

Conveyances made by such woman for the term of her life, good.

Alienation by tenant by the curtesy not to bar the issue of the inheritance of their mother.

In such case non-age not to delay suits brought by the woman or her heirs.

The reversioner or remainderman may have writ of error on judgment against tenant for life in dower or by curtesy.

But if the first judgment was by covin, restitution shall be made to the plaintiff in error.

band, to give, sell or make discontinuance of such lands, tenements or hereditaments, for term of her life only, after the course of the common law.

10. That if a man shall alien any lands or tenements which he may hold by the curtesy, neither his children nor the issue of his children shall be barred, by his deed, from recovering the same of the seizin of their mother, although in such deed of their father there be a clause that he and his heirs are bound to warranty; and in like manner the heirs of the wife shall not, after the death of their father and mother, be barred, by the deed of their father, from recovering the inheritance of their mother, which he aliened in her lifetime.

11. That the suit of the woman, or his heirs, after the death of her husband, for lands or tenements aliened by the husband, shall not be delayed by the nonage of the heir or heirs, who ought to warrant.

12. That if tenant for term of life, or in dower, or by the curtesy, be impleaded, and judgment given against him or her for the lands or tenements, then the person or persons to whom the reversion or remainder of the same belongs at the time of such judgment, his, her or their heirs or successors, may have writ of error, if error be found in the record of such judgment, as well in the lifetime of the said tenant as after his or her death; and if such judgment be reversed, the tenant, if living, shall be restored to his or her possession of the said lands or tenements, and the party prosecuting such writ of error to the arrearages of rent for the same; and if such tenant be dead at the time of the judgment given on such writ of error, then restitution of the said lands or tenements shall be made to the party prosecuting the said writ, together with the arrearages of rent; *provided, always,* that if the party prosecuting the said writ of error allege that the judgment first obtained against such tenant was by covin or assent, then restitution shall be made to the party prosecuting the said writ, with arrearages, although the said tenant be living; but in such case the said tenant may have a scire facias against the party plaintiff in error, if he will deny and traverse the covin or assent aforesaid, and not otherwise.

Constables.

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| 1. Bond to be given. Form of. Condition. | 11. Vacancy in office of constable, how filled. |
| 2. Clerk to give certified copy of to applicant. | 12. Election of constables in certain cities. |
| 3. Where bond prosecuted. Damages assessed. | 13. Repealer. |
| 4. When by jury. | 14. Term of office. |
| 5. Proceedings in suit on bond. | 15. Vacancies, how filled. |
| 6. Prosecutor to give bond, if required. | 16. Bonds to be renewed annually. |
| 7. Relief of surety when constable absconds, &c. | 17. Term of office in certain municipalities. |
| 8. Court authorizing suits brought—how to be proceeded in. | 18. Repealer. |
| 9. On death of constables, how business settled. | 19. Number of constables in certain townships. |
| 10. Moneys received, how applied. | 20. Term of office. |

Rev. 644, 656.

P. L. 1840, p. 33.
" 1844, p. 252.

R. S. 850.

Bond to be given.

An act respecting constables.

Approved April 16, 1846.

1. That every person who shall be elected or appointed to the office of constable, in any of the townships of this state, shall, before he enters upon the execution of his office, repair to the township committee, and thereupon enter into a bond to the inhabitants of the township, in their corporate name and capacity, with one or more sureties, to be approved of by the said committee (a) in such sum as the said committee shall direct, conditioned for the true and faithful performance of all the duties of his said office as constable, in the following or like form:

Know all men by these presents, that we, A. B., C. D. and E. F., all of the township of _____, in the county of _____, in the state of New Jersey, are held and firmly bound unto the inhabitants of the township of

Form.

(a) A *mandamus* will not lie commanding the township committee to accept a bond otherwise valid, when there is a doubt

as to the legal election of the constable. *Prickett's Case, Spen.* 134.

