

Set-Off.

1. What demands may be set off.
2. Defendants to plead or give notice of.
3. Plaintiff to recover only balance due.
4. Defendant to have judgment, when. Remedy on such judgment.

An act concerning set-off.

Revision—Approved March 27, 1874.

R. S. 801.

1. That if any two or more persons be indebted to each other, such debts or demands not being for unliquidated damages, may be set off against each other; and if one of such debtors, or his executors or administrators shall commence an action against the other, his executors or administrators, in any court of this state it shall be lawful for the defendant at the trial, to set off as against the plaintiff, the debts or demands which may be due and owing to him as aforesaid; and any defendant failing to set off such debts or demands, shall thereafter be precluded from bringing any action for such debt or demand which might have been set off by virtue of this act. (a)

What demands may be set off.
R. S. 801, § 11.
Amended.

Such debts shall be set off or the defendant barred.

2. That defendant in any such action, in order to avail himself of such set-off, shall plead the same, or give notice thereof in writing, annexed to the plea by him filed in the action.

Defendant shall plead or give notice of his set-off.
Ib., § 11.

3. That if on the trial it shall appear that there is any debt or demand as aforesaid, due and owing to the defendant, but that the same is not equal in amount to the amount which shall be due to the plaintiff, on his cause of action, it shall be the duty of the jury to allow, and set off so much as shall be found to be due and owing to such defendant, against the claim of the plaintiff, and to find a verdict for the balance; upon which the plaintiff shall have judgment and execution, as in other cases.

Plaintiff shall recover only balance due him.
Ib., § 13.

4. That if on the trial, the amount found to be due to the defendant on his set-off, shall equal, or exceed the amount found to be due to the plaintiff on his cause of action, the defendant shall be entitled to a verdict and judgment; which verdict and judgment shall, in case of such excess, be for the amount or balance, which shall appear to be due to the defendant on the adjustment and allowance of the debts and demands of the parties under this act; and upon such judgment, the defendant may have an action of debt, or a scire facias, or may issue execution thereon, as in other cases; unless the plaintiff is suing in his representative capacity, as executor or administrator, in which case the sum so found to be due the defendant, shall be deemed a debt of record, to be paid in the course of administration.

If amount due defendant shall equal or exceed plaintiff's demand, the defendant shall have judgment.
Ib., § 14.
Remedy on such judgment.

(a) If in an action where a set-off is pleaded, the plaintiff be non-suited at the trial, the defendant is not precluded thereafter from maintaining an action upon the demand which he had interposed as a set-off. *Chapin-Hall Lumber Co. v. Dalrymple*, 24 Vr. 267. As to a set-off against an insolvent estate, see *Crisp*

v. Dunn, 27 Vr. 355. Set-off of an individual debt cannot be pleaded by one of two joint and several makers of a promissory note to an action against both makers under section 29 of the practice act. *Potts v. Barlow et al.*, 18 N. J. L. J. 246.

Sheriffs.

1. Who eligible to office of sheriff.
2. How to give bond.
3. Form of official oath.
4. Certificate of judges to governor.
5. When sheriff authorized to act.
6. Date of commission and official term.
7. Until sheriff qualified, coroner to act.
8. Sheriff not to act till qualified.
9. Office, when to be deemed vacant.
10. Penalty for presuming to act without giving bond.
11. Governor may order prosecution of bond.
12. Of suit and judgment on bond.
13. Sheriff and sureties, when not discharged from liability.
14. Amended by sections 53 and 58.
15. To receive prisoners.
16. Who may be let out on giving bail.
17. Returns of process, how made.
18. Duty as to prisoners in custody.
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23. Elisors, their powers and fees.
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27. Prisoners for debt, &c., to be safely kept.
28. So if in custody on process from chancery.
29. Retaking, &c., must be pleaded, and oath necessary.
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31. When prisoners to be remanded on *habeas corpus*.
32. Sheriff to keep account of moneys paid out under jury act.
33. To receive prisoners committed under authority of the United States.
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44. Acts of under-sheriff before filing bond void.
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47. When evidence of failure to renew bond admissible.
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51. Sale of goods, lands, &c., remaining unsold after sheriff's term has expired, how conducted.
52. Repealer.
53. Amended by section 58.
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55. Provision for executing writs in sheriff's hands at time of his death, &c.
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57. Fees to former sheriff to be taxed and collected.
58. Custody of jails and prisoners.
59. Bonds taken by sheriffs to be recorded and to have effect of recognizances.
60. When court may order discharge to be entered.
61. When sheriff may cancel record of bond, &c.
62. Sheriffs in second-class counties to transport to county work-house persons sentenced thereto. Fees for transportation.
63. Repealer.

An act concerning sheriffs.

Approved March 15, 1876.

P. L. 1876, p. 33.

Who eligible to the office of sheriff.
R. S. 833, § 1.

Sheriff to give bond.

Judges to attend and approve sureties.
Id., § 2.
Amended.

Form of bond.

1. That no person shall be sheriff of any county in this state unless he shall have been a citizen of this state and an inhabitant of such county for at least three years next preceding his election. (a)

2. That the judges of the courts of common pleas in the several counties of this state shall meet at the office of the clerk of the said court, in their respective counties, on the first Tuesday after the close of the annual election of members of the general assembly, on the penalty of fifty dollars for each defaulter, to be sued for and recovered by the collector of the said county, and applied to the use of the same; at which time and place the sheriff for the time being or sheriff-elect, as the case may be, of the same county is hereby required and enjoined to attend with the certificate of his election and not less than five sufficient sureties, being freeholders and residents in the same county, to be approved of by the judges then met, or the major part of them, and then and there, before the said judges, with such approved sureties, shall enter into bond for the faithful execution of his office in the sum of twenty thousand dollars, or in such greater sum not exceeding fifty thousand dollars as the said judges, or the major part of them, may order, which bond shall be in the form following, to wit:

"Know all men by these presents, that we, A. B., C. D., E. F., G. H., I. K., and L. M., all of the county of _____, are held and firmly bound to the state of New Jersey in the sum of _____ thousand dollars, to be paid to the said state, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals; dated this _____ day of _____ in the year of our Lord _____; the condition of the above obligation is such, that if the above-bounden A. B. shall well and truly execute the office of sheriff of the county of _____, and in all things touching his said office shall well and truly, justly and faithfully perform and execute the same as well with respect to all persons concerned (b) as to the state aforesaid, then this obligation to be void, or else to be and remain in full force and virtue; signed, sealed and delivered in the presence of, and approved by us,

A. B.,
C. D.,
E. F., &c., } judges of the pleas in and for the county of _____," to the

execution of which bond, the said judges, then present shall be subscribing

(a) A commission affords no proof that the person elected was qualified according to law. *State v. Anderson, Case 318*. His commission does not authorize the court to presume that he was eligible. *State v. Anderson, Case 326*. When properly

called on by the court, it is incumbent on the sheriff to prove that he was eligible. *Ib.*
(b) This includes the assignee or equitable owner of any judgment or execution. *State v. Smith, 3 Gr. 81*.

witnesses ; and the said bond so as aforesaid executed by the said sheriff or sheriff-elect and his sureties, and approved of in the manner before prescribed shall be filed and securely kept in the office of the clerk of the court of common pleas, in and for the same county. (a)

Bond to be filed
in clerk's office.

