

pay any judgment for the plaintiff or plaintiffs in such suit, to show cause why such administrator or executor, or other person or representative, should not be suggested upon the record of such suit as a defendant therein; and the court in which such suit is or may be pending, upon proof of service of such rule to show cause upon such proposed defendant, shall, upon such terms as shall be equitable and just, make an order that the name of such succeeding administrator, executor, person or representative, shall be entered on the record as a defendant in such suit; and after the entry of such order such suit shall proceed in the same manner, and judgment or decree therein shall have the same force and effect as if such defendant whose name has been so as aforesaid suggested upon the record, had been originally brought into court as a defendant in such suit in the manner required by law.

Account.

1. Executors may have writ of.
2. Executors or guardians liable to.
3. Joint tenants and tenants in common.
4. Proceedings in actions of. Sheriff liable for escape.
5. Powers of auditors.
6. Proceedings in case defendant do not plead or demur.

An act concerning the action of account.

Passed December 1, 1794.

Rev. 156.

R. S. 46.

1. That from henceforth, executors shall have a writ of account, and the same action and process in the same writ, as the testator might have had, if he had lived.

Executors may have a writ of account.

2. That actions of account shall and may be brought and maintained against the executors or administrators of every guardian, bailiff and receiver.

Account may be brought against the executors of guardians, &c.

3. That actions of account shall and may be brought and maintained by one joint tenant or tenant in common, his or her executors or administrators, against the other, as bailiff, for receiving more than comes to his or her just share or proportion, and against the executor or administrator of such joint tenant or tenant in common. (a)

One joint tenant or tenant in common may bring action of account against the other.

4. That where any person is or shall be bound or liable to account as guardian, bailiff, receiver, or otherwise, to another, and will not give account willingly, and the party, to whom such account ought to be made, shall sue out a writ of account, if the person, against whom such writ is issued, being summoned, do not appear at the return of the writ, or if it be returned that the defendant hath nothing, then the defendant shall be attached, by his or her body, to come and make his or her account; and when such accountant shall appear in court, and submit or be adjudged to account, auditors shall be assigned by the court to take his or her account and if such accountant shall be found in arrears, and cannot pay the arrears and the costs of suit forthwith, then a fieri facias de bonis et terris, or a capias ad satisfaciendum shall be awarded; and if such accountant shall neglect or refuse to account before the auditors, he or she shall be committed to jail, there to be kept under safe custody until he or she shall satisfy the plaintiff of his or her demand, with costs; and further, if it shall be found that there is a surplusage due on such account, from the plaintiff to the defendant, then the defendant shall have judgment to recover such surplusage, with costs of suit, against the plaintiff, unless where the suit is brought by executors or administrators, in right of their testator or intestate; in which case, the defendant shall not recover costs against them; and the defendant shall or may have such execution for the same as he or she might have had, if he or she had recovered such sur-

Proceedings in actions of account.

(a) Where one tenant in common actually receives the rents, issues and profits, he may be compelled to account. *Izard v. Bodine*, 3 Stock. 403. *Davidson v. Thompson*, 7 C. E. Gr. 83. *Barrell v. Barrell*, 10 C. E. Gr. 173. Account lies where a partner is excluded from the business of the firm by the illegal act of his copartner. *Hartman v. Woehr*, 3 C. E. Gr. 383. *Hargrave v. Conroy*, 4 C. E. Gr. 281. *Gordon v. Hammell*, 4 C. E. Gr. 216. See *Young v. Brick*, Pen. *664. One who is next of kin, or a

legatee, or creditor, cannot file a bill against the surviving partner of a testator or intestate for the sole purpose of compelling him to account and settle with the personal representative of the deceased partners. *Harrison v. Righter*, 3 Stock. 389. The right of a tenant in common, out of possession, to require the tenant in possession to account, is purely a statutory regulation. *Etsall v. Merrill*, 10 Stew. 115.

Sheriff who shall suffer prisoner to escape, to be answerable for the debt, or damages.

Auditors may examine witnesses.

Compensation to auditors.

Proceedings if the defendant do not plead or demur, as in other cases.

