ceedings shall vest in the circuit court full authority, power and jurisdiction to hear and determine the question of the value of the land, water, water rights and other property and the damages sustained, if any, and thereupon the said court shall direct a proper issue to be framed between the parties for the trial of the said question, and order a jury of twelve men to be struck for the trial of the same and a view of the premises to be had by them; and the said issue shall be tried upon the like notice and in the like manner as other issues of fact in said court are tried; and it shall be the duty of the said jury to assess the value of the lands, water, water rights and other property in question, and the damages sustained, if any; and the party or parties appealing shall recover costs, if he, she, it or they shall succeed at the trial on appeal in changing the valuation or assessment thereof, and the damages in his, her, its or their favor and shall pay costs if he, she, it or they shall fail so to do; but no appeal shall prevent the city from taking the lands, water, water rights or other property upon filing the commissioners' report and award and payment or tender to the parties of the amount thereof, as hereinbefore provided; and a party accepting from the city the amount of the award of the commissioners shall not thereby waive the right of appeal; and upon the verdict of the jury fixing the value in damages, the court shall enter judgment for the amount thereof, with or without interest and costs, according to the provisions of this act and the principles of law applicable to the trial of similar issues in other cases, and the judgment so entered shall be the sum which the owner or owners or other parties interested are entitled to have from the city, for the said lands, water, water rights and other property and damages, and may be enforced in manner and form similar to other cases in which judgment is pronounced in said court; and when the commissioners' award is paid by the city into court, as hereinbefore provided, and an appeal is taken and judgment afterwards pronounced on the verdict, it shall be the duty of the court to order the money so paid into court applied to the payment of the said judgment and the surplus, if any, to be paid the city.

Values and damages shall be assessed by the jury.

Court shall enter judgment for amount.

Repealer.

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

Error.

I. When and to what courts error lies.

An act respecting writs of error.

R. S. 929, 980.

Revision—Approved March 27, 1874. P. L. 1859, p. 643.

1. That a writ of error shall not be granted or issued in any case, until final judgment be rendered. (*a*)

No writ until final judgment. R. S. 980, ¿ 14.

2. That no writ of error shall be brought or allowed on any judgment that shall have been, or hereafter may be entered or obtained, unless the same shall be had and done within three years after the judgment rendered; *provided*, that in cases where the person entitled to such writ of error be an infant, feme covert, or insane, he or she shall have three years to bring such writ of error after such disability shall be removed. (*b*)

Must be brought within three years. Ib., ¿ 15.

3. That errors happening in the supreme court shall be heard, rectified and determined by the court of errors and appeals.

Errors in supreme court. Ib., ¿ 1.

4. That it shall and may be lawful for the attorney-general, in behalf of this state, or for any party, his legal representative, or other person who may be damnified or aggrieved (*c*) by any judgment rendered or to be rendered in the supreme court, to sue forth a writ of error, to be directed to the justices of the said supreme court, commanding them to cause the record of such judgment, and all things concerning the same, to be brought before the court of errors and appeals.

By whom writ sued out. Ib., ¿ 2.

5. That all errors happening in any circuit court, shall be heard, rectified and determined, either by the supreme court or by the court of errors and appeals, at the option of the party prosecuting such writ of error. (*d*)

Errors in circuit. Ib., ¿ 4.

6. That all errors happening in any court of common pleas, shall be heard, rectified and determined by the supreme court, which is hereby declared to have jurisdiction of the same, and out of which a writ for that purpose shall be issued at the instance of the state, or of any party, his legal representative, or other person who may be damnified or aggrieved by any judgment rendered or to be rendered in any of the said courts of common pleas.

Errors in pleas. Ib., ¿ 5.

II. How writ issued and returned; assignment of errors, &c.

7. That the party prosecuting a writ of error, shall, without delay, cause a transcript of the said record (*e*) to be made, and the said justices or judges to whom the said writ of error may be directed, or any one of them, shall annex the said transcript to, and indorse a proper return on the said writ, and return the same under his or their signature; (*g*) and unless the said party shall procure the said writ to be returned to the day to which it is made returnable, or show good cause why it is not returned, the said writ shall be null and void.