_____, in the county of _____, in the sum of _____ dollars, money of the United States, to be paid to the said inhabitants of the township of _____, in the county of _____, their successors or assigns, to which payment well and truly to be made, we bind ourselves, and each of us for himself in the whole, our and every of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the _____ day of _____ in the year of our Lord, &c.

The condition of this obligation is, that whereas the above-bound A. B. was, at the last annual town meeting of the township of _____, elected a constable of said township; now, therefore, if the said A. B. shall truly and faithfully perform all the duties enjoined on him as constable of said township, then the above obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed and delivered in the presence of

A. B. [L. s.]
C. D. [L. s.]
E. F. [L. s.]

Condition.

Which bond shall be delivered to the clerk of the township, who is hereby directed and required to record and file the same in his office. (a)

Recorded and filed.

2. That if any person shall sustain loss by the neglect or default of any constable in the discharge of his official duties, whereby such bond shall become forfeited, and shall, by himself, his agent or attorney, make affidavit of such loss before any person authorized to administer the same, and shall tender such affidavit to the clerk of the township, city or borough having the custody of such bond, it shall be the duty of such clerk to file the said affidavit in his office, and thereupon forthwith to deliver to the person or persons making such affidavit, his, her or their agent or attorney, a certified copy of such bond, to the end that an action may be brought upon such bond.

Clerk to give certified copy to applicant.

3. That all suits or actions to be brought and prosecuted on constables' bonds, conditioned for the faithful performance of the duties of the office of constable, shall and may be brought and prosecuted in the supreme court or any of the circuit courts or courts of common pleas of this state, and the same shall be conducted and prosecuted in every respect, as suits on sheriffs' bonds are by law directed to be prosecuted; and the court before whom any judgment shall be obtained on any constable's bond as aforesaid, shall from time to time, upon due notice, assess the damages which shall have been sustained by any person or persons by reason of any neglect or default of the said constable in his official duties, and the said court shall and may award execution thereon, with costs; *provided*, the said assessment do not exceed the penalty of the said bond. (b)

Where bond prosecuted.

Damages assessed.

Proviso.

4. That assessments of damages in and by this act directed to be made by the court shall be made by a jury, upon application of either party interested, anything in this act to the contrary notwithstanding.

When by jury.

5. That the name of the person or persons for whose use the said bond shall be prosecuted, shall be indorsed upon the first process to be issued thereon, and shall also be mentioned and stated in the declaration in such suit; and if, in any such suit, the plaintiffs shall discontinue, be non-suited or judgment pass against them, the said person or persons for whose use the said suit is brought and prosecuted, and not the said township, city or borough, shall be liable for costs; and it shall be the duty of the sheriff or other officer

Proceedings in suit on bond.

(a) The condition of the bond should correspond with the language of the act. *Northingham v. Giles*, Pen. *120. *Middletown v. McCormick*, Pen. *300. Yet if more comprehensive it will not be vitiated. *Woolwich v. Forrest*, Pen. *115. The sureties are liable if the constable collect money on a tax warrant and neglects to pay it over. *Hugg v. Camden*, Spen. 583. The action against the sureties must be on their bond and not against them as individuals. *Mallack v. Stow*, Pen. *532. Proceedings on the bond, see *Boyd v. Rose*, 1 South. *230. *Lewis v. Little*, 2 South. *685. Suit by the sureties to recover the amount they may have been obliged to pay will not lie. *Stout v. Dilts*, 1 South. *218.

(b) The action must be brought within nine years. *Knowlton v. Bead*, 6 Hal. 230. If a constable be sued before a justice for neglect of duty, and have judgment in his favor, it is a good plea in bar to an action brought on his bond for the same neglect.