P. L. 1855, p. 288, § 82.

plusage by action of debt; and moreover, if any sheriff or jailer shall suffer any such prisoner to go out of prison, without the assent of the plaintiff, he shall be answerable to the plaintiff for the debt, or damages done to him or her by such accountant, according as it may be found by the country, and the party, at whose suit such prisoner was committed, shall have his or her recovery by action of debt, or by bill or plaint, in any court of record.

5. That the auditors appointed by the court, where any action of account shall be depending, shall be and hereby are empowered to administer an oath, and to examine the parties on oath, touching the matters in question; and for their pains and trouble in auditing and taking such account, shall have such allowance as the court shall adjudge to be reasonable, to be paid by the party in whose favor the balance shall be found, and to be allowed to him or her in the costs to be taxed against the opposite party, where costs are recoverable. (a)

6. That when a defendant in the action of account shall be summoned to appear, the plaintiff may file his declaration as in other actions; and if the defendant do not plead or demur, as in other cases, the plaintiff, without proceeding to attach him, may enter judgment against him that he account, and the court or a judge may thereupon assign auditors to take the account; and no pleas shall in any case be allowed before auditors in the action of account, but they shall proceed as referees are required to do in other cases; and if the defendant does not plead to the action, or shall neglect or refuse to account before the auditors, the plaintiff may prove his account against the defendant before the auditors, who shall investigate and report thereon as if the parties had both appeared before them.

(a) Proceedings by auditors. *Wilson v. Wilson*, 2 South. *791.

Agriculture.

I. NEW JERSEY STATE AGRICULTURAL SOCIETY.

1. Incorporation.
2. Objects of incorporation.

II. STATE BOARD OF AGRICULTURE.

3. State board of agriculture, how constituted.
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5. Amended by sections 19 and 23.
6. Who entitled to vote at meetings of board.
7. Powers of the board.
8. County boards, how encouraged.
9. Amended by section 24.
10. Amended by sections 20 and 25.
11. Amended by section 26.
12. Amended by section 21.
13. Report of treasurer of board.
14. Membership and organization of county boards.
15. County boards to make annual reports.
16. By-laws and regulations, how made.
17. Annual report of executive committee.
18. Repealer.
19. Amended by section 23.
20. Amended by section 25.
21. Powers of executive committee of state board.
22. Board of directors, how constituted.
23. Compensation of officers.
24. Election of officers.
25. Term of office of board of directors.
26. Officers' expenses, how paid.

III. STATE PREMIUMS.

27. Appointment of state premium committee.
28. Committee to make up list of premiums.
29. Committee to appoint judges to award premiums.
30. Appropriation for payment of premiums.

31. Expenses of act, how defrayed.
32. Limit of appropriation.

IV. AGRICULTURAL COLLEGE (RUTGERS SCIENTIFIC SCHOOL).

33. Commissioners to sell scrip.
34. Interest to be paid to Rutgers college.
35. Fund devoted to maintenance of scientific school.
36. Gratuitous education to be furnished.
37. Annual reports of trustees.
38. When interest to be paid.
39. Board of visitors, how composed, &c.
40. Powers of board of visitors.
41. Public lectures on agriculture.
42. Students, how admitted.
43. Reserved powers of legislature.
44. Board of visitors, how appointed.
45. Term of members of board of visitors.
46. Public lectures under direction of board of visitors.
47. Term of office of members of board of visitors.
48. Expenses of board of visitors, how paid.
49. Notice of vacant scholarships, how given.
50. Bills for giving notices, how paid.
51. Rutgers scientific school designated to receive benefits of certain acts of congress.
52. Board of visitors, how composed.
53. Repealer.
54. Certain moneys to be paid into sinking fund.
55. Upon such payment certificate to be issued.
56. To whom the per centum paid by state shall be paid.
57. Additional free scholarships provided.
58. How students may be admitted.
59. Amount paid to treasurer of college for each scholarship.
60. President of college to certify number of scholarships when warrant upon state treasurer may be drawn.
61. Act subject to alteration or repeal.