3. That every sheriff-elect after having entered into bond as aforesaid, shall take and subscribe before the said judges, an oath or affirmation in the words following, to wit : " I do solemnly swear (or affirm), that I will well and truly serve the state of New Jersey in the office of sheriff of the county of ——— ; that I will in no case knowingly use or exercise the office of sheriff illegally, corruptly or unjustly ; that I will neither directly or indirectly by any means or device, or under any color or pretense whatsoever, accept, receive, take, use, or enjoy, or consent to the accepting, receiving, taking, using or enjoying, any fee or reward of or from any person or persons whomsoever, for summoning, impaneling, or returning any inquest, jury or tales, other than such fees or rewards as are or shall be allowed by law ; that I will not directly or indirectly exact, demand, or receive any manner of fee or reward from any person or persons, for serving, executing, or returning any writ, precept, process, or execution, or for performing any other service, act, or duty in my said office, other than such fees or reward as are or shall be allowed for the same by law ; that I will not neglect, refuse, or delay to serve and return any writ, precept, or execution, to me directed and delivered, and to make sale of property by me levied upon and seized by virtue of any writ or execution, for any gift, promise, reward, or favor ; that I will do no wrong to any person, for any gift, reward or promise, nor for favor or hatred ; that I will do right to all persons in all things belonging to my office ; that I will truly, faithfully and impartially and with all convenient speed, summon, impanel and return, or cause to be summoned, impaneled and returned, good and lawful men for jurors, able and sufficient and not suspected or procured, as is or shall be directed by law ; that I will to the utmost of my power duly, faithfully, and with all convenient speed, execute, or cause to be executed all writs, processes, precepts, and executions to me directed, and which shall come to my hands, and will faithfully and truly return the same, according to the best of my skill and understanding ; and that I will truly and honestly, without fraud or deceit, do, execute, and perform all services, acts, and duties of my said office, according to the best of my judgment, skill, and power ;" and such oath or affirmation in writing, subscribed as aforesaid and attested by the said judges or a major part of them, shall be filed and securely kept in the office of the clerk of the court of common pleas, in and for the same county.

Sheriff to subscribe
oath.
Ib., § 3.
Form of oath.

4. That the said judges, after having taken the bond and administered the oath or affirmation of office as aforesaid, shall deliver to every sheriff-elect a certificate thereof, under their hands and seals, directed to the governor of the state in the form following : " This day personally appeared before us the subscribers, judges of the court of common pleas in and for the county of ———, A. B. and executed a bond to the state of New Jersey, with sufficient sureties by us approved, for the faithful execution of the office of sheriff of the said county of ———, and subscribed the oath of office, in due form of law ; given under our hands and seals, the ——— day of ———, in the year of our Lord ——— ;" which certificate shall be annexed to the certificate of election aforesaid and by the said judges delivered to the sheriff-elect, to be by him transmitted to the governor, in order to be commissioned ; and the said judges then present, shall for their services aforesaid, be severally entitled to the sum of one dollar and fifty cents, which the collector of the county is hereby authorized and required to pay out of any public moneys he may have in his hands.

Oath to be filed
by clerk.
Ib., § 4.

Judges to make
certificate to the
governor.
Ib., § 5.

Form of certifi-
cate.

5. That every sheriff shall, on receipt of such certificate of his having given bond and taken the oath of office as aforesaid, be and he is hereby authorized to act in and execute his office of sheriff, before receiving his

Sheriff then
authorized to
act
Ib., § 6.

(a) The failure of the sheriff to renew his bond within the time prescribed by law does not, *per se*, vacate his office. *Clark v. Ennis*, 16 Vr. 69.

commission, for the space of one month and no longer, as fully to all intents and purposes as he will be after he has received his commission.

Date of commission and expiration of office.
Ib., § 7.
Amended.

6. That the commission of every sheriff elected at any general election shall bear date and take effect on the Wednesday after the first Tuesday succeeding such general election, and his term of office shall expire on the first Tuesday after the third succeeding general election.

Until sheriff qualified, coroners to act.
Ib., § 8.

7. That until the sheriff-elect shall enter into bond and take the oath of office as aforesaid, the coroner or coroners last elected shall serve and execute all writs and process directed to the said sheriff.

Sheriff not to act till qualified.
Ib., § 9.

8. That if any sheriff-elect shall presume to execute the office of sheriff before he shall have given bond and taken the oath of office, agreeably to the directions of this act, then all such his acts and proceedings done under color of office shall be absolutely void, and he shall for such offense be liable to be indicted for a misdemeanor, and on conviction fined in any sum not exceeding two thousand dollars.

Office, when to be deemed vacant.
Ib., § 10.
Amended.

9. That if any person who shall have been elected to the office of sheriff shall neglect, refuse or be unable to give bond with sureties as aforesaid, or shall refuse to take the oath of office, agreeably to the directions of this act, at the times herein limited, then such office shall be deemed and taken to be vacant and such vacancy shall be supplied in the manner hereinafter prescribed.

Penalty for presuming to act without giving bond.

10. That if any sheriff for the time being of any county shall neglect, refuse or be unable to give bond with sureties as aforesaid, agreeably to the directions of this act, at the time or times herein limited, the office of such sheriff shall immediately expire and shall be deemed and taken to be vacant; and if such sheriff shall thereafter presume to execute the office of sheriff, then all such his acts and proceedings done under color of office shall be absolutely void, and he shall for such offense be liable to be indicted for a misdemeanor, and on conviction fined in any sum not exceeding two thousand dollars.

Governor may order prosecution of sheriff's bond.
R. S. 833, § 11.

