

to his answer to such questions; and if any such witness shall refuse to answer any question so decided to be proper and pertinent he shall be deemed guilty of a misdemeanor.

Penalty for refusal to answer.

76. SEC. 2. That if any witness summoned to appear before any such committee shall willfully neglect or refuse to appear in obedience to the summons, or shall refuse to be sworn or affirmed, he shall be deemed guilty of a misdemeanor.

Executions.

I. FORM OF AND RECORDING.

1. Form of writ against goods and lands.
2. Execution against lands to be recorded.

II. WHAT MAY BE LEVIED ON.

3. Money.
4. Notes, stock, &c.
5. Clerk or cashier of company to give certificate.
6. Proceedings when clerk, cashier, &c., of joint stock company is non-resident.
7. Such clerk, &c., to return statement and certificate.
8. How proprietary rights levied on and sold.
9. Repealed.

III. PROPERTY EXEMPT FROM.

10. Amended by section 35.
11. Sheriff to make inventory and appoint appraisers.
12. Duty of appraisers.
13. Fees of sheriff and appraisers.
14. Exemption where executions issue into different counties.
15. By whom selection to be made if defendant absent.
16. Selection, how made if defendant die.
17. Section 9 of act of 1846 repealed.

IV. FROM WHAT TIME BINDS PROPERTY.

18. Goods bound from delivery of writ, time to be indorsed.
19. Priority as to lands.
20. When purchase of goods before levy, good.

V. WHERE PRISONER FOR DEBT ESCAPES OR DIES.

21. If debtor escape, plaintiff to have new execution.
22. If he die, plaintiff may have execution against estate.

VI. DISCOVERY IN AID OF.

23. Amended by sections 39 and 41.
24. Amended by section 40.
25. Amended by section 37.
26. Examination to be certified to judge. Receiver.
27. Dismissal of petition.
28. Penalty for disobeying subpoena.
29. Filing of papers and *certiorari*.
30. Fees of commissioner.

VII. SALE UNDER.

31. Advertisement of sale of goods.

VIII. PROCEEDINGS ON CLAIM OF PROPERTY.

32. Adjournment by sheriff. Application to and trial by judge.
33. Verdict protects sheriff.

IX. SUPPLEMENTS.

34. Execution against municipal corporation or township, how served.
35. What property exempt from seizure under execution.
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37. Witnesses required to testify on discovery proceedings. Defendant may have counsel.
38. Repealer.
39. Amended by section 41.
40. Proceedings to obtain order for discovery.
41. Order for discovery may be made if execution is returned unsatisfied.
42. Certain household goods and furniture exempted from seizure in attachment proceedings.
43. When provisions of act to apply to income of property held in trust for debtor.
44. When execution is satisfied clerk shall cancel the judgment.
45. Clerk's fee on cancelling judgment.
46. Clerk required to cancel judgment on request of interested party.

I. Form of and recording.

An act respecting any execution.

Revision—Approved March 27, 1874.

I. That in every writ of execution, which shall be issued against lands, tenements, hereditaments and real estate, the sheriff or other officer to whom the said writ may be directed, shall be commanded, that of the goods and chattels in his county, of the party against whom such execution issues, he cause to be made the debt, damages and costs or sum of money mentioned in the said execution; and if sufficient goods and chattels of the said party cannot be found in his county, that then he cause the whole or the residue, as the case may require, of the said debt, damages and costs or sum of money, to be made of the lands, tenements, hereditaments and real estate, whereof the said party was seized on the day when the said lands, tenements, hereditaments and real estate became liable to such debt, damages and costs or sum of money, specifying the day particularly, or at any time afterwards, in whose hands soever the same may

R. S. 335, 660, 976,
978.

P. L. 1850, p. 301.
" 1851, p. 278.
" 1852, p. 36.
" 1854, p. 108.
" 1855, p. 283.
" 1858, p. 409.
" 1863, p. 31.
" 1869, p. 498.

Form of the writ
against goods and
lands.

R. S. 660, § 4.

then be ;(a) but when such execution shall be issued against terre tenants, or heirs, or devisees (unless they shall have made their estate liable by false pleading or otherwise), it shall only command the sheriff or other officer, that of the lands, tenements, hereditaments and real estate, whereof the ancestor, testator or person deceased, was seized on the day when the said lands, tenements, hereditaments and real estate became liable as aforesaid, or at any time afterwards, or at the time of his or her death, as the case may require, he cause to be made the debt, damages and costs or sum of money in the said writ mentioned. (b)

Form, when
against terre ten-
ants, heirs or
devisees.

2. That every writ of execution which shall be sued forth against lands, tenements, hereditaments and real estate, shall, before it be delivered to the sheriff or other officer, be recorded in a book by the clerk of the court out of which the same was issued ; and the record of such writ so made, shall be as good evidence as the writ itself. (c)

Execution against
lands to be
recorded.
Ib., § 2.

II. What may be levied on.

3. Money belonging to a defendant in execution may be levied on and returned by virtue of such execution, as so much money collected, without exposing the same to sale.

Money.
R. S. 976, § 6.

4. That bank notes, bills, or other evidence of debt, circulated as money, or any share or interest in any bank, insurance company or other joint stock company, that is or may be incorporated under the authority of this state, or incorporated or established under the authority of the United States, belonging to the defendant in execution, may be taken and sold by virtue of such execution, in the same manner as goods and chattels. (d)

Notes, stock, &c.
Ib., § 7.
P. L. 1869, p. 498.

5. That the clerk, cashier, or other officer of such company, who has at the time the custody of the books of the company, shall upon exhibiting to him the writ of execution, give to the officer having such writ a certificate of the number of shares or amount of the interest held by the defendant in such company ; and if he shall neglect or refuse so to do, or if he shall willfully give a false certificate thereof, he shall be liable to the plaintiff for double the amount of all damages occasioned by such neglect or false certificate, to be recovered in an action on the case against him.