Writ when to be returned. Ib., ¿ 3. R. S. 929, ¿ 103.

(*a*) A writ of error will lie on a decision upon the legality of an election of officers of a corporation. *Taylor* v. *Griswold*, 2 *Gr.* 258, *note*. On a judgment that an administrator shall not pay costs. *Norcross* v. *Boulton*, 1 *Har.* 310. On an order of the circuit court refusing to set aside an award, where the proceedings have been entered of record. *Eames* v. *Stiles*, 2 *Vr.* 490. *Jessup* v. *Cook*, *Coxe* 105. *Bell* v. *Price*, 2 *Zab.* 585. See *Ford* v. *Potts*, 1 *Hal.* 388. On an order settling the priority among several executions. *Woodruff* v. *Chapin*, 3 *Zab.* 555. On a judgment of non-suit. *Rose* v. *Parker*, 2 *South.* *780 (*b*). On a judgment entered by confession. *Burroughs* v. *Condit*, 1 *Hal.* 300. *Phillips* v. *Phillips*, 3 *Hal.* 122. A writ of error will not lie to bring up the proceedings on the trial of a feigned issue. *Brewer* v. *Ware*, 3 *Har.* 370. Nor the order for such issue. *Tradesmen's Bank* v. *Allen*, 3 *Vr.* 543. Nor upon a mere entry in the minutes of the court below, discharging a rule improvidently granted. *Den*, *Rutherford* v. *Fen*, 1 *Zab.* 700. See *Evans* v. *Adams*, 3 *Gr.* 373. Nor upon a decision denying the application of defendant to be discharged from arrest in a civil suit upon a contract. *Allen* v. *Tyler*, 3 *Vr.* 499. Nor upon an order overruling a demurrer to a *mandamus*. *Warren Railroad Co.* v. *Belvidere*, 6 *Vr.* 588. Nor because the judge has not signed the record. *Lutkins* v. *Den*, *Zabriskie*, 1 *Zab.* 337. Nor because the judge refused to allow all the evidence in the cause to be inserted in the bill of exceptions. *Budd* v. *Crea*, 1 *Hal.* 370. *Wilson* ads. *Moore*, 4 *Har.* 186. The superior court decides whether it issued properly. *State* v. *Farlee*, *Coxe* 82. *Jessup* v. *Cook*, *Coxe* 105. *Hillyer* v. *Schenck*, 2 *McCart.* 399.

(*b*) A writ of error in a criminal case must be sued out within three years. *State* v. *Holmes*, 7 *Vr.* 62.

(*c*) Judgment creditors of B. cannot bring error on a judgment of A. against B. *Sherer* v. *Collins*, 2 *Har.* 181. *Black* v. *Kirgan*, 3 *Gr.* 45. See *Clapp* v. *Ely*, 3 *Dutch.* 575. And see *ante*, p. 1031 (*a*).

(*d*) See *ante*, p. 1022 (*b*).

(*e*) The schedule should contain simply a transcript of the record from the book of judgments. *McCourry* v. *Suydam*, 5 *Hal.* 245. And the court will strike out errors assigned upon the written opinions of the court. *State*, *Ruckman* v. *Demarest*, 3 *Vr.* 528. The *court*, on diminution alleged, may supply any defects in the record. *Gilliland* v. *Rappleyea*, 3 *Gr.* 138. Even after argument. *Apgar* v. *Hiler*, 4 *Zab.* 808. See RULES OF COURT OF ERRORS, Sec. 28. The act respecting writs of error extends to all causes, whether civil or criminal, unless otherwise specified. The seventh section applies only to writs of error brought to review judgments rendered in the supreme court, the circuit courts and the courts of common pleas; it does not apply to the quarter sessions courts. It is the duty of the plaintiff in error to procure the writ of error to be promptly returned, whether the cause be civil or criminal, and whether embraced in the seventh section or not; and for default in that respect the writ may be dismissed without the defendants, ruling the plaintiff to procure the return. *Hines* v. *State*, 25 *Vr.* 199.