Lower Alloways Creek v. Moore, 3 Gr. 146. No writ of inquiry to assess the damages is necessary; it will be done by the court unless such writ be applied for by the parties. *Jersey City v. Chase*, 1 Vr. 233. See *State v. Edsall*, 5 Hal. 190. How the property is bound after the first execution is satisfied. *Northampton v. Woodward*, 2 South. *788. *Nil debet* is not the proper plea in an action of debt on a constable's bond, when the declaration sets out the condition and breach. *Mayor, &c., of Gloucester City v. Powell et al.*, 7 N. J. L. J. 45. It is not a good plea in an action on a constable's bond, that the plaintiff had previously brought suit against the constable and recovered a judgment against him for the very same neglect of duty for which the present action is brought against him and his securities. The former judgment only served to establish the breach of the condition of the bond. *Lower Alloways Creek v. Moore*, 3 Gr. 146, distinguished. *Id.*

CONSTABLES.

to whom any writ of execution issued upon such judgment shall be directed and delivered, to make and levy the amount of money required to be made and levied by the said writ of execution, upon and out of the property, real or personal, as may be required of the said person or persons for whose use the said suit is brought or prosecuted. (a)

Prosecutor to give bond, if required.

6. That the person or persons for whose use the said action shall be brought upon any such bond, shall, if required before issue joined, give bond to the defendants in the sum of one hundred dollars, with sufficient sureties, being freeholders and residents in this state, with condition to prosecute the said action with effect, and pay costs if the plaintiffs discontinue, be non-suited or judgment pass against the plaintiffs; which bond shall be filed in the office of the clerk of the court in which such action shall be pending.

Relief of surety when constable absconds, &c.

7. That if any constable hath absconded or shall abscond, or become insolvent, or incapable of doing the duties of his said office, it shall be lawful for the court of common pleas of the county from which said constable hath absconded or shall abscond, or become insolvent, or incapable as aforesaid, on application for that purpose, to authorize the surety or sureties of such constable for the time being to ask, demand, sue for and recover any moneys which said constable could or might lawfully demand, levy and receive by virtue of any process of execution or other process in his official capacity as constable, and also all moneys in the hands of any person or persons collected by said constable on any execution or process, and which at the time of his absconding or insolvency or incapacity as aforesaid, were not paid over to the plaintiff or person entitled to the same.

Courts authorizing suits brought.

8. That where, by the absconding, insolvency or incapacity as aforesaid, of such constable, executions or process in his hands remain wholly or in part unexecuted, it shall be lawful for the said surety or sureties for the time being, authorized as aforesaid by the court of common pleas, to apply to any justice of the peace in the county where such judgment was rendered, and execution issued thereon, for a summons in debt on such judgment and execution, in the name of the plaintiff or plaintiffs in the original process against the defendant or defendants therein; and the said suit shall proceed as in other cases of summons in debt, the said surety or sureties always producing before the said justice a transcript of the judgment and the execution or executions issued thereon, and the defendant or defendants may plead payment or satisfaction of such judgment or execution, in part or whole, to such absconding, insolvent or incapable constable, or other lawful discharge; and in case of final judgment against the defendant or defendants, execution may be issued immediately for debt and costs, but if the judgment should be for the defendant or defendants, with costs, the said surety or sureties shall pay the same, and if recovered against the plaintiff or plaintiffs named in the record, they may recover the same over from the surety or sureties.

How to be proceeded in.

9. That in case any constable shall die before settling up all executions that shall have come to his hands by virtue of his office, his executors or administrators shall and may have full power to collect and settle up any execution or process remaining unsettled at the time of his decease, in the same manner as the surety or sureties of constables in the preceding sections; and in case of the neglect or refusal of the said executors or administrators as aforesaid, the surety or sureties of the said deceased constable shall have the same power to collect and settle the said executions as mentioned in the preceding sections of this act.

On death of constables, business, how settled.

10. That all moneys which may be recovered or come to the hands of any surety or sureties, executor or executors, by virtue of this act or otherwise, in regard to the said absconding, insolvent, deceased or incapable constable, shall be held and appropriated by such surety or sureties, executor or administrator, to the only proper use and benefit of the person or persons who may have lawful right thereto.