May be sold as
goods, &c.

Clerk or cashier of
company to give
certificate, &c.
R. S. 976, § 8.

6. That when the clerk, cashier, or other officer of any joint stock company that is or hereafter may be incorporated under the authority of this state, who has the custody of the books of registry of the stock thereof, shall be non-resident in this state, it shall be the duty of the sheriff or other officer, receiving a writ of execution issued out of any court of this state against the goods and chattels of a defendant in execution holding stock in such company, to send by mail a notice in writing, directed to such non-resident clerk, cashier or other officer, at the post-office nearest his reputed place of residence, stating in such notice that he, the said sheriff or other officer, holds such writ of execution, and out of what court, at whose suit, for what amount, and against whose goods and chattels, such writ has been issued, and that by virtue of said writ, he, the said sheriff or other officer, seizes and levies upon all the shares of the stock of such company held by the defendant in execution on the day of the date of

Proceedings when
clerk, cashier, &c.,
of joint stock com-
pany is non-resi-
dent.
P. L. 1858, p. 409,
§ 1.

(a) A levy may be made on lands acquired after the date of the judgment, or which have been conveyed to other persons before the date of the execution. *Den, Green v. Steelman*, 5 *Hal.* 298.

(b) A judgment against an heir or devisee upon his individual debt, and levy of an execution issued thereon upon lands descended or devised prior to the commencement of an action against the heir or devisee upon a debt of the ancestor or testator, is not an alienation within the meaning of the "act for the relief of creditors against heirs and devisees." *Muldoon v. Moore*, 26 *Vr.* 410. The supreme court has full power to set aside and annul, for good cause, levies and sales made by sheriffs and other officers in execution of final process issued out of said court, when proper parties are or can be brought before the court. *Voorhis v. Terhune*, 21 *Vr.* 147.

(c) It must be actually recorded. A mere entry of the title and date of entry in the book of executions is not sufficient. *Voorhees v. Chaffers*, 4 *Zab.* 507. *Elmer v. Burgin*, *Pen.* *186. The clerk's certificate indorsed on the execution is sufficient

evidence that it was recorded before it was delivered. *Den, Vanderveer v. Gaston*, 4 *Zab.* 818, 1 *Dutch.* 615. Although the plaintiff can prove that an execution delivered to and indorsed by the sheriff, previous to the delivery of the plaintiff's execution, was not recorded until after his was delivered. *Johnston v. Darrah*, 3 *Hal.* 282. The one first actually recorded is entitled to priority. *Ib.* *Clement v. Kaighn*, 2 *McCurt.* 48. Without such recording the sheriff has no authority to levy or sell. *Den, Vanderveer v. Gaston*, 4 *Zab.* 818. The plaintiff in a junior judgment, by suing out and levying the first execution upon land, acquires a priority of lien. *Wills v. McKinney*, 12 *Vr.* 120. See, also, *Bogert v. Lydecker*, 16 *Vr.* 314. *Clement v. Kaighn*, 2 *McCurt.* 48.

(d) Shares of stock in a bank or other incorporated company are not bound by the delivery of a *f. fa.* to the sheriff against their owner, but may be transferred before an actual levy. *Princeton Bank v. Crozer*, 2 *Zab.* 383. *Rogers v. Stevens*, 4 *Hal. Ch.* 167.

Sheriff to mail notice and set up notice on company's place of business.

Transfer by defendant in execution thereafter void.

Such clerk, &c., to return statement and certificate, &c. *Ib.*, § 2.

For refusal of, or false certificate liable to double damages.

How proprietary rights levied on and sold. *R. S. 660*, § 13.

Executions to issue out of supreme court to sheriff of Burlington or Middlesex.

Sale of, how advertised.

Proceedings to set off. *P. L. 1851*, p. 278, § 2. *P. L. 1854*, p. 108. Amended.

Sheriff to make inventory.

such written notice; and it shall also be the duty of such sheriff or other officer, on the day of mailing such notice, as aforesaid, to affix and set up upon any office or place of business of such company, within his county, a like notice in writing, and on the same day to serve like notice in writing upon the president and directors of said company, or upon such of them as reside in his county, either personally or by leaving the same at their respective places of abode; and the sending, setting up, and serving of such notices in the manner aforesaid, shall constitute such levy taken, a valid levy of such writ upon all shares of stock in such company, held by the defendant in execution, which have not at the time of the receipt of such notice by the said clerk, cashier or other officer, who has custody of the books of registry of the stocks thereof, been actually transferred by the defendant; and thereafter any transfer or sale of such shares by the defendant in execution, shall be void as against the plaintiff in said execution, or any purchaser of such stock at any sale thereunder. (*a*)

7. That the non-resident clerk, cashier, or other officer in such company, to whom notice in writing is sent, as prescribed in the preceding section, shall thereupon send forthwith, by mail or otherwise, to the officer having such writ, a statement of the time when he received such notice, and a certificate of the number of shares held by the defendant in such company at the time of the receipt by him of such notice, not actually transferred on the books of said company; and the said sheriff or other officer shall on receipt by him of such certificate, insert the number of such shares in the inventory attached to said writ; and if such clerk, cashier, or other officer in such company, neglect to send such certificate, as aforesaid, or if he shall willfully send a false certificate, he shall be liable to the plaintiff for double the amount of all damages occasioned by such neglect or false certificate, to be recovered in an action on the case against him; but the neglect to send, or miscarriage of such certificate, shall not impair the validity of the levy upon the stock.

8. That all proprietries, rights, share and shares of propriety, and rights to unlocated lands, shall be and hereby are made liable to be levied upon and sold by executions, to be issued on judgments, for the payment of the debt or damages, and costs or sum of money thereby recovered, in the same manner as lands, tenements, hereditaments and real estate are made liable to be levied upon and sold; but every such execution shall issue out of the supreme court, and if the said shares or rights be within the western division, shall be directed to the sheriff of the county of Burlington, and if within the eastern division, shall be directed to the sheriff of the county of Middlesex; and further, that the said sheriff shall give notice by advertisements, signed by himself and put up in five or more public places in the said county, and by an advertisement in one of the newspapers published in this state, of the time and place of exposing such shares or rights to sale, at least two months before the time appointed for selling the same.

