penalties as now provided by law for such neglect. (1)

(*a*) A culprit giving a recognizance to appear to an indictment, and not to depart from the court without leave, is not discharged from his obligation by the quashing of the indictment. *State* v. *Hancock*, 25 *Vr.* 393.

(1) See section 3 of the supplement to "An act creating the office of comptroller of the treasury, and defining the duties thereof," approved March 24th, 1868, *post*, title TREASURY.

193. SEC. 2. That all acts or parts of acts inconsistent herewith, the same be and they are hereby repealed, and that this act shall take effect immediately. Repealer.

An act concerning recognizances.

Approved April 1, 1878. P. L. 1878, p. 246.

194. SEC. 1. [Amended by Sec. 196, *post.*]

195. SEC. 2. That hereafter the recognizance of any inn and tavern-keeper may be taken by the clerk of the county in which such inn and tavern-keeper is licensed; and such recognizance shall be held as binding as if taken in open court. Recognizance of tavern-keeper may be taken by county clerk.

1159-194 RWS 98-937

Supplement.

Approved April 12, 1886. P. L. 1886, p. 217.

196. SEC. 1. That section one of the act to which this is a supplement be and the same is hereby amended so that hereafter the said section one shall read as follows, to wit:

[That in the several courts of oyer and terminer and general gaol delivery and general quarter sessions of the peace, and in the courts of special sessions now existing or hereafter to be created in any of the counties of this state, recognizances of bail in criminal cases may be taken by the law judge of any of said counties during any recess or after any adjournment of any of said courts; or said recognizances may be taken during such recess or after any such adjournment by the clerk of said courts, upon the written order of the presiding judge of either of said courts, and that all recognizances so taken shall be held as binding as though taken in open court: *provided, however*, that this act shall apply only to counties having a presiding law judge.] Recognizances of bail in criminal cases may be taken by law judge or clerk. Proviso.

An act relative to forfeited recognizances.

Approved March 14, 1882. P. L. 1882, p. 94.

197. SEC. 1. That where judgment shall have been entered upon a forfeited recognizance in a criminal case in any court in this state, and it shall appear to said court that the bail has brought in the person accused or indicted and surrendered said person within a reasonable time and paid the costs of said judgment, said court shall have power, in its discretion, to order said judgment to be canceled of record. Court empowered to have judgments upon forfeited recognizances canceled.

1159-197 R98-937

An act concerning recognizances in criminal cases.

Passed April 15, 1884. P. L. 1884, p. 131.

198. SEC. 1. That hereafter all recognizances entered into in criminal cases before any justice of the peace or police justice authorized to take the same, shall be void unless signed by the recognizor or recognizors before the officer or officers taking the same. Recognizors to sign recognizances.

1159-198 R98-937

199. SEC. 2. That all acts or parts of acts inconsistent with this act be and the same are hereby repealed. Repealer.

An act to limit the duration of the lien of recognizances.

Passed February 17, 1885. P. L. 1885, p. 28.

200. SEC. 1. That all recognizances of bail made or hereafter entered into, in or before any court or magistrate having a criminal jurisdiction in this state, which have been or shall hereafter be forfeited, but upon which no writ of scire facias or other process to enforce or collect the same shall have been issued within a period of six years after the same shall have been entered into, shall be and the same are hereby declared to be no longer a lien or charge upon or against any lands, tenements, hereditaments or real estate of which any surety named in any such recognizance was or shall have been seized at the time of his entering into such recognizance or at any time afterwards. Lien of recognizance limited to six years.

1159-200 R98-937

201. SEC. 2. That all acts and parts of acts inconsistent with this act are hereby repealed. Repealer.

An act to compel the appearance of corporations to indictments and informations.

R. S. 999.

Approved April 15, 1846.

[Secs. 1, 2 and 3 repealed. See *ante*, Sec. 79.]

Proceedings when execution against township returned not satisfied.

1160-202
R98-937

202. SEC. 4. That when any execution, issued against any township for the amount of any fine and costs, as provided by the second section of this act, (1) shall be returned by the sheriff or other proper officer unsatisfied for want of goods and chattels, or for want of lands and tenements of the township against which said execution issued, it shall be the duty of the clerk of the court out of which the same issued, to make a copy thereof, with the indorsements thereon, and the return of the sheriff or other proper officer thereto, having first added to the costs indorsed thereon one dollar, the fee of the said clerk for said copy, and a certificate thereof, and two dollars, the fee of the sheriff for the services hereinafter required of him, and to certify the same under his hand and seal of office, and deliver the same to the sheriff or other proper officer.