11. That it shall and may be lawful for the governor, or person administering the government, upon application made in writing by any person, his legal representative or attorney, who may be aggrieved, or suppose himself to be aggrieved, by the neglect, default, malpractice or misconduct of any sheriff in his office, to order a prosecution to be commenced upon the proper bond given, or to be given, by such sheriff and his sureties, and to be carried into effect at the costs and charges of the applicant. (a)

Of suits and judgments on sheriffs' bonds.
Ib., § 12.

12. That all suits upon bonds given by sheriffs and their sureties in manner aforesaid, shall be instituted in the supreme court and not elsewhere; and when judgment shall be obtained upon any such bond the

(a) A sheriff's sureties for one year are not liable for money raised by him in that year, on an execution of another year. *State v. Hardenburgh, Pen. *355*. Where the sheriff made a levy between the time of the delivery of the execution and the expiration of his term, but did not return the writ until after his re-election—*Held*, that those who were his bondsmen when he began the execution of the writ are liable for all subsequent defaults in relation thereto. *State v. Hamilton, 1 Har. 153, 156*. If the breach charged consisted in not levying at the time when the execution was delivered, it should be shown that the neglect was after the execution of the bond; and also that the defendant in execution then had lands or goods whereon the levy might have been made. *State v. Roberts, 7 Hal. 114*. If an execution is delivered to a sheriff four days before his term of office expires, and he has the means and opportunity of levying it upon the property of the defendant, and omits to do so to the prejudice of the plaintiff, he thereby renders himself and his sureties responsible. *Ib.* A sheriff who levies *à. fa.* on the estate, real or personal, of a defendant, is to finish the execution of the writ, although his term of office afterwards expires; and if he neglects so to do, or if having afterwards made sale, he refuses or neglects to pay over the moneys, his sureties in the official bond in force at the time he received the execution will be responsible. *Ib.* If an execution remains in the hands of a sheriff wholly unexecuted, until by a new election he is again charged with the office, it becomes his duty to execute the writ and make due return; and an omission to perform such duty will constitute a breach of his official bond. *Ib.* A breach of duty by a sheriff in wholly neglecting to execute an execution does not necessarily preclude or prevent the occurrence of a subsequent breach of duty by his successor, into whose hands the writ may come unexecuted, in neglecting to execute it; nor by the same person holding the office of sheriff under a new election. *Ib.* Where a sheriff, having an execution against the goods and chattels of one person, levies upon and sells the goods of another, it is not a breach of the condition of his official bond, and does not make his sureties liable to the party whose property is taken. *State v. Conover, 4 Dutch. 224*. If an officer seize

the property of a person not named in the writ it is not an official act done by virtue of his office, but unofficial, and done by color of the office. *Ib.* A sheriff's bond may be put in suit at the instance of the assignee or equitable owner of any judgment or execution. *State v. Smith, 3 Gr. 85*. But not by a party injured by a tort of the sheriff. *State v. Conover, 4 Dutch. 224*. Where it is assigned as a breach that A. and B. recovered a judgment in the name of C. against D. for damages sustained by C., and it is then alleged that the promises made by D. to C., the judgment recovered by the latter against the former and the execution issued thereon were for the use, &c., of A. and B.—*Held*, that the pleading is unintelligible, for there can be no record of a recovery at law by A. and B. in the name of C. *State v. Smith, 3 Gr. 84, 86*. There may be a recovery by C. for the use of A. and B., and if such be the case the facts should be so pleaded that the sheriff may put either of them in issue. *State v. Smith, 3 Gr. 87*. *Held*, also, that it is double pleading, inasmuch as there is first an averment that A. and B. recovered in the name of C., and afterwards another that the promises on which the action was brought, judgment recovered and execution issued, were for the use, &c., of A. and B. *Ib.* It is not necessary to assign breaches on the record after a judgment by default on a sheriff's bond. *State v. Edsall, 5 Hal. 190*. A notice to assess damages upon a judgment entered upon a sheriff's bond is properly served upon the sheriff and his sureties, and need not be served upon the attorney who appeared for the defendants in the suit on the bond. *Ib.* Although more than a year and a day have elapsed since an amercement was entered, no *scire facias* is necessary, since the notice of the motion takes its place. *State v. Hamilton, 1 Har. 153*. The motion for assessment is a summary proceeding admitting all the defenses which may be pleaded by the sheriff in bar of execution if a *scire facias* had been issued. *Ib.* On such motion the court cannot go back of the amercement. *State v. Hamilton, 1 Har. 157*. Applications for assessments on a sheriff's bond are limited to six years. *State v. Hardenburgh, Pen. *355*. See *Knowlton v. Bead, 6 Hal. 320*.

said court shall direct so much money to be levied on such judgment as shall be sufficient to satisfy the party aggrieved for his debt or damages, with costs, to be paid to the said party and upon the satisfaction of such debt, damages and costs such judgment may be satisfied of record; *provided*, there be no application to said court for relief thereon then pending; and if after judgment obtained upon such bond and before the same be actually satisfied of record, any other party aggrieved by the neglect, default, malpractice or misconduct of such sheriff in his office shall apply to the supreme court for relief, the said court shall direct such further sum to be levied thereon as shall be sufficient to satisfy such party for his debt or damages, with costs, and so on as often as application shall be made by parties aggrieved; and such judgment shall not be satisfied or discharged of record so long as any application to said court for relief thereon be pending in said court.

Proviso.

13. That neither the obtaining of a judgment, as provided for in the preceding section, nor the satisfaction thereof, nor any proceedings thereon, shall operate or have the effect to discharge any sheriff or his sureties, or any or either of them, from liability on any bond upon which suit shall be or shall have been brought, but fresh suit may be instituted thereon, in manner aforesaid, as often as circumstances require, the same as if judgment had not been obtained thereon and the same satisfied of record; *provided*, that the sureties in any sheriff's bond shall not be charged by virtue of this act beyond the sum contained in such bond.

Sheriff or his sureties not to be discharged from liability on any bond upon which suit is brought.

14. [Amended by Secs. 53 and 58, *post*.]

15. That it shall be the duty of sheriffs and jailers to receive from constables and other officers all persons who shall be apprehended by such constables or officers for offenses against this state; and if any sheriff or jailer refuse to receive any such offenders, he shall be adjudged to be guilty of a misdemeanor, and, on conviction, shall be fined at the discretion of the court.

To receive prisoners. *Ib.*, § 14.