9. [Repealed by *P. L. 1879*, p. 292.]

III. Property exempt from.

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

11. That if any sheriff or other officer shall have an execution or civil process against any defendant entitled to exemption as aforesaid, it shall be the duty of such sheriff or other officer to make a careful and particular inventory of the goods and chattels of every kind and description of such defendant which shall be subject to levy under an execution, and thereupon to appoint, in writing, three discreet and judicious persons of his county, indifferent between the parties in said execution, to make a just and true appraisement of the goods and chattels so levied upon; which persons shall, before they enter upon the duties of their appointment, be

(*a*) As to the duty of the sheriff in levying upon the stock of an incorporated company under a writ of execution, see *Voornis v. Terhune*, 21 *Vt.* 147.

severally sworn before said sheriff or other officer, or before any person authorized to administer an oath, faithfully, honestly and impartially to appraise such property, according to the true and intrinsic value thereof, and without reference to what the same might be supposed to bring at a sale by vendue under said execution or process, which said oath shall be indorsed upon said appointment and filed, together with the same, in the clerk's office of the court of common pleas of said county.

And appoint appraisers.

Oath of appraisers.

12. That the said appraisers shall appoint a time and place when they will proceed to make the appraisal aforesaid, and shall cause at least five days' notice, in writing, thereof to be given to the plaintiff in said execution, or to his attorney; and shall at the time and place so appointed, proceed to make the appraisal aforesaid, in the presence of the plaintiff in such execution, or his attorney, if he shall see fit to attend, and shall set down in writing a particular account of the articles and things appraised, with their respective values annexed, and sign the same; and if the said appraisal shall not exceed the sum of two hundred dollars, the said sheriff or other officer shall suffer the same to remain in the possession of the defendant for the use of himself and his family; but in case the amount of said appraisal shall exceed two hundred dollars, then the defendant may select from such inventory articles to the amount of two hundred dollars to be reserved for the use of himself and his family; and shall annex a written statement thereof signed by himself to said inventory; and the said sheriff or other officer shall proceed and sell the residue of such goods and chattels or tools of trade or other property in payment, or towards payment, of said execution; and in either case it shall be the duty of such sheriff or other officer to annex the said inventory and account made by said appraisers, and the debtor's statement, if any, to the execution or process, and return the same to the court from which it was issued. (a)

Duty of appraisers. P. L. 1851, p. 278, § 2.

Notice of plaintiff.

Statement of goods selected.

Residue to be sold.

13. That the sheriff or other officer having the execution or process, shall be entitled to the sum of fifty cents for making the inventory aforesaid, and for the appointment of the appraisers and drawing and administering to them the oath aforesaid, the sum of fifty cents; the clerk for filing the same, eight cents; and the said appraisers for the services required of them, the sum of fifty cents each, to be paid by the defendant.

Fees of sheriff and appraisers Ib., § 5.

Paid by defendant.

14. That when several executions into different counties shall issue on the same judgment, the proceedings to set off the property under the preceding sections for the benefit of the family of the defendant, shall be had in the county in which his family resides, and not in any other county to which execution shall have issued, except for the deficiency of goods and chattels of the defendant in the former county, to make the amount which is reserved by law.

Exemption in case of executions into different counties.

15. That if the defendant in execution shall be absent from his place of residence when the appraisal by the said appraisers is completed and cannot readily be found, or shall refuse to make selection from the goods and chattels inventoried and appraised, as above required, such selection may be made by the wife or family of the defendant, or by the appraisers, and the statement annexed to and returned with the execution, shall be signed accordingly.

By whom selection made if defendant absent.

16. That in case the defendant in execution shall die after execution issued, and a levy and sale of goods and chattels be made thereafter, the selection of goods and chattels to be reserved for the use of his family shall be made by the person or persons entitled to make the selection under the act entitled "An act respecting the orphans' court, and relating to the powers and duties of the ordinary, and the orphans' court and surrogates;" (b) *provided*, that if the property reserved for the benefit of the family of the deceased shall be set off under the provisions of the latter act, the property so set off shall also be the property exempted from sale under such execution.

How set off in case of death of defendant.

(a) The officer has a right to seize and hold the goods of the debtor until an appraisal can be made, and will not be liable in trespass, although their value be less than \$200. *Bon-*

nel v. Dunn, 5 *Dutch*. 435. See *Kirkpatrick v. Cason*, 1 *Vr.* 332.

(b) See ORPHANS' COURT, Sec. 52.

Ninth section of act of 1846 repealed except as to contracts before March 14th, 1851.

17. That the ninth section of an act entitled "An act respecting executions and regulating the sale of personal estate by virtue thereof" [Revision], approved April sixteenth, one thousand eight hundred and forty-six, is hereby repealed, except so far as relates to contracts made before the fourteenth of March, one thousand eight hundred and fifty-one.

IV. From what time binds property.

Binds goods from time of delivery. R. S. 976, § 3

Note of time indorsed.

Priority of.

Priority as to lands. Ib., § 4.

Time received to be indorsed.

When purchase of goods before levy good. Ib., § 5.