County collector to pay costs, &c.

203. SEC. 5. That it shall be the duty of the sheriff or other proper officer, upon receiving such certified copy of the execution and return, to present the same to the county collector, who shall pay to the sheriff of said county or other proper officer the amount of the costs indorsed, together with the interest due thereon, taking the receipt of the sheriff or other proper officer thereupon, which certified copy and receipt shall be a sufficient voucher for the payment thereof, in the settlement of the accounts of the said collector.

Costs, &c., to be added to said township's quota of next tax.

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

Supplement.

P. L. 1851, p. 346.

Approved March 18, 1851.

Additional penalty against corporations indicted and convicted for a nuisance, &c.

205. SEC. 1. That in addition to the remedy now provided against corporations by the act to which this is a supplement, where a corporation are or shall be indicted and convicted for a nuisance, for not repairing and keeping in repair any turnpike road or bridge, and shall neglect to pay the fine and costs awarded against them therefor, for the space of three months after an execution shall have been issued against them for the same, then and in such case it shall not be lawful for any corporation so neglecting, their, or any or either of their lessees, officers, or agents, or any other person, to demand or take any toll upon any part of their road, or any bridge not kept in repair, until the said fine and costs are paid; and if any person or persons whatsoever shall demand or take any toll upon any part of the road of any corporation so indicted and convicted, after such neglect to pay as aforesaid, and notice in writing thereof to such person or persons and until the said fine and costs are paid, such person or persons shall be punished by a fine of one hundred dollars, to be sued for and recovered by, and in the name of the prosecutor of the pleas of the county, and applied towards payment of the fines and costs aforesaid. (*a*)

(*a*) See *State* v. *Morris Turnpike Co.*, 1 *South.* *165, and cases cited.

(1) See *ante*, Sec. 80.

An act concerning reprieves.

Approved April 16, 1846. R. S. 299.

206. SEC. 1. That when a reprieve shall be granted by the governor or person administering the government, to any convict sentenced to the punishment of death, and such convict shall not be pardoned, it shall be the duty of the said governor or person administering the government, to issue his warrant to the sheriff of the proper county, commanding him to execute the sentence at such time as shall be therein appointed and expressed; which warrant shall be transmitted to said sheriff at the expense of the state.

When reprieve granted and no pardon, governor to issue warrant for execution.

1161-206 R98-935

An act relative to the payment of costs of conviction and the expense of transporting persons sentenced to imprisonment and hard labor.

Approved March 31, 1882. P. L. 1882, p. 227.

207. SEC. 1. That the costs of conviction of every offender sentenced to hard labor and inprisonment in the state prison, and the expense of transporting such offenders to the state prison, at the rates now or hereafter to be established by law, shall be paid by the county collector of the county in which the conviction is had, on a certificate of the taxed bill of costs signed by the clerk of the court in which conviction is had and countersigned, as to the receipt of the offender, by the keeper of the state prison; *provided*, that if the county collector aforesaid is not satisfied as to the correctness of such taxed bill of costs, it shall be his duty to return the same to the court where such conviction was had, in order that the same may be re-examined and retaxed by said court, which it is hereby made the duty of said court to do; and if the said county collector is not satisfied as to the correctness of the charges for transport, it shall be his duty to refer the same to the board of chosen freeholders and to be governed by their action in regard to the same. [See Sec. 169, *ante*.]

Costs of conviction and expenses of transportation to be paid by county collector.

1161-207 R98-935

Proviso.

208. SEC. 2. That all acts and parts of acts, general and special, inconsistent with this act, be and the same are hereby repealed.

Repealer.

An act concerning fugitives from justice.

Approved April 1, 1889. P. L. 1889, p. 136.

209. SEC. 1. That it shall be unlawful to take, or cause or procure to be taken, or to aid or abet in taking any person or persons from out of this state whether with or without the consent of such person or persons, for the purpose of answering any criminal charge that may have been preferred against such person or persons in any other state, except upon the warrant or mandate of the governor of this state.

Unlawful to take fugitive from state except upon warrant of governor.