16. That every sheriff, under-sheriff, coroner, jailer and other officer, shall let out of prison all persons who are or shall be arrested by them or any of them, or be in their or any of their custody, by virtue of any writ, process or warrant, in any personal action or by reason of any indictment for trespass, upon reasonable sureties of competent persons, having sufficient within the counties where such persons shall be so let to bail, to appear at such day and place as the said writ, process or warrant shall require, except such person or persons as are or shall be in custody or prison by condemnation, execution, surety of the peace, or special command of any court of justice; and that no sheriff, nor any of the officers or ministers aforesaid, shall take or make, or cause to be taken or made, any obligation for any cause aforesaid, or by color of his or their office, of any person, or by any person who shall be in his or their custody or prison by course of law, but only to themselves respectively, and by the name of their office, and upon condition written, that the said prisoner shall appear at the day and place mentioned and contained in said writ, process or warrant; and if any sheriff or other officer, or minister aforesaid, return upon any person, that he hath taken the body, or that such person hath surrendered himself or herself, such sheriff or other officer or minister shall be chargeable to have the body of such person, at the day of the return of the said writ, process or warrant, in such form as he or they were before the making of this act. (*a*)

Who may be let out on giving bail. *Ib.*, § 15.

Form and condition of bail bond.

17. That sheriffs and other officers, whose duty it is or shall be to make return of any writ or process, shall put their own names to the return of such writ or process, so that the court may know of whom they receive such return; and any sheriff or other officer, who shall not sign such return shall be amerced, and also answer damages to the party. (*b*)

Returns of process, how made. *Ib.*, § 17.

(*a*) Where a sheriff, *colore officii*, takes a bond for the performance of matters not authorized by the statute, the bond is void. *Allen v. Smith*, 32 *Gr.* 43. See *Griggs v. Drake*, 1 *Zab.* 169. An action for a rescue can only be brought by the sheriff. *Brewster v. Vail*, 56 *Sp.* 58.

(*b*) The return must be proved by the person in whose handwriting it appears to be. *Den, Lee v. Ewaul, Cox* 233. *Browning v. Flanagin*, 2 *Zab.* 567.

Duty of sheriff and other officers in regard to prisoners in custody.
Ib., § 18.

18. That no sheriff, under-sheriff, coroner, or officer or minister, shall convey or carry or cause to be conveyed or carried any person or persons, by him or them arrested, or being in his or their custody, by virtue or color of any writ, process, or warrant, to any tavern, ale-house, or other public victualing or drinking-house, without the free and voluntary consent of the person or persons so arrested or in custody; nor charge any such person or persons with any sum of money for wine, brandy, rum, gin, spirits, ale, cider, beer, victuals, or any other liquor or things whatsoever, except what he, she, or they shall call for of his, her or their own free accord; nor shall cause or procure him, her or them to call or pay for any such liquor, victuals, or thing except what he, she, or they shall particularly and freely ask for; nor shall demand, take, or receive, or cause to be demanded, taken, or received, directly or indirectly, any other or greater sum or sums of money than is or shall be by law allowed to be taken or demanded for such arrest, taking and detaining, or waiting until the person or persons so arrested or in custody, shall have given an appearance or bail, as the case may require or agreed with the person or persons at whose suit or prosecution he, she, or they shall be taken or arrested, or until he, she, or they shall be sent to the proper jail of the county or place where such arrest or taking shall be; nor shall exact or take any reward, gratuity, or money for keeping the person or persons so arrested or in custody out of jail or prison; nor shall take or receive any other or greater sum or sums for one or more nights' lodging or day's diet or other expenses, than what is or shall be allowed by law.

Privileges allowed prisoners.
Ib., § 19.

19. That every sheriff, under-sheriff, jailer, keeper of any prison or jail or other person or persons whomsoever, to whose custody or keeping any person or persons so arrested or taken shall be committed by virtue of any writ or process, or on any pretense whatsoever, shall permit and suffer him, her, or them so arrested or taken, at his, her or their will and pleasure to send for and have any victuals or necessary drink or food from what place and whom they please, and also to have and use such bedding, linen, and other things, as he, she or they shall think fit, without purloining or detaining the same, or any part thereof, or enforcing or requiring him, her, or them to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her, or them in using thereof or relating thereto.

Debtors and criminals to be kept separate.
Ib., § 20.

20. That it shall not be lawful for any sheriff, jailer or keeper of any jail to confine or keep debtors and criminals together in the same room or chamber, but they shall be confined and kept separate and apart from each other in distinct rooms.

Penalty for violating three preceding sections.
Ib., § 21.

21. That if any sheriff, under-sheriff, coroner, jailer or other officer, or minister aforesaid, shall offend against the three clauses or sections immediately preceding, or any of them, or any part thereof, every such offender shall, besides being punished on conviction for a misdemeanor, forfeit and pay double damages to the party aggrieved, to be recovered, with costs, by action of debt in any court having cognizance thereof.

For what causes sheriff may be amerced.
Ib., § 22.

22. That if any sheriff or coroner shall neglect or refuse to execute any writ of execution to him directed, and which hath or shall come to his hands, or, where the execution shall be by fieri facias, shall neglect to file a just and true inventory of the goods and chattels, lands and tenements, so taken in execution, unless such sheriff or coroner return that he hath levied to the value of the debt or damages and costs, or shall voluntarily or negligently omit for the space of two months rendering to the plaintiff or plaintiffs his, her or their representative or attorney, the money which he shall have received from the sale of the estate, real and personal, of the defendant or otherwise, he shall be amerced in the value of the debt or damages and costs to and for the use of the said plaintiff or plaintiffs; *provided*, that ten days' notice in writing shall be given to such sheriff or coroner by the plaintiff or plaintiffs, his, her or their representative or attorney, before any motion shall be made for such amercement; which said amercement, so as aforesaid ordered by the court shall have the force and effect of a judgment; whereupon execution, in the name and for the

use of such plaintiff or plaintiffs, or his, her or their representatives, may instantly, on motion in open court, and without any further proceedings, be awarded and issued against the goods and chattels, lands and tenements of such sheriff or coroner so amerced as aforesaid; *provided*, that nothing in this act contained shall prevent the party injured from proceeding, at his election, against such sheriff or coroner by attachment according to law. (a)

23. That when an amercement as aforesaid has been obtained against any sheriff or coroner, it shall be lawful for the court, at the request of the plaintiff or plaintiffs, his, her or their attorney or legal representative, to appoint one or more elisor or elisors, to whom the execution upon such amercement shall be directed, and who, on accepting such appointment

Elisors appointed.
Ib., § 23.