18. That no writ of execution shall bind the property or the goods of the person against whom such writ is sued forth, but from the time that such writ shall be delivered to the sheriff, under-sheriff, coroner or other officer, his deputy or agent, to be executed; and for the better manifestation of the said time, such sheriff, under-sheriff, coroner or other officer, his deputy or agent, shall, upon the receipt of any such writ, indorse thereon, without fee for so doing, the day of the month and year when he received the same; and if two or more writs of execution shall be delivered against the goods of the same person on the same day, that which was first delivered shall be first executed and satisfied. (a)

19. That where sundry writs of execution shall be issued against the goods and chattels, lands, tenements, hereditaments and real estate of the same person, and sufficient cannot be found to satisfy all the sums commanded to be made, then the like priority and preference shall be given in such cases as is given by the preceding section in writs of execution against the goods only, and all disputes respecting the same shall be adjudged and determined accordingly; and for that purpose the like indorsement, as aforesaid, shall be made on the said writs, by the proper officer, of the time that he shall have respectively received the same. (b)

20. That if any person shall purchase, in good faith, of a defendant in execution, any goods or chattels, and pay for the same prior to the actual levy of such execution, and without notice thereof, the title of such purchaser shall not be divested by the fact that such execution had been delivered before such purchase was made. (c)

V. Where prisoner for debt escapes or dies.

If a debtor escapes from prison, plaintiff may have a new execution. R. S. 335.

If debtor die in prison, upon a ca. sa., plaintiff may have execution against his estate.

21. That if any person who is or shall be committed, in execution, to any prison, shall escape therefrom, the creditor or creditors, at whose suit such prisoner was charged in execution at the time of such escape, may retake such prisoner by any new capias, or capias ad satisfaciendum, or sue forth any other kind of execution on the judgment, as if the body of such prisoner had never been taken in execution. (d)

22. That the party or parties, at whose suit, or to whom any person doth or shall stand charged in execution for any debt or damages recovered, his, her or their executors or administrators, may, after the death of the said party so charged and dying in execution, lawfully sue forth and have new execution against the goods and chattels, lands and tenements, or any of them, of the person so deceased, in such manner and form, to all

(a) A tax warrant issued and delivered to the collector before a *fi. fa.* is delivered to the sheriff, but not levied until after the levy under the *fi. fa.*, shall have priority over it. *Evans v. Walsh*, 12 Vr. 281. In the absence of a voluntary acceptance by a defendant in execution of the position of bailee to the sheriff or constable holding the writ of execution, there can be no valid levy unless the officer take actual possession of the goods, or assert such dominion over them as would make him a trespasser in the absence of the writ. *Nelson v. Van Gazelle Valve Manufacturing Co.*, 18 Stev. 594.

(b) An alias execution first delivered to the sheriff, is entitled to priority over an alias upon an older judgment delivered subsequently, as against land acquired by the defendant after the date of both judgments and before the issue of either alias. *Rammel v. Watson*, 2 Vr. 232. After judgment by default entered, execution issued and placed in the sheriff's hands, but before levy made, the defendants were allowed to come in and plead, and proceedings on the execution were stayed; and the execution against the defendants meanwhile came to the sheriff's hands, under which he sold defendant's property. The proceeds were ordered to be first applied in satisfaction of the

first judgment and execution. *Richards v. Morris Canal Co.*, *Spen*. 136. Where a subsequent execution gains priority through the laches or fraud of the first execution creditor. *Cook v. Wood*, 1 Har. 254. *Cumberland Bank v. Hann*, 4 Har. 167. *Williamson v. Johnston*, 7 Hal. 86. *Sterling v. Vancleve*, 7 Hal. 285.

(c) The goods of the defendant are bound, even against subsequent bona fide purchasers, unless sold under circumstances equivalent to a sale in market overt. *James v. Burnet*, *Spen*. 685. *Newell v. Sibley*, 1 South. *381. Upon levy made, title under the execution is good even as against subsequent bona fide purchasers. *Williamson v. N. J. Southern R. R. Co.*, 2 Stev. 333. See, also, *Coe v. N. J. Midland Railway Co.*, 4 Stev. 125.

(d) An alias ca. sa. may be issued against a defendant who, on his arrest under the original ca. sa., gave bond to the sheriff, under the insolvent debtors act, and was released from custody, and was afterwards refused a discharge under the insolvent law. In such case the plaintiff may sue on the bond, or have an alias ca. sa., or issue execution against goods or lands, or bring an action on the judgment. *David v. Blandell*, 11 Vr. 372, reversing 10 Vr. 612.

intents and purposes, as he, she or they, or any of them might have had by the laws of this state if such person so deceased and never been taken or charged in execution; *provided always*, that no person or persons, his, her or their executors or administrators, at whose suit or suits any party shall be in execution, and die in execution, shall have or take any new execution against the lands, tenements or hereditaments of such party so dying in execution, which shall, at any time after the judgment or judgments against such party so dying, and by reason whereof such party was taken or charged in execution, be by him or her sold, bona fide, for the payment of any of his or her creditors; and the money, which shall be paid for the lands so sold, either paid or secured to be paid to any of his or her creditors, with their privity and consent, in discharge of his, her or their debts, or of some part thereof, nor against any lands, tenements or hereditaments of such party so dying in execution, which shall have been sold by reason or any other judgment against him or her so dying in execution.

But such execution not to affect any estate bona fide sold for payment of debts.

VI. Discovery in aid of.

23. [Amended by Secs. 39 and 41, *post.*]

24. [Amended by Sec. 40, *post.*]

25. [Amended by Sec. 37, *post.*]

26. That when such examination of a judgment debtor or of witnesses shall be taken by a commissioner, it shall be certified to the judge making said order under the hand of said commissioner; and thereupon, after considering the evidence of said party and witnesses, taken before said commissioner, or by himself, it shall be lawful for said judge to make order appointing a receiver^(a) of the property and things in action belonging or due to or held in trust for such debtor as aforesaid, at the time of the issuing said execution, or at any time afterwards, who thereby shall receive authority to possess, receive, and if need be, in his own name as such receiver, sue for such property or things in action; and it shall be the duty of such receiver to apply the same in payment of the said judgment, and the costs of the proceedings thereon and the reasonable compensation of said receiver to be taxed by the judge, and to pay the rest into said court wherein said judgment was recovered or docketed, to be there disposed of according to law; and such judge shall order said judgment debtor to convey and deliver to such receiver all such property and rights in action and the evidence thereof; and said receiver shall be subject to the authority and orders of said court from time to time to be given, and shall on the fulfillment of his duties, or at other times when called upon, make report in writing to said court of his doings in the premises.