(*g*) The return on a writ of error to the circuit court or common pleas need not be so certified. *Stevens* v. *Chetwood*, 2 *Har.* 353.

Writs from court of errors, how tested.
P. L. 1859, p. 643.

8. That writs of error to remove causes into the court of errors and appeals, shall issue out of that court and under its seal, and shall be dated as of the day on which it issues, and in the name of the chancellor, chief justice, or any other judge of said court. (*a*)

When returnable.
Revision.

9. That all writs of error may be made returnable either in term time or in vacation, and shall be made returnable within such time as the court whence they issue shall, by rule, from time to time direct.

Errors to be assigned in thirty days.
R. S. 929, § 100.
Amended.

10. That the plaintiff in error shall assign and file errors, and serve a copy thereof on the defendant in error or his attorney, in thirty days after the return of the writ, or be nonprossed, unless the court shall grant further time; and in such case the plaintiff shall assign and file errors, and serve a copy of the same on the defendant or his attorney within the time so granted, or be nonprossed. (*b*)

Joinder in thirty days.
Ib., § 101.

11. That the defendant shall join in error within thirty days after service of copy of said assignment of errors, and in default thereof, said errors shall be taken as confessed, and the cause be set down to be heard ex parte.

The plaintiff to notice case for argument.
Ib., § 102.
Amended.

12. That after joinder in error, the plaintiff in error shall notice the case for argument at the next term; such notice shall be served at least twenty days before such intended argument, if there be not sufficient time between the joining of said issue and the next term, then the argument shall be noticed for a special day in term, or at the subsequent term, at the option of the plaintiff in error; if the plaintiff fail to give such notice, or bring on the argument at the time appointed, the judgment shall be affirmed, unless the court, in its discretion, shall grant further time. (*c*)

Otherwise judgment to be affirmed.

III. Writ when a supersedeas.

How execution stayed on error, after judgment in debt, &c.
R. S. 980, § 6.

13. That no execution shall be stayed or delayed by any writ of error or supersedeas thereon, for the reversal of judgment in any action of debt founded upon a prior judgment, or upon any single or penal bill for the payment of money only, or upon any obligation with condition for the payment of money only, or upon any action of debt, or upon the case for rent, or upon any contract sued in the supreme court or any other court of record, unless the plaintiff in such writ of error, or other responsible person in his behalf, with two sufficient sureties, to be approved and allowed, shall first become bound to the party for whom such judgment is given by recognizance, as hereinafter directed, in double the sum adjudged to be recovered by the said judgment, to prosecute the said writ of error with effect, and also to pay and satisfy, if the said judgment be affirmed, all the debt or debts, damages and costs, adjudged on the former judgment, and all costs and damages to be awarded for the delay of execution. (*d*)

Recognizance required.

Recognizance must be acknowledged, &c.
Ib., § 7.

14. That no execution shall be stayed or delayed in any of the courts mentioned in the section next preceding, by any writ of error or supersedeas thereon, after verdict and judgment on such verdict in any personal action whatsoever, unless such recognizance as is prescribed in the preceding section shall be first acknowledged, as hereinafter directed.

Recognizance in dower and ejectment.
Ib., § 8.

15. That no execution shall be stayed or delayed by writ of error, to be brought upon judgment after verdict in dower or in ejectment, unless the plaintiff in such writ of error, or other responsible person in his behalf, with two sufficient sureties as aforesaid, shall first become bound by recognizance to the plaintiff in the writ of dower or action of ejectment, in such reasonable sum (*e*) as the court or a judge thereof to which the

(*a*) Before the passage of this section, writs of error to the supreme court issued out of chancery. *Anonymous, Spen.* 495. *Carter* v. *Gleason*, 1 *Zab.* 561, *note.*

(*b*) A writ of error dismissed because errors were not assigned and filed in season, may be restored on good cause shown by affidavits. *Engle* v. *Leake*, 1 *Zab.* 561. The grounds of error should be specified in the assignment. *Donnelly* v. *State*, 2 *Dutch.* 465.

(*c*) Formerly either party could notice the case for argument, and when so noticed the plaintiff in error must prepare the state of the case or have his writ dismissed. *Harwood* v. *Smethurst*, 2 *Vr.* 502.