(a) For returning an insufficient inventory, the sheriff will be amerced for the amount of the debt and costs. *Watson v. Hoel*, *Coxe* 186. It is not a ground to amerce a sheriff that he has not returned an execution according to law. *Ritter v. Mervises*, 4 *Zab.* 627. *Waterman v. Merrill*, 4 *Fr.* 378. *Hoagland v. Todd*, 7 *Fr.* 352, 8 *Fr.* 544. Section 47 of the practice act which provides for the amercement of the sheriff in case he fails to make return of "any summons, *ca. res.*, or other process," refers to mesne process, and not process of execution. *Ritter v. Mervises*, 4 *Zab.* 628. Where there are goods upon which an execution might operate with effect, the fact that there is no inventory filed is ground for amercement. *Todd v. Hoagland*, 7 *Fr.* 352. Where the sheriff is specially instructed to proceed immediately on a *fi. fa.*, and does not dispute the instructions, it is no excuse that he had offered the property for sale after the term at which the execution was returnable, and adjourned two or three times for want of bidders, the plaintiff not being specially informed of either. *Lortillard v. Welsted*, 3 *Hal.* 271. If he be ruled to return his writ, he is liable to amercement, unless he be accompanied by an inventory, save when, as the statute directs, he returns that he has levied to the value of the debt or damages and costs. *Hoagland v. Todd*, 8 *Fr.* 544, 546. Where the court directed an order to be entered for the appearance of the defendants, pursuant to the act for the relief of creditors against corporations (P. L. 1817, § 8), and before judgment in such suit the sheriff had sold under a judgment by confession in favor of a third party—*Held*, that the sheriff may be amerced for refusing to sell under execution in the suit first begun. *Stansbury v. Pat. Cloth Co.*, 2 *South.* *435. See opinion of *Southard, J.*, dissenting. *Stansbury v. Pat. Cloth Co.*, 2 *South.* *442; reversed, 2 *South.* *861. A sheriff cannot be amerced for refusing to grant an adjournment of his sale. *Hoagland v. Todd*, 8 *Fr.* 544. But he may be amerced for neglecting to execute his writ, and any misconduct which substantially deprives the party of the substantial benefit of the writ, is such neglect. *Ib.* He may be amerced if, after levy, he permits the defendant in execution (who is a storekeeper) to continue selling the goods taken in execution. *Ib.* The words "writ of execution" apply to writs of *fi. fa.* as well as to writs of *ca. sa.* *Kemble v. Harris*, 7 *Fr.* 526, reversing 6 *Fr.* 392. Where there is adverse claim to property levied on by a sheriff and the plaintiff's attorney and the sheriff are in correspondence as to the action to be taken in the premises, the latter asking and the former promising instructions, the sheriff is not liable to amercement for not proceeding to sale until he shall have disobeyed or disregarded positive, reasonable and lawful directions to that end. *Ib.* For not taking a bail bond, the sheriff is liable to be amerced. *Cunningham v. Jaques*, 4 *Har.* 42, 44. Where an irregular return to a *fi. fa.* has been filed, and the plaintiff proceeds to sue out a *ca. sa.*, which is executed, he cannot amerce the sheriff on the ground of irregularity in his proceedings. *Hustick v. Allen*, *Coxe* 169. A sheriff may be amerced after he is out of office. *Ib.* If after a motion to amerce, the plaintiff gives the sheriff time, and he neglects to raise the money during such time, or to proceed to a sale, as he ought to do, and has time enough to do, he will be amerced. *Scott v. Dow*, 2 *Gr.* 350. The word "execute" means to "fulfill or complete the execution." *Ib.* *Waterman v. Merrill*, 4 *Fr.* 378, 381. *Kemble v. Harris*, 7 *Fr.* 526, 529. A sheriff will not be amerced if the plaintiff has, by his own interference, prevented him from discharging his duties. *Stryker v. Mervises*, 4 *Zab.* 542. Directions to stay proceedings on an execution, given by one of the assignors, and a guarantor of the bond sued on, are not sufficient to excuse a sheriff from amercement. He should accept directions only from the plaintiff or his attorney. *Stephens v. Clark*, 3 *Hal.* 270. If he cannot levy, he is not accountable to the plaintiff. *Lloyd v. Wyckoff*, 6 *Hal.* 216, 218. Where an execution was delivered to the sheriff on its return day, and a levy made two days afterwards, and the sheriff states these facts to the plaintiff's attorney, on a motion to amerce, the sheriff is not estopped from setting up that such levy was a nullity. *Kemble v. Harris*, 7 *Fr.* 526, 530. A letter was received by the sheriff from the plaintiff's attorney, after levy made, and before the return of the writ, in these words: "You may delay proceeding till you hear from me or Mr. W., holding on to your levy." *Held*, that such an interference with the regular course of proceedings under the execution amounts to an acceptance and ratification by the plaintiff, of whatever has been done or omitted by the sheriff up to that time, so far, at least, as to preclude the plaintiff from alleging any such act or omission as a ground of amercement. *Waterman v. Merrill*, 4 *Fr.* 378. Where the amercement had been waived, and time given, and the sheriff afterwards advertised the property for sale, and notified the plaintiff thereof, and adjourned several times for want of bidders, and at the time of the motion the sale stood adjourned, the court would not, at the second term after waiver of said notice, order the sheriff