Examination certified to judge. *Ib.*, § 4.

Receiver.

Duty of receiver.

Order for conveyance.

(a) The allegations must be established by proof, but if there is any evidence, the decision of the judge appointing a receiver will not be reversed. *Journeay v. Brown*, 2 *Dutch*, 111. Equity will not interfere after the appointment of a receiver, where only questions of law are involved. *Newkirk v. Morris*, 1 *Beas.* 62. A *ca. sa.* cannot be issued while the proceedings are depending. *Bourne v. Seadey*, 1 *Wr.* 340. A receiver appointed under this act may file a bill in his own name to have the property discovered freed from claims and liens put upon it in favor of creditors. *Miller v. Mackenzie*, 2 *Stew.* 291. Before a receiver will be appointed, it must appear that the execution has been returned unsatisfied. It is not enough that the property levied on has been claimed by others and that the sale has been indefinitely adjourned. *Fennimore v. Brown*, 11 *N. J. L. J.* 23. If, upon an examination, it does not appear that the debtor has property or things in action which the receiver would be entitled to collect, a receiver will not be appointed. *Van Ness v. Bond*, 13 *N. J. L. J.* 85. A receiver appointed upon supplemental proceedings under the execution act, has, by virtue of such appointment merely, no interest in real estate held in trust for the judgment debtor. *Boid v. Dean*, 3 *Dick.* 193. Where an order for the examination of a judgment debtor has been duly served on the debtor, and he fails to appear for examination, the judgment creditor may proceed to examine witnesses, and an order appointing a receiver may be made on such examination without examining the judgment debtor. In such proceeding the judge cannot determine the rights of third persons in the property respecting which a receiver is applied for, but the receiver may institute action for the settlement of

such rights. If there be a disputed or contested right, a receiver should be appointed. *Collon v. Bigelow*, 12 *Wr.* 265. On the appointment of a receiver, the title to personal property, choses in action and equitable interests of the debtor passes to the receiver, in virtue of his appointment, without any formal assignment by the debtor. *Harrison v. Maxwell*, 15 *Wr.* 316. An order appointing a receiver, made upon a judgment against a debtor who has been discharged in bankruptcy after judgment recovered, will be set aside if the debt for which the judgment was entered was such as to be discharged by the debtor's discharge in bankruptcy. *Gibson v. Gorman*, 15 *Wr.* 325. An assignment of choses in action made by a defendant in execution after proceedings for discovery taken under the execution act, made to an assignee having notice of the proceedings, is void as against a receiver subsequently appointed. *Coleman v. Raff*, 16 *Wr.* 7. A receiver may maintain a bill to set aside assignments of mortgages if fraudulent, and to discover the debtor's property which is concealed. *Bergen v. Littell*, 14 *Stew.* 18. Where, at the time the receiver was appointed, the judgment debtor was executing a building contract, the work being unfinished and the payment under the contract not yet due, it was held that the execution act does not operate upon such an inchoate right and that the receiver acquired no title to the payment which subsequently became due. *Willson v. Salmon*, 18 *Stew.* 257. A receiver cannot interfere to an unreasonable extent or collect an unreasonable amount for the satisfaction of the judgment creditor's claim and the costs of proceedings. *Dickson v. Shay*, 18 *Stew.* 527. See, also, *Hackensack Savings Bank v. Terhune*, 5 *Dick.* 297.

Petition dismissed.
Ib., § 5.

Costs taxed.

Penalty for disobeying subpoena.
Ib., § 6.

Papers, when filed.
Ib., § 7.
Proceedings amended on certiorari.
P. L. 1855, p. 288.

Fees of commissioner.

27. That in case the judgment creditor shall not appear and examine the debtor at the time and place specified, or after examination of the party and witnesses, no such property or things in action shall be discovered, the petition of such judgment creditor shall be dismissed, with costs, to be taxed by said judge, which shall be allowed either party after the rates provided in actions at law; *provided*, that no attorney's fees shall be taxed or recoverable on either side.

28. That if any party or witness disobey any order of the judge, or any subpoena issued as above authorized, and duly served, and the fees of such witness paid, or refuse on attendance to answer and testify, such party or witness may be punished by the judge as for a contempt of the court whereof he is such judge.

29. That the petitions, orders, examinations and reports, made and taken as above provided, shall be filed with the clerk of the court whence the unsatisfied executions issued; and whenever a certiorari shall be brought to remove any of the proceedings, the court out of which the certiorari issued may amend the proceedings in matters of form, and shall give such judgment and make such order as the judge before whom the proceedings were had ought to have given or made.

30. That the commissioner shall, for every certificate under this act, be allowed the sum of fifty cents, and shall be allowed for taking examinations the same fees as are allowed in the court of chancery to masters and examiners in chancery for the like services.

VII. Sale under.

Advertisement of sale of goods.
P. L. 1858, p. 409,
§ 10.

31. That no sale of any goods or chattels shall be made by virtue of any execution, unless previous notice of the time and place of such intended sale shall have been given by the officer making the levy, by advertisements, signed by himself, and put up in three or more of the most public places in the township where they were taken, at least five days before the time appointed for sale.

VIII. Proceedings on claim of property.

On claim of property in writing, sheriff to adjourn and apply to a judge for a venire.
Ib., § 11.

How right tried.

Verdict shall protect sheriff.
Ib., § 12.