(*d*) The court will not stay execution to give time to file bail. *Den, Crane* v. *Hamilton, Pen.* *882. It belongs to the court rendering the judgment to determine whether an execution shall issue notwithstanding the allowance of a writ of error. *Allen* v. *Hopper*, 4 *Zab.* 514. See *Suydam* v. *Hoyt*, 1 *Dutch.* 232. The plaintiff in error may have either a writ of *supersedeas* or a rule upon the sheriff to stay proceedings on the execution. *Sayre* v. *Reynolds*, 2 *South.* *564.

(*e*) Bail in error in ejectment, must be in double the annual value of the lands and of the costs. *Den, Crane* v. *Hamilton, Pen.* *882. *Den, Laurence* v. *Lippincott*, 1 *Hal.* 478.

writ of error is directed shall think fit, with condition that if judgment be affirmed on the said writ of error, or if the said writ of error be discontinued by default of the plaintiff therein, or if the said plaintiff be non-suit in the said writ of error, that then the said plaintiff shall pay such costs, damages and sum or sums of money as shall be awarded upon or after such judgment affirmed, discontinuance or non-suit; and to the end that the same damages and sum or sums of money may be ascertained, the court wherein execution ought to be granted, shall upon such affirmation, discontinuance or non-suit, issue a writ to inquire, as well of the mesne profits, as of the damages by any waste committed after the first judgment in dower or in ejectment; and upon return thereof, judgment shall be given and execution awarded for such mesne profits and damages, and also for the costs of suit.

How recognizance taken. Ib., § 9.

16. That the recognizance mentioned in the thirteenth and fourteenth sections of this act may be acknowledged, and the sureties therein may be approved and allowed, either by the court in which judgment is given, in open court, or by any justice or judge thereof; or in case the said judgment be rendered in the supreme court or circuit court, before any one of the commissioners appointed by the supreme court to take recognizances of bail, and the recognizances so taken shall be filed in the court in which judgment is given.

Before whom recognizance mentioned in section 15 may be taken. Ib., § 10.

17. That the recognizance mentioned in the fifteenth section of this act may be acknowledged before any one of the justices or judges of the court to which the writ of error is directed, at his chambers, in such reasonable sum as such justice or judge shall think fit; and such recognizance when so acknowledged, as aforesaid, and filed in the said court, shall be as good and effectual in law as if the same had been acknowledged in open court.

Recognizance to be filed within fifteen days after term in which judgment is entered. Ib., § 11. Amended.

18. That when a writ of error shall be issued pursuant to the laws of this state, directed to the supreme court, or to any circuit court or court of common pleas, and presented to the court or to the presiding judge thereof, such writ of error shall stay execution; *provided*, the plaintiff in error shall within fifteen days after judgment rendered, unless further time be granted by the court or presiding judge, file in the office of the clerk of said court such recognizance of bail duly taken, as by law is or shall be required. (*a*)

Additional bail in error may be required. Revision.

19. That it shall be lawful for the court of errors and appeals, or for the supreme court, or for any justice of the supreme court, upon good cause shown, and upon reasonable notice to require in any case in addition to the bail in error above mentioned, such further security by recognizance, to be given by the plaintiff in error as may seem proper; and unless such additional recognizance, to be taken in the manner hereinbefore prescribed, shall be given within the time appointed by the said court or justice, then the writ of error in such case shall forthwith cease to be a supersedeas.

Writ issued in bad faith will not stay. R. S. 980, §§ 12, 13.

Bail not required in certain cases.

20. That when it is apparent to the court that the writ of error is brought against good faith or for the mere purpose of delay, or it is returnable of a term previous to the entry of final judgment or special bail, when requisite, is not put in and perfected in due time, it shall not be a supersedeas or stay of execution; *provided always*, the thirteenth, fourteenth, and fifteenth sections of this act shall not extend to any writ of error to be brought by any executor or administrator, nor to any action popular, or action on any penal statute, nor to any indictment, presentment, inquisition or information.

IV. Supplements.

Supplement.

Approved February 23, 1886. P. L. 1886, p. 49.