Moneys received, how applied.

(a) If the name of the prosecutor has not been indorsed, leave will be given at any time to amend by indorsing the name on

the writ and inserting it in the declaration. *Wiley v. Paterson*, 3 *Har.* 440. See, also, JUSTICES' COURTS, Sec. 68, and cases cited.

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Supplement.

Approved February 19, 1879. P. L. 1879, p. 29.

11. SEC. 1. That any vacancy existing in the office of constable in this state by reason of resignation, removal or death, such vacancy may be filled by the board of aldermen, common council, township committee or other legislative body of any incorporate city, town or township within this state; *provided*, that such vacancy so filled be only for the unexpired term. Vacancy, how filled.
Proviso.

An act relative to the election of constables in incorporated cities and towns.

Approved April 6, 1876. P. L. 1876, p. 82.

12. SEC. 1. That at the annual charter elections in each of the incorporated cities and towns of this state, which are or may be divided into wards, the voters of each ward may elect one constable therein; *provided*, that this act shall not apply to any incorporated city or town in which the number of constables in each ward is fixed by the charter thereof. Election of constable.
Proviso.

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

An act relative to the election of constables.

Approved March 12, 1880. P. L. 1880, p. 291.

14. SEC. 1. That all constables shall be hereafter elected for the term of three years; *provided, however*, that at the first election held after the passage of this act when it shall be necessary to elect three constables, the ticket voted shall designate the name of one constable for one year, the name of another for two years, the name of the third for three years, and at each succeeding election one constable shall be elected for the term of three years. (a) Term of office of constables.
Proviso.

15. SEC. 2. That all vacancies in the office of constable shall be filled for the unexpired term only. Vacancies, how filled.

16. SEC. 3. That constables shall be required to renew their bonds annually, and if they shall neglect or refuse so to do within thirty days after the expiration of each yearly term, the position shall become vacant, and such vacancy shall be filled as provided by law. Constables to renew bonds annually.

Supplement.

Approved February 25, 1884. P. L. 1884, p. 28.

17. SEC. 1. That in any township, district or municipality of this state where five constables are now elected annually, such constables shall hereafter be elected for the term of three years; *provided, however*, that at the first election held after the passage of this act, one constable shall be elected for the term of one year, two for the term of two years, and two for the term of three years, and thereafter all constables shall be elected for the term of three years except in case of a vacancy, when the vacancy shall be filled for the unexpired term only. Constables to be elected for three years in certain townships.
Proviso.

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

An act relative to the election of constables in townships of this state.

Approved April 16, 1884. P. L. 1884, p. 191.

19. SEC. 1. That all townships of this state which, prior to the passage of an act entitled "An act relative to the election of constables," approved March twelfth, one thousand eight hundred and eighty, were by law entitled to elect as many constables as the number of justices of the peace Number of constables to be hereafter elected in certain townships.

(a) Query—Is this act unconstitutional by reason of its being special and local? *Ellingham v. Mount*, 14 Vr. 472. As to the number of constables that may be elected at the annual township election, see *McDavitt v. Andover*, 14 Vr. 595.

which the several townships were respectively entitled to elect, shall hereafter elect such number.

Term of office.

20. Sec. 2. That the constables in the townships herein embraced shall be elected at the regular annual township elections, and for terms of three years; that in townships entitled to two constables, one shall be elected in the year one thousand eight hundred and eighty-five and one in the year one thousand eight hundred and eighty-six; that in townships entitled to three constables, one shall be elected each year; that in townships entitled to four constables, two shall be elected in one thousand eight hundred and eighty-five, one in one thousand eight hundred and eighty-six, and one in one thousand eight hundred and eighty-seven; that in townships entitled to five constables, two shall be elected in one thousand eight hundred and eighty-five, two in one thousand eight hundred and eighty-six, and one in one thousand eight hundred and eighty-seven; that in townships entitled to six constables, two shall be elected each year; and that in each succeeding year as many constables shall be elected as there shall be constables in said township whose terms shall in that year expire.