32. That in all cases where any sheriff shall by virtue of any writ of execution, issued out of any court in this state, levy on or take into his possession any goods or chattels, which shall be claimed by notice in writing, delivered to said sheriff, by any other person than the defendant, he shall, immediately upon such claim, delay his sale of the same for the space of ten days, that the said claimant may within the said term apply to one of the judges of the court of common pleas, in the county where the goods and chattels were so seized, for a venire to summon a jury of twelve men, to try the right of said claimant to said property; and it shall be lawful for such judge to issue the same, and direct a return thereof to be to him made, and to proceed therein as in other cases of trial by jury; but the claimant shall in all cases give at least eight days' previous notice in writing to the plaintiff or his attorney, of the time and place of the said trial; and either party shall be entitled to process of subpoena, out of the court from which such execution issued, to compel the attendance of witnesses; and the judge before whom such inquest may be held shall have power to adjourn, upon the application of either party, for a reasonable time, upon good cause shown for such adjournment. (a)

33. That the verdict of such jury shall be reduced to writing, and signed by the jury and judge before whom the matter shall be tried, and shall be filed in the office of the clerk of the court out of which the said execution issued; and the inquisition so taken shall protect the said sheriff from any action, for taking and seizing such property or delivery thereof to the

(a) The sheriff has authority to reject unlawful evidence. *Obart v. Jetson*, 2 Har. 78. See, also, *Harris v. Kirkpatrick*, 6 Vr. 392, 7 Vr. 526. *Cox v. Dunham*, 4 Hal. Ch. 594.

claimant; and if the said property shall be found to belong to the claimant, the sheriff shall proceed no further with the same; but if it shall be found to belong to the defendant, he shall proceed to dispose thereof as is directed in such process; and the costs attending such trial shall be taxed by the said judge as in other cases, and shall be paid by the plaintiff at whose suit the said property was taken and seized, if the claimant obtain a verdict in his favor, and by such claimant, if the verdict is found against him; *provided*, that if the plaintiff, upon notice being given to him as aforesaid, shall indemnify the sheriff against the command of the claimant, then he shall suspend any further proceedings therein, and proceed to sell. (a)

Costs, by whom paid.

Sheriff to sell, if indemnified.

IX. Supplements.

Supplement.

Approved March 27, 1878.

P. L. 1878, p. 182.

34. SEC. 1. That when any execution shall be issued against any town, township, borough or other municipal corporation of this state, by any court authorized to issue the same, upon any judgment against such town, township, borough or municipal corporation, whether upon a judgment recovered before the passage of this act or subsequent thereto, and there shall be no property belonging to such town, township, borough or other municipal corporation sufficient to satisfy the same whereon to levy, then the officer authorized to execute such process shall serve a copy of the same, not only on the collector of such town, township, borough or other municipal corporation, as is now required by law, but also upon the assessor thereof, who is by law required to assess the taxes in and for such town, township, borough or municipal corporation; and upon receipt of such copy of execution it shall be the duty of such assessor to assess and levy, in addition to the regular taxes, the amount due upon the said execution, with interest to the time when the same shall be paid to the officer serving such process, upon all the property within such town, township, borough, or other municipal corporation; and this tax shall be assessed and collected at the same time and in the same manner and under the same conditions, restrictions and regulations as taxes for other purposes are required to be assessed and collected in such town, township, borough or municipal corporation, and when collected shall be paid over to the officer serving the said process. (b)

Copy of execution issued against any municipal corporation to be served on the collector and assessor of such municipality.

Duty of the assessor on receipt of such copy.

Supplement.

Approved February 18, 1879.

P. L. 1879, p. 25.

35. SEC. 1. That the tenth section of the act to which this is a supplement, and which reads as follows, to wit [See Sec. 10, *ante*], be and the same is hereby amended so as to read as follows, to wit:

[That goods and chattels, shares of stock or interest in any corporation, and personal property of every kind, not exceeding in value (exclusive of wearing apparel) the sum of two hundred dollars, and all wearing apparel (c) the property of any debtor having a family residing in this state, (d) shall

What property exempt from seizure under execution.

(a) A sheriff holding an execution has no right, where the property levied on is claimed by a third party, to require a bond from the plaintiff executed by a surety, if the plaintiff himself is of unquestionable sufficiency. *Harrison v. Allen*, 11 Vr. 556. But, if the plaintiff fails to give ample indemnity after personal property has been levied on and claimed by a third party, the sheriff will not be amerced for neglecting or refusing to advertise and sell. *Weller v. Lanning*, 12 Vr. 477. Where a sheriff has taken an ample bond of indemnity from the plaintiff in execution he must look to the bond as security against the claim of third persons. *Adams v. Disston*, 15 Vr. 662.

(b) The execution must be served by the sheriff or officer authorized to serve legal process. A bailiff, with only a verbal appointment, is not such authorized officer. *Gabler v. Elizabeth*, 12 Vr. 318, 13 Vr. 79. Property used by a municipal corporation in the exercise of its functions of government cannot be taken in execution upon a judgment against the corporate body. The creditor may establish his claim by judgment, and it then becomes the duty of the proper officers to provide the means of payment out of the public revenues, which duty is enforceable by *mandamus*. *Lyon v. City of Elizabeth*, 14 Vr. 159. *Munday v. Rahway*, 14 Vr. 338, 15 Vr. 395. No *mandamus* will be allowed to compel commissioners of taxation appointed

under the act of March 20th, 1884 (P. L. 1884, p. 84), to levy a tax for the payment of a judgment. *Thompson v. Wiley*, 17 Vr. 476. A writ of *mandamus* served on the assessors of taxes after their duties were completed for the year will not be quashed, but the time for its return will be extended. *Brown v. Rahway*, 22 Vr. 279.

(c) A lace shawl is wearing apparel and exempt from execution—rings and jewelry are not. *Frazier v. Barnum*, 4 C. E. Gr. 316.