1161-209 R98-935

210. SEC. 2. That if the governor shall be satisfied that the facts in the premises justify the granting of an application for extradition, he shall thereupon issue his warrant or mandate to the sheriffs, under sheriffs, detectives or constables of the several counties of the state, directing said officers to cause the said person or persons to be apprehended and delivered into the custody of the officer or agent appointed by the governor of the state making such requisition to receive such person or persons.

When governor to issue warrant.

211. SEC. 3. That on receiving said warrant or mandate from the governor as aforesaid, it shall be the duty of any sheriff or other said officer to whom it may be delivered to use all due diligence to cause said person or persons mentioned therein, if found in his county, to be arrested, if not already arrested, and to be delivered into the custody of the officer or agent aforesaid.

Duty of sheriff or officer to whom warrant is delivered.

212. SEC. 4. That it shall then be lawful for such officer or agent aforesaid to take such person or persons out of this state, giving a receipt for the body or bodies of such person or persons to the said officer, who shall transmit the same to the prosecutor of the pleas, who shall forward the same to the secretary of state.

Officer or agent to give receipt.

Magistrate may issue warrant for arrest and commit to county jail.

213. SEC. 5. That it shall be lawful for any police justice, recorder or justice of the peace, on satisfactory evidence under oath being presented to him that application has been made, or is about to be made, by the authorities of any other state to the governor of this state for the extradition of any person or persons within the jurisdiction of such magistrate, to issue a warrant or warrants for the arrest of such person or persons and to commit such person or persons to the county jail, or to take bail for his or their appearance from day to day for a period not to exceed thirty days from the date of the arrest of said person or persons; *provided*, that any person or persons who may be so arrested and committed to the county jail shall not be detained or imprisoned for a longer period than thirty days. (*a*)

Proviso.

Penalty for violation of act.

214. SEC. 6. That any agent or officer or other person appointed by or representing the authorities of any other state who shall violate any of the provisions of this act, or any person or persons who shall aid or abet such agent, officer or other person in the violation of any of the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than two hundred dollars and not to exceed one thousand dollars, or by imprisonment of not less than four months and not to exceed two years, or both, at the discretion of the court.

Repealer.

215. SEC. 7. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed, and that this act shall take effect immediately.

An act requiring, in counties wherein penitentiaries are located, the confinement of persons sentenced to over six and not exceeding eighteen months, in penitentiaries instead of state prison.

P. L. 1894, p. 343.

Approved May 15, 1894.

Preamble.

WHEREAS, The state prison is now and has for a number of years been overcrowded, and the authorities have been unable to comply with the law in regard to separate confinement; *and whereas*, in view of the imperative necessity of erecting an intermediate prison of reformatory nature for the separation of the younger from the hardened criminals (a bill for which is now pending before the legislature), which, when completed in addition to the state prison, will afford ample facilities for all the requirements of the law; *and whereas*, in view of such fact, it is deemed inadvisable to expend any further sum for the enlargement of the state prison; therefore, to afford the state prison some present relief,

When persons to be confined in penitentiaries instead of state prison.

1162-216
R98-935
32V-262
263

216. SEC. 1. That on and after the passage of this act, in any county of this state wherein a penitentiary is located, every person sentenced to hard labor and imprisonment under the laws of the state, for any time over six and not exceeding eighteen months, shall be imprisoned in the penitentiary located wherein such conviction was had, instead of state prison, as now provided; *provided*, the person so convicted shall not have served a term previously in the state prison; in such case the person so convicted may, in the discretion of the court, be imprisoned in the state prison or penitentiary.

Proviso.

(*a*) A fugitive from justice may be lawfully arrested and detained in this state before the warrant for extradition is issued. This section does not change the law with respect to this, but only defines the procedure and limits the time of detention and gives power to take bail. *In re Harrison*, 18 *N. J. L. J.* 146. The court cannot deliver up a person for the purpose of compelling him to attend as a witness in another state. The proceeding is only in aid of the power of extradition, to be exercised by the executive upon a requisition based upon a charge of crime. *Ib.* The right to arrest and detain a fugitive from justice before warrant for his arrest and surrender has actually been made existed prior to the passage of this act. This act limits and defines the exercise of this discretion and is in this respect constitutional. *In re Coddington*, 12 *N. J. L. J.* 151. If it appears that demand for the extradition has been made and refused by the governor on the merits, the prisoner cannot longer be detained; *aliter* if the papers presented were clearly informal and that was the ground of the refusal of the governor. *Ib.*

An act making it unlawful for justices of the peace to entertain complaints in certain cases, specifying when complaints shall be made before recorders in certain cities and giving them power to act thereon.