amerced. *New Brunswick Bank v. Welsted*, 3 *Hal.* 271. If the plaintiff by letter directs the sheriff "to adjourn the sale and stay until further orders," he cannot, on an application to amerce the sheriff, insist that the officer did not make a full and complete inventory of the personal property on which he levied. *Paterson Bank v. Hamilton*, 1 *Gr.* 159. By giving such directions to the sheriff, the plaintiff accepts and ratifies the return, and absolves the sheriff from any neglect to execute the writ, which had previously occurred; at least so far as to preclude the plaintiff from setting up those matters as grounds of amercement. *Ib.* If the plaintiff, after notice of amercement, informs the sheriff by letter, "that he should not move to amerce him in pursuance of such notice, but should trust to his raising the money in the following vacation," he cannot afterwards move to amerce the sheriff because he has neglected to file a just and true inventory of the goods and chattels of the defendant. *Scott v. Dow*, 2 *Gr.* 350. So, if after directing his attorney to proceed against the sheriff for not selling, the plaintiff's agent gives the sheriff instructions incompatible with the notice of amercement. *Le Roy v. Blawell*, 1 *Gr.* 341, 342. Where the sheriff of B. returned a *fi. fa.* under which a levy of six cents was made, and then a *testatum fi. fa.* was directed to the sheriff of E., giving credit for such sum, the sheriff of E. cannot object to an amercement, on the ground that the money should be first made out of the sheriff of B. *Trenton Bridge Co. v. Ward*, 1 *South.* 320. A sheriff is not by a levy and sale estopped from denying the plaintiff's title to the proceeds, nor from showing that he had levied on and sold, by mistake, property not subject to seizure and sale under plaintiff's execution. *Hopkins v. Chandler*, 2 *Har.* 289. *Harris v. Kirkpatrick*, 6 *Fr.* 392. *Lomerson v. Hoffman*, 1 *Dutch.* 625. *Browning v. Flanigan*, 2 *Zab.* 567. That the sheriff has served and returned a *captus* which was inclosed with the notice is strong evidence that both papers came to his hands, but not that he received them ten days before the first day of the term. *Melvin v. Purdy*, 2 *Har.* 162. Service of notice of amercement on the sheriff must be a personal service. *Anonymous*, 1 *Hal.* 159. Proof of notice sent by mail is not sufficient. *Ib.* Such notice is operative from the time of service, and is good without a date, or with an impossible date. *Scott v. Dow*, 2 *Gr.* 350. A notice of amercement must state a legal ground of amercement specifically, and with the same certainty as is required in a declaration. A notice of amercement "for not having returned said execution according to law, and for neglect of duty by you in relation to said execution," is insufficient. *Ritter v. Mervises*, 4 *Zab.* 627. It is not sufficient, in a notice to a sheriff of a motion to amerce, to assign as the ground that it is "for not executing the writ of execution." The notice must assign neglect or refusal to execute it as the ground. *Harris v. Kirkpatrick*, 6 *Fr.* 392, 395. *Stryker v. Mervises*, 4 *Zab.* 542. Notice of a motion to amerce need not be given to the sheriff's sureties. *State v. Hamilton*, 1 *Har.* 159, 156. *Ni debet* is no plea to an action of debt on an amercement. *Campbell v. Allen*, *Coxe* 203. The supreme court will set aside a judgment of amercement which has been impositively entered. *Le Roy v. Blawell*, 1 *Gr.* 341. Judgment of amercement may be entered against the sheriff, to stand as security, although the judgment upon which the execution issued was opened. *Bell ads. Kelly*, 2 *Har.* 270, 275. The sureties, although not parties to the proceedings to amerce, are nevertheless concluded thereby. *State v. Hamilton*, 1 *Har.* 153, 156. On motion to amerce, the burden of showing that property of which the defendant was found in possession and on which a levy was made was not the property of the defendant, is upon the sheriff. *Harris v. Kirkpatrick*, 6 *Fr.* 392; case reversed, 7 *Fr.* 526. An alleged fraud in the exercise of the sheriff's discretion as to adjournments cannot be investigated on a motion to amerce. *Hoagland v. Todd*, 8 *Fr.* 544, 546. So far as it draws in question the truth of the return, the proceeding by amercement may be considered as standing in the place of an action on the case for a false return, and as governed by the same principles, both as to the matters to be proved and the amount of proof required. *Waterman v. Merrill*, 4 *Fr.* 379. If a plaintiff assigns all his interest in a suit to A. and B., and then takes the benefit of the insolvent law, and the sheriff is appointed his assignee, and the suit is carried on to judgment and execution, and the sheriff raises the money thereon, but does not pay it over to A. and proof that he had notice of the assignment to A. and B., and that he had voluntarily omitted or neglected to pay them after such notice. *State v. Salem Pleas*, 5 *Hal.* 319. See, also, *White v. Rockefeller*, 16 *Fr.* 299. *Delaney v. Martin*, 22 *Fr.* 150. *Louis v. Kasket*, 20 *Fr.* 153. A sheriff is not bound, without indemnity, to levy on goods standing in the name of, and claimed by, another than the defendant in execution. *Stevens v. Deats*, 12 *Fr.* 340. See, also, *Force v. Gardner*, 14 *Fr.* 417. *Stout v. Keeler*, 11 *N. J. L. J.* 171.

Their powers
and duties.

and receiving such execution, shall have as full power and authority to levy upon, seize and sell the estate, real and personal, of such sheriff or coroner and make deed or deeds for the same and in all things to execute the said writ of execution, as any sheriff might or could have by law, in cases of execution to him directed, and shall be entitled and liable to the like fees and penalties.

Pleas may award
attachment for
contempt.
Ib., § 24.

24. That the court of common pleas, and circuit court in and for the respective counties of this state, shall have the like power in cases of contempt and disobedience as aforesaid, to award attachments, and proceed thereupon against the sheriff or coroner of such county where the said court is held, as the supreme court now hath or hereafter shall have.

Statement of sales
to be filed by
sheriff within
thirty days
thereafter.
P. L. 1847, p. 4, § 2.

25. That in case of a sale on execution made by a sheriff, under-sheriff, coroner or other officer, he shall, within thirty days thereafter, file in the clerk's office of the court out of which the execution issued, a true statement and calculation, in order of time, of the execution or executions in his hands upon which such sale was made, and the amount due thereon, respectively, at the time of such sale mentioning the time or times of sale, as also the amount of sales, certified under his hand, together with his bill of costs, or execution fees, for which service he shall be entitled to one dollar; *provided*, that such statement, so filed, shall not be conclusive against any person other than such officer; *and provided*, that if there be more sales than one, such statement shall be made and filed within thirty days after the final sale.

Prisoners to be
actually detained
in prison.
R. S. 833, § 25.

26. That all prisoners, either upon contempt or mesne process, or in execution who are or shall be committed to any prison, shall be actually detained within such prison until they shall be from thence discharged by due course of law; and if at any time the keeper of any prison shall permit or suffer any prisoner committed to his custody either upon contempt or mesne process, or in execution, to go or be at large out of prison except by virtue of some writ of habeas corpus or rule of court (which rule of court shall be granted only on motion made or petition read in open court), and except, also, when otherwise provided by law, every such going or being out of the said prison shall be adjudged and deemed, and is hereby declared to be an escape. (a)

Prisoners for
debt, &c., to be
safely kept.
Ib., § 26.