(d) If the family reside here, the goods of an absconding debtor are exempt. *Bennell v. Dunn*, 5 *Dutch*, 435. On a judgment against a married woman, a sheriff seized her chattels. She was living with her husband, who was insolvent and contributed but little to the family's support, and she had for several years almost entirely maintained him and her children. *Held*, that her right to claim exemption as "a debtor having a family residing in this state" not being clear, she was not entitled to an injunction restraining the sheriff from selling the chattels which she claimed were exempt. *Muir v. Howell*, 10 *Stev.* 39. A mother living with her married daughter and the daughter's husband, the daughter being a minor, is not the head of the family, especially when the mother has no more means than the son-in-law. *Briggs v. Bell*, 8 *N. J. L. J.* 251.

EXECUTIONS.

be reserved, as well after as before the death of the debtor, for the use of his family, and shall not be liable to be seized or taken by virtue of any execution or civil process whatever, issued out of any court of this state, except the same be issued on a judgment founded on a contract made before the fourteenth of March, one thousand eight hundred and fifty-one; *provided*, that nothing herein contained shall be deemed or held to protect from sale, under execution or other process, any goods, chattels or property, for the purchase whereof the debt or demand for which the judgment on which such execution or process was issued, shall have been contracted; (a) or to apply to process issued for the collection of taxes.] [See Sec. 42, *post.*]

Proviso.

Supplement.

Approved March 7, 1881.

P. L. 1881, p. 80.

Executions
against school
districts, how
served.

36. SEC. 1. That when any execution shall be issued against any school district of this state, or against the trustees of any such school district as a body corporate representing such school district, by any court authorized to issue the same, whether upon a judgment recovered before or subsequent to the passing of this act, and there shall be no property belonging to said school district or body corporate sufficient to satisfy the same liable to be levied on, then the officer authorized to execute such process shall serve a copy of the same upon the assessor or assessors of the township or townships in which said school district is situate, and also upon the collector or collectors of such township or townships; and upon receipt of such copy or copies, it shall be the duty of such assessor or assessors, at the time of the next regular assessment of school taxes in such school district, to assess and levy in addition to said regular school taxes, the amount due upon said execution, with interest to the time when the same shall be paid to the officer serving such process, upon the inhabitants of said school district and their estates, and upon the taxable property therein; and this tax shall be assessed and collected at the same time and in the same manner and under the same conditions, restrictions and regulations upon the assessor or assessors, collector or collectors as other taxes for school purposes are required to be assessed and collected in such school district; and the amount of this tax when collected shall be a separate fund, and shall be paid over by the collector of the township in which such school district shall be situate, or if such school district be situate in two or more townships then by the collector of that township in which the fraction of the school district containing the school-house is situate, to the officer serving the process.

Assessor to assess
and levy amount
due upon execu-
tion upon inhabi-
tants, &c., of
school district.

Tax, how assessed
and collected, and
to whom paid.

Supplement.

Approved March 22, 1882.

P. L. 1882, p. 154.

37. SEC. 1. That section twenty-five of the act to which this is a supplement be and the same is hereby amended to read as follows:

[Witnesses may be required to appear and testify concerning said matters, by either party, by process of subpoena ad testificandum, issued out of the court wherein such judgment shall be recovered or docketed, and the defendant or defendants to any judgment shall be entitled to be represented by counsel at any examination under this act, and cross-examine any witnesses sworn and examined, and the judge or commissioner may adjourn the examination from time to time, at the instance of either party, as may be needful.] (b)

Witnesses re-
quired to testify
on discovery
proceedings.

Defendant may
have counsel.

Repealer.

38. 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.

(a) The articles must have been purchased with the purpose of defrauding the plaintiff, or the credit therefor obtained by false or fraudulent representations. *Stoutenburgh v. Konkie*, 2 *McCurt.* 33. On a judgment and execution obtained by the payee against the maker of a note given in part payment of the price of a horse, the horse was levied on in the hands of the maker of the note. *Held*, that the maker of the note could not claim the horse as exempt from execution, although he pointed out to

the officer other chattels which he said he owned, and which he requested the officer to levy upon. *Neary v. Hinckley*, 4 *N. J. L. J.* 121.

(b) If under an order for discovery in aid of execution an examination of witnesses be had without personal notice to the defendant, the proceedings will be set aside as irregular. *Shannon v. McMurtrie*, 19 *Vr.* 427.

Supplement.

Approved March 17, 1887. P. L. 1887, p. 26.

39. SEC. 1. [This section, amending Sec. 23, *ante*, is amended by Sec. 41, *post*.]

Supplement.

Approved April 7, 1890.

P. L. 1890, p. 185.

40. SEC. 1. That section twenty-four of the act to which this is a supplement be and the same is hereby amended so as to read as follows :

[That the judgment creditor, before he shall be granted such order, shall present to said judge a petition, verified by the oath of such creditor, his agent or attorney, (*a*) in which he shall state the amount due on said execution, the return made thereon by the officer to whom it was issued, and his belief that said judgment debtor hath property or money, or things in action due to him, or held in trust for him, where the trust has been created by or the fund held in trust has proceeded from himself (*b*) over and above such property as is or may be reserved by law, to an amount exceeding fifty dollars, on presentation whereof said order shall be made ; and the said judge shall further, on allegation in said petition, or in one supplementary thereto, and proof by the oath of the party, or any other person, of facts and circumstances, showing that any person owes the said debtor otherwise than for his labor or personal services, (*c*) or the labor or personal services of any member or members of his family, or holds money or property in possession or action in trust for him, or for his use as aforesaid, make order forbidding the payment of such debt, or the transfer of said property or money by or to the said debtor, or any third person, until further order to be by him made ; affidavits verifying said petitions, may be taken before any officer authorized by law to administer oaths ; and if any person, in any affidavit or examination taken under this act, shall willfully and corruptly swear falsely, he shall be deemed guilty of perjury.] [See Sec. 43, *post*.]

Proceedings to obtain order for discovery.

Injunction.

False swearing, perjury.

Supplement.

Approved March 27, 1893.