Conveyances.

I. ANCIENT CONVEYANCES.

1. Books of record for ancient deeds to be provided. Affidavits of claimants to be made. Originals to be filed and numbered.
2. Clerk's compensation.
3. Deeds recorded for thirty years, followed by use, may be read in evidence though acknowledgment irregular.

II. ACKNOWLEDGMENTS AND PROOFS TAKEN WITHIN THIS STATE.

4. Conveyance, how acknowledged or proved. Who may take acknowledgment or proof.
5. Judges of common pleas may take acknowledgment in any county.
6. Amended by section 100.

III. ACKNOWLEDGMENTS AND PROOFS TAKEN OUT OF THE STATE, AND IN SOME OTHER STATE OR TERRITORY.

7. Deeds may be acknowledged or proved in other states where the grantor or witnesses reside or happen to be. Before what officers.

IV. ACKNOWLEDGMENTS TAKEN OUT OF THE UNITED STATES.

8. Amended by section 88.

V. ACKNOWLEDGMENTS BY MARRIED WOMEN.

9. Acknowledgment by *feme covert* on private examination.
10. General provisions of act extended to acknowledgments of *femes covert*.
11. *Feme covert* may convey by letter of attorney.
12. Provisions of sections 16 and 17 extended to letters of attorney mentioned in section 11.

VI. WHAT INSTRUMENTS MAY BE RECORDED; MODE OF RECORDING AND EFFECT.

13. Deeds to be recorded must be acknowledged or proved.
14. Unless recorded, void against subsequent judgment creditors, purchasers, &c., not having notice thereof.
15. Record of deeds not recorded in ten years from date shall not be evidence. Deed to be filed.
16. Letters of attorney for sale of lands may be proved and acknowledged and shall be evidence.
17. Amended by section 98.
18. A conveyance or lease of railroad or canal constructed in more than one county, how acknowledged, where recorded.
19. Certain leases may be recorded.

20. How sold under judgment.
21. Assignment of lease may be recorded.
22. Assigned by way of mortgage.
23. Agreements for sale of lands may be recorded.
24. Fees of clerks.
25. Clerks to provide books.
26. Clerks to record deeds.
27. Shall give receipt and certify on deed when received and where recorded.
28. Penalty for neglect.
29. Record and transcript evidence.
30. Record not to be removed from county.
31. Original deed must be produced at trial on notice, or its loss or destruction shown.
32. Deeds recorded in order as received.
33. General index to books of records to be made.
34. All future deeds to be indexed.
35. Revenue stamps to be denoted on record.
36. Record of stamps *prima facie* evidence.

VII. COMMISSIONERS FOR TAKING ACKNOWLEDGMENTS.

37. Commissioners of deeds to be appointed for the several counties.
38. Acknowledgments before commissioners to have same effect as if made before a justice of the supreme court.
39. Amended by sections 95 and 97.
40. Term, when to begin. Official oath.
41. Amended by section 83.
42. Term of office.
43. Fee for commission.
44. List of commissioners to be filed by county clerks.
45. Foreign commissioners to have official seal.
46. Fees of foreign commissioners.
47. Parts of this act to be sent to foreign commissioners.
48. Commissioners to take oath.
49. Commissioners may administer oaths and affidavits.

VIII. CERTAIN ACKNOWLEDGMENTS VALIDATED.

50. Acknowledgments by non-residents in the district of officer taking same made valid.
51. Same as to proof of deeds.
52. Registry of such deeds made valid.
53. Record of such deeds made evidence.
54. Acknowledgments and proofs heretofore taken before officers authorized by other states to take acknowledgments made valid.
55. Acknowledgments heretofore taken before a consul of the United States made valid.
56. Valid, though commissioner not sworn before clerk of county.
57. Amended by sections 78 and 105.