27. That every person who, by virtue of any writ of execution against his body, for any debt recovered or acknowledged, or damages assessed, awarded or adjudged in any court of record, hath been or hereafter shall be taken or arrested by any sheriff or other officer, to whom any such writ hath been or shall be directed, and every person who hath been or shall be committed to the custody of any sheriff or other officer, in execution for any such debt or damages, shall be safely kept in prison in close and secure custody, without bail or mainprise, except when otherwise provided by law, until he shall satisfy and pay such debt, or damages; and if any such sheriff or other officers shall permit or suffer any such person so taken, arrested or committed, or hereafter to be taken, arrested or committed, to go out of prison or be at large, by bail, mainprise, or otherwise, without the assent and agreement of the plaintiff, such sheriff or other officer shall thereby become answerable to the plaintiff for the debt or damages for which such person was or shall be taken, arrested, or committed; and the plaintiff may recover the same, with costs, by action of debt against such sheriff or other officer.

Or sheriff liable.

So if in custody
on process from
chancery.
Ib., § 27.

28. That if any person is or shall be in the custody of any sheriff or other officer for not performing any decree of the court of chancery, whereby money is ordered or decreed to be paid, and shall escape from the said sheriff or other officer, then and in every such case, the person or persons, his, her or their executors or administrators, to whom the money was to be paid by the said order or decree, shall have the same remedy against the said sheriff or other officer as if such person so escaping

(a) As to what constitutes an escape, see *Patten v. Halsted*, Coxe 277. *Howard v. Blackford*, Pen. *177. *Tunison v. Cramer*, 2 South. *498. *Bayre v. Earle*, 3 Hal. 359. *Woodruff v. Barrett*, 3 Gr. 40. *Browning v. Rittenhouse*, 9 Fr. 279. For pleadings and proceedings, see *Jones v. Pemberton*, 2 Hal. 350. *Patten v. Halsted*, Coxe 277. *Dunham v. Solomon*, 1 Har. 50. *Camp v. Allen*, 7 Hal. 1. *Smith v. Allen*, Sax. 43. *Pattin v. Freeman*, Coxe 113. *Kirby v. Garrison*, 1 Zab. 179. *Anderson v. Radley*, Pen. *1035. *Beatty v. Ivins*, Pen. *623. *Rogers v. Brundred*, 1 Har. 159.

had been in custody upon an execution at law, and shall recover the money ordered or decreed to be paid to him, her or them in and by such order or decree against such sheriff or other officer, with costs, in any action of debt or upon the case, to be brought against such sheriff or other officer in any court of record of this state.

29. That no retaking on fresh pursuit shall be given in evidence on the trial of any issue in any action of escape against any sheriff or keeper of any prison, unless the same be specially pleaded, nor shall any special plea be taken, received or allowed unless oath or affirmation be first made in writing by such sheriff or keeper of such prison against whom such action shall be brought, and filed with such plea, that the prisoner, for whose escape such action is brought, did, without his consent, privity or knowledge, make such escape; and if such affidavit shall at any time afterwards appear to be false, such sheriff or keeper of such prison shall, on conviction thereof, be adjudged to be guilty of a misdemeanor, and be punished by fine not exceeding fifteen hundred dollars.

Retaking, &c., must be pleaded, and oath necessary.
Ib., § 28.

30. That when the sheriff, or any of his deputies, find that resistance will be made against any process of execution, the sheriff, laying aside all other business, and taking with him the power of the county, shall forthwith go in his proper person and execute the same; and if he find resistance, he shall certify to the court the names of the persons making such resistance, their aiders, assistants, favorers, and procurers, so that they may be proceeded against according to law.

Duty of sheriff or his deputies if resistance made.
Ib., § 29.

31. That if any person hath been or shall be condemned in any court of record of this state, and hath been or shall be by virtue of such condemnation committed to prison, there to remain, until he or she make satisfaction to the party to whom he or she is or shall be condemned, and any writ or writs shall be granted, commanding the sheriff or keeper of the prison where such prisoner is held, to have the body of such prisoner, with the cause of his or her imprisonment, in the court of chancery or supreme court, or before the chancellor, or any judge or justice of the supreme court, and it be returned upon the said writ or writs that the said prisoner is condemned by judgment given against him or her, then, and in every such case, such prisoner shall be immediately remanded, and remain in prison according to law until satisfaction be made for the sum adjudged.

When prisoner to be remanded on habeas corpus.
Ib., § 30.

32. That the sheriff of each county in this state shall keep a true account of all the moneys by him paid out under the directions of the third section of an act entitled "An act concerning juries," approved March twenty-seventh, eighteen hundred and seventy-four, and submit the same for examination to the clerk of the court, who is hereby required to examine said account, and certify the same, if found correct; and the said sheriff, upon the production of said account, so certified to the county collector, with an affidavit annexed thereto that the said account is just and true and that the money claimed by him is justly and honestly due to him, shall be paid the amount so due him by said collector, who shall be entitled to an allowance for the same in the settlement of his accounts with the board of chosen freeholders of his county.

Sheriff to keep account of moneys paid out under jury act.
P. L. 1847, p. 4, § 1.

To be paid by county collector.

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

Sheriff, &c., to receive prisoners committed under authority of the United States.
R. S. 314.

Proviso.

34. That the sheriff or keeper of every jail in any county of this state, shall on or before the first days of April and October, semi-annually, make out the name of all prisoners who, since the last settlement, shall have been committed to his custody under the authority of the United States, and

Names and costs of subsistence to be transmitted to United States marshal semi-annually.
P. L. 1867, p. 922.

the time they shall have been respectively confined, with an account of the amount thereof at fifty cents per month for the use and keeping of such jail for every person so committed, together with an account of their subsistence at the rate established by law for state prisoners, and transmit the same to the United States marshal for this district for payment.

Writs unexecuted to be turned over to successor.
R. S. 833, § 31.

35. That every sheriff shall, at the expiration of his office, turn over, in writing under his hand and seal, all writs unexecuted to the succeeding sheriff, who shall execute and return the same.

Sheriff not to exercise any other civil office

36. That no person shall exercise any other civil office during the time that he holds and exercises the office of a sheriff; and that by acceptance of the latter office, his commission for any other civil office shall be null and void.

Provision for death, removal or disability.
R. S. 833, § 33.
Amended.

37. That whenever the sheriff of any county, before the expiration of his term of office, shall die or remove out of the jurisdiction of the state, or otherwise become disabled by law to execute the office, and as often as the office of sheriff in any county shall become vacant, it shall be the duty of the judges of the court of common pleas of the said county, or any three of them, forthwith, as soon as may be, after information or knowledge of the happening of such death, removal or other disability, or of such vacancy, to direct the clerk of such court to certify such death, removal or other disability, or the fact of such vacancy to the governor; and the clerk of such court shall immediately certify the same under his hand and the seal of such court, to the governor, who shall forthwith, on the receipt of such certificate, fill such vacancy by appointment, and the commission of the person by him so appointed shall expire when a successor is elected and qualified, which successor shall be elected, at the next ensuing general election, for the full term of three years.

Person appointed by governor to fill vacancy, to give bond, &c.

38. That every person appointed by the governor, pursuant to the provisions of the foregoing section, to fill a vacancy in the office of sheriff shall, before he proceed to execute such office, give the bond and take and subscribe the oath or affirmation in manner and form as is prescribed by this act, for a sheriff-elect; and such person shall, upon receiving information from the governor of his appointment, give notice thereof to the judges of the court of common pleas of his county, assigning a time not less than three days from the giving of such notice when he will be ready to qualify for such office; and the said judges are hereby required to attend at the office of the clerk of said court, at the time so assigned, on the penalty for default as is prescribed in the second section of this act; and every person so appointed to fill a vacancy shall, in all respects, comply with the provisions and requirements of this act, and be subject to all regulations and restrictions herein prescribed, and shall be subject to the same penalties, suits and amercements for any violation thereof, or for any neglect of duty, as he would have been subject to in case such person had been elected to the office of sheriff.

When coroner to act.
R. S. 833, § 34.

39. That whenever the sheriff of any county, before the expiration of his term of office shall die or remove out of the jurisdiction of the state, or otherwise become disabled by law to execute the office, and as often as the office of sheriff in any county shall for any reason become vacant the coroners of the county or either of them shall serve and execute all writs and process and shall have full power and authority to execute all the other duties of such office of sheriff, until another sheriff shall be appointed and qualified to act; and the coroner or coroners executing such writs, process and powers shall be answerable for the due execution of the same during such interval in like manner as the sheriff would have been.

Death or disability of officer having writ levied.
Ib., § 35.

40. That whenever any sheriff or coroner, or other person to whom any writ of execution by fieri facias hath heretofore been directed, or shall hereafter be directed hath levied, or shall levy, the same execution on the goods and chattels or on the lands and tenements of the party named therein, and such sheriff, coroner or other person hath died, or shall die, or hath or shall become disabled by law to discharge the duties of their respective office or appointment, or hath removed or shall remove himself or themselves out of the jurisdiction of the state, and continue to reside

thereout, discharging the duties of their respective office or appointment, by a sale of the property or estate so levied on, then, or in either of the said cases, it shall and may be lawful for the court, in which judgment is or shall be had, to award a special scire facias against the party named in such execution or the lawful representatives of such party, according to the circumstances in the case, to show cause why the property or estate so levied on should not be sold, or such part thereof as may be sufficient to satisfy the whole or the residue of the moneys contained in the said execution; and if the said scire facias be returned served, or if no service thereof can be made, be published as prescribed by law, and the said party should not appear at the time at which such scire facias shall be made returnable, and within ten days after such return day plead or show sufficient matter to the contrary, the said court shall thereupon award a writ, to be directed to the sheriff or coroner, for the time being, of the county where the levy was made, commanding the said sheriff or coroner to sell the property or estate so levied on, or so much thereof as may be sufficient to satisfy the whole or the residue of the moneys due on said execution; which sale the sheriff or coroner is hereby authorized and required to make, in as full and ample manner, to all intents and purposes, as if the said execution had been originally directed to such sheriff or coroner, and shall be entitled to the same fees for services done, and liable to all the penalties and consequences of law for neglect of duty, as if the said execution had been originally directed to such sheriff or coroner. (a)

Special scire
facias to issue.

Writ awarded.

41. That it shall be lawful for any judge or justice of any court out of which any writ or process has been or shall be issued, upon application made upon notice to the other party, where notice can be given, the facts being verified to the satisfaction of said judge or justice, to make order that the sheriff or coroner, for the time being, of the county, proceed to execute any writ or process which shall have been directed to any sheriff, coroner or other persons who hath died or shall die, or hath or shall become disabled by law to discharge the duties of his office or appointment, or hath or shall remove out of the jurisdiction of this state, and continue to reside thereout, without discharging the duties of his office or appointment in relation to the command thereof, and upon such order being made, and upon a memorandum thereof signed by such judge or justice being indorsed upon said writ or process, such sheriff or coroner for the time being shall proceed to execute the same or complete the execution thereof, and to do and complete all other acts in the premises, in as full and ample a manner as the said sheriff or other officer might himself have done had such death, removal or disability not occurred, subject to the same regulations and restrictions, and to the same penalties, suits and amercements, for any neglect of duty thereon.

In case of death
or disability of
sheriff or coroner,
court may order
sheriff or coroner
for time being to
execute writ.

42. That any sale to be made by such sheriff or coroner for the time being, in virtue of this act, of any estate, real or personal, and any conveyance to be made by such sheriff or coroner of any real estate so sold, shall be as good and effectual in the law, to all intents and purposes, as if the writ or writs of execution on which such property or estate was levied, had been originally directed to such sheriff or coroner.

Sale made by
such sheriff or
coroner for time
being, good and
effectual.

43. That the appointment of any under-sheriff hereafter to be made shall be by writing under the hand and seal of the sheriff; and further, that every under-sheriff, before he intermeddles in such office, shall take and subscribe, before one of the judges of the court of common pleas of the county, an oath or affirmation, well and faithfully to execute the office of under-sheriff, according to the best of his skill and judgment; which appointment, with the certificate of the oath or affirmation thereupon indorsed and attested by the said judge, shall be by such under-sheriff

Appointment of
under-sheriff.
R. S. 833, § 37.

Certificate and
oath to be filed
with clerk.

(a) A plea of payment to a *scire facias*, under the statute, will not be supported by evidence of a bargain and sale of lands, by the defendant to the plaintiff in execution, unless such bargain and sale has been consummated. *Earle v. Earle, Spens. 347*. In such case advantage cannot be taken of the want of a lawful and sufficient levy. *Id.* Where the lessor of the plaintiff claims title under a sheriff's deed, made to him after a sale by virtue of a special *scire facias*, parol evidence is inadmissible to impeach

the judgment on the *scire facias*, by proving the death of the plaintiffs before the