P. L. 1893, p. 450.

41. SEC. 1. That section twenty-three of the act to which this is a supplement [see Secs. 23 and 39, *ante*] be and the same is hereby amended so as to read as follows :

[That when an execution against the property of any debtor, individual, corporation, (*d*) unincorporated company or voluntary association, upon a judgment recovered or docketed in the supreme court, or in the circuit court, or court of common pleas in and for any county in this state, or which now is or hereafter shall be docketed in the court of common pleas from any of the courts for the trial of small causes in this state, or from any of the district courts in any of the cities in this state, shall be returned by the officer to whom it is delivered unsatisfied, in whole or in part, it shall be lawful for any judge of the court out of which said execution issued in term time or vacation, on application by the judgment creditor in manner hereinafter provided, to make order requiring the judgment debtor to appear and make discovery, on oath, concerning his, its or their property and things in action, before such judge or a supreme court com-

Order for discovery if execution returned unsatisfied.

(*a*) An execution returned in the manner pointed out by section 23 (now amended by section 41), and a petition in compliance with the requirements of section 24 (now amended by section 40), are the jurisdictional facts upon which the power to make an order for discovery rests. Service of the order may be made beyond the jurisdiction of the court, and even out of the state. *Seyfert v. Edison*, 18 Vr. 428. Prior to the amendment of section 24 by section 40, the petition by the plaintiff's agent was not authorized. *Westfall v. Dunning*, 21 Vr. 459.

(*b*) Where the trust has proceeded from any person other than the debtor himself, it is exempt. *Frazier v. McWilliams*, 4 C. E. Gr. 317. Accumulations of interest upon a fund held by a trustee which has not proceeded from the debtor cannot be reached by the debtor's judgment creditors under supplementary proceedings taken under the execution act. *Hardenburgh v. Blair*, 3 Stew. 646. Where a fund is given to executors to keep invested and pay over the interest to a legatee during his life, a trust is created and the income of such fund cannot be

reached by a judgment creditor of the legatee by supplementary proceedings. *Linn v. Davis*, 18 N. J. L. J. 207. Where the income of such trust fund exceeds \$4,000, see Sec. 43, *post*.

(*c*) A receiver appointed under the provisions of the execution act is not entitled to wages due to the defendant in execution for his personal services. *Howell v. McDowell*, 18 Vr. 359. A receiver will not be appointed for moneys due to a physician for his professional services, as they are included in the exception of moneys owing to the debtor for his "labor or personal services." *Fennimore v. Brown*, 11 N. J. L. J. 23.

(*d*) Prior to the amendment of this section by the act of 1893, the property of a corporation being a judgment debtor could not be reached under supplementary proceedings taken under the execution act. *Conner v. Todd*, 19 Vr. 361. In a proceeding for a discovery under this statute it is not a necessary prerequisite that an execution *de bonis et terris* shall have been issued ; a *fi. fa.* against personalty alone will suffice. *Westfall v. Dunning*, 21 Vr. 459.

missioner, to be designated in said order, at a time and place in said order specified; *provided, nevertheless*, that no such order shall be made when the amount due on such judgment shall be less than twenty-five dollars.]

Proviso.

Supplement.

P. L. 1895, p. 597.

Approved March 22, 1895.

Certain household goods and furniture exempted from seizure in attachment proceedings.

42. SEC. 1. That the household goods and furniture of every kind, not exceeding in value the sum of two hundred dollars, of any absconding debtor having a family residing in this state, shall be reserved for the use of his family, and shall not be liable to be seized or taken by virtue of any writ of attachment or civil process whatever issued out of any court of this state, except the said writ of attachment shall have been issued on a debt or demand for which said household goods shall have been sold and delivered; *provided*, that nothing herein contained shall be deemed to apply to process issued for the collection of taxes.

Proviso.

A supplement to an act entitled "An act to prevent fraudulent trusts and assignments," approved March seventh, one thousand eight hundred and fifty.(1)

P. L. 1880, p. 274.

Approved March 12, 1880.

When provisions of act to apply to income of property held in trust for debtor.

43. SEC. 1. That the provisions of the act to which this is a supplement, and of all supplements thereto, shall apply to the income of all property, or money or things in action held in trust for the debtor, where the trust has been created by, or the fund held in trust has proceeded from, some other person than the debtor himself; *provided*, the income of such trust property shall exceed four thousand dollars.

Proviso.

An act respecting executions.

P. L. 1894, p. 22.

Passed March 21, 1894.

When execution is satisfied, clerk shall cancel the judgment.

44. SEC. 1. That when an execution against the property of any debtor, upon a judgment, recovered or docketed in the supreme court, or in the circuit court, or court of common pleas for any county of this state, or which now is or hereafter shall be docketed in the court of common pleas from any of the courts for the trial of small causes or district courts of any city of this state, shall be returned by the officer to whom it is delivered, satisfied, it shall be the duty of the clerk of the court out of which such execution issued to enter on the margin of record of the judgment for which execution issued, the following: "canceled by execution returned, satisfied," and to sign his name thereto.

Clerk's fee on canceling judgment.

45. SEC. 2. That the clerk of the court who shall enter such cancellation as aforesaid shall receive for such service the sum of twenty cents to be paid by the officer returning such execution, which sum of twenty cents shall be taxed by the officer aforesaid as part of the execution fees.

Clerk required to cancel judgment on request of interested party.

46. SEC. 3. That it shall also be the duty of the clerk aforesaid, upon request of any person interested in any judgment entered in any of the said courts, upon which an execution has heretofore been returned, satisfied, upon receipt of said fee, to enter a cancellation on the record of such judgment as above mentioned.

(1) The act entitled "An act to prevent fraudulent trusts and assignments," approved March 7th, 1850, may be found in Nix. Dig. (Ed. 1868), p. 297, which act is now embodied in sections 23 to 28, *ante*, of the act entitled "An act respecting executions," approved March 27th, 1874.