Approved April 1, 1895. P. L. 1895, p. 767.

All complaints in certain cities shall be made before the recorder. 1163-217 R98-935

217. SEC. 1. That in all cities of this state having a population of less than thirty-five thousand having a recorder who is paid a definite salary for his services by such city, it shall be unlawful for any justice of the peace to entertain any complaint for any crime or misdemeanor alleged to have been committed within such city, but all complaints for crimes or misdemeanors alleged to have been committed within any such city not made directly before the grand jury or before the court of oyer and terminer or court of general quarter sessions of the peace of the county wherein such city is situate, shall be made before said recorder, who is hereby authorized to receive the same and to take all necessary and lawful proceedings thereon and who in relation to the same shall have and possess all the power now held and possessed by any justice of the peace; *provided, however*, that said recorder shall not be entitled to receive any extra compensation for his services under this act, and any fees paid or allowed to him for such services shall be paid by him to the treasurer of said city. Proviso.

Dairy, Food and Drug Products.

I. DAIRY PRODUCTS.

1. BUTTER AND CHEESE.

1. Name of manufacturer and weight of vessel to be branded.
2. Penalty for neglect or defacing brand.
3. Penalty for sale of diluted or adulterated milk to any cheese or butter manufactory.
4. Oleomargarine, butterine, &c., to be sold only out of tubs, &c., marked and labeled.
5. Compound of butter or cheese with oleomargarine, &c., to be sold only out of tubs, &c., marked and labeled.
6. How tubs, pails, &c., to be marked and branded.
7. Amended by section 24.
8. Oleomargarine, &c., colored with annotto, &c., not to be sold.
9. Terms "natural butter," &c., construed.
10. What considered *prima facie* evidence of intent to sell.
11. Brands required by this act not to be defaced.
12. Penalty for violation of act.
13. Courts empowered to try cases.
14. Service of process.
15. Adjournments and bail.
16. Appeals.
17. Penalties paid to state treasurer.
18. Appointment of dairy commissioners. Salary, &c.
19. Yearly expenses, limit.
20. Powers of commissioners and assistants, &c.
21. Declaration of objects of act.
22. Repealer.
23. Act construed.
24. Purchaser to be informed that substance sold is not natural butter.
25. Dairy commissioner to enforce provisions of "act to prevent adulteration of food and drugs."
26. Dairy commissioner may appoint chemists, &c.
27. Form of conviction in prosecutions.
28. When act to take effect.
29. Manufacture and sale, or exposure for sale, of imitation butter forbidden. Proviso.
30. Penalty.
31. Appropriation, how expended by dairy commissioner.
32. Repealer.

2. MILK.

33. Label or tag to be placed on can, &c., containing skimmed milk.
34. Persons selling impure or adulterated milk liable to penalty.
35. Addition of water or other substance declared an adulteration.
36. In prosecutions, when milk deemed adulterated.
37. Penalty for violation of act.
38. Jurisdiction of justices of the peace, &c.
39. Arrest, trial and conviction of offenders.
40. Certificate of analysts evidence.
41. Appointment of state inspector of milk. Duties.
42. Penalties, to whom paid.
43. Repealer.
44. Jury trial may be demanded.
45. Proceedings upon finding of jury.
46. Appeal to quarter sessions.
47. Jury trial may be demanded in sessions.
48. Repealer.
49. State dairy commissioner to assume duties of inspector of milk.
50. Analysis of milk, by whom to be made.
51. Inspector taking sample of milk for analysis shall divide it into two parts, one of which to be delivered to vender.
52. Defendant may produce evidence at trial to show the percentage of milk solids in the sample delivered to him.
53. May produce evidence to show that milk has not been adulterated.
54. Repealer.
55. Unlawful to use, sell, &c., milk can marked or stamped.
56. Penalty for using, selling, &c.
57. Complaint by owners of unlawful use, &c., of cans.
58. Arrest of party complained of.
59. Proceedings before justice.
60. When justice to determine right of possession of cans.
61. Jury trial may be demanded.
62. Appeal to quarter sessions.
63. Proceedings, how conducted.
64. Repealer.
65. Adulterated or skimmed milk not to be sold in cities of the first class.
66. Penalty, how recovered.