Writs of error sued forth by attorney-general, when returnable.

21. SEC. 1. That whenever the attorney-general, in behalf of the state, eo nomine, or in the name of any board or officer thereof, shall sue forth a writ of error directed to the justices of the supreme court of the state, such

(*a*) If the party holding the *postea* does not file the same at the time required by rule 37 of the supreme court, the defendant, although he may bring error, cannot file his recognizance so as to stay execution. *Warwick* v. *Cox*, 7 *Vr.* 392.

writ shall be made returnable, at the option of the attorney-general, either at the next term thereafter of the court of errors and appeals, or within ten days after the teste of the writ; and in all such cases the attorney-general may assign and file errors and serve a copy thereof on the defendant in error or his attorney within ten days after the return of the writ, and the defendant shall join in error within ten days after service as aforesaid of a copy of the assignments of error, and in default thereof the cause shall be set down to be heard ex parte.

Argument at special term of court of errors and appeals.

22. SEC. 2. That when the attorney-general shall elect to make such writ of error returnable within ten days from the date of its teste, the cause shall come on for argument without further notice at a special term of the court of errors and appeals, to be appointed by the presiding judge of said court upon the application of the attorney-general without notice to the defendant; said special term to be held not more than twenty days from and after the time herein fixed for the filing of the joinder in error.

Attorney-general may employ assistant counsel.

Compensation of assistants.

23. SEC. 3. That the attorney-general shall, with the approval of the governor and the comptroller, have power to employ such assistant counsel and to incur such other expense for printing and otherwise, as may be necessary to protect and properly defend the interests of the state; and such assistants shall be paid such compensation for their services as may be approved by the governor, the attorney-general and the comptroller.

Supplement.

P. L. 1894, p. 491.

Passed May 24, 1894.

Writ shall not lie in contested election cases.

24. SEC. 1. That no writ of error shall be brought or lie to reverse any judgment of the supreme court rendered on any appeal heretofore taken or hereafter to be taken to said supreme court from the judgment of any circuit court in any case of contested election.

Act repealed.

25. SEC. 2. That the act entitled "A supplement to an act entitled 'An act respecting writs of error' [Revision], approved March twenty-seventh, anno domini one thousand eight hundred and seventy-four," which supplement was approved March fourth, one thousand eight hundred and ninety-one [P. L. 1891, p. 77], be and the same is hereby repealed.

Escheats.

ttorney-general to issue writ, and form of it.
2. To cause notice thereof to be advertised.
3. To serve notice on tenants, &c. To make conveyances.
4. Amended by section 6.
5. Injunction to restrain waste.
6. Expenses of proceedings and debts, how paid.

Har. 176.

R. S. 342.

An act concerning escheats.

Passed February 27, 1828.

Attorney-general to cause a writ to issue.

1. That whenever the attorney general shall be informed, or shall have reason to suppose, that any person hath died seized of any real estate within this state, without making any devise thereof, and leaving no heirs capable of inheriting the same, (*a*) he shall cause a writ to be issued out of the court of chancery, and directed to the sheriff of any county in this state, in the form following: "The state of New Jersey to the sheriff of the county of ——— greeting: Because we are informed that ——— died seized of divers lands, tenements and hereditaments in our county of ———, without making any devise thereof, and leaving no heir capable of inheriting the same; we command you, that, by the oath of twelve good and lawful men in your county, you diligently inquire what lands, tenements and hereditaments the said ——— was seized of at the time of his death, if any; and what estate of inheritance, and when he died, and whether he

Inquisition to be made.

(*a*) The real estate of a person dying intestate, and leaving no heirs capable of inheriting the same, escheats to and vests in the state at the instant of his death. *O'Hanlin* v. *Den, Spen.* 31, 1 *Zab.* 552. Land which has escheated may be granted by the state by a private act passed before any proceedings in escheat. *Colgan* v. *McKeon*, 4 *Zab.* 566. After the state in proceedings in escheat has acknowledged a certain person as heir-at-law, he cannot proceed with the escheat in the name of the state for his own benefit. *State* v. *Engle*, 1 *Zab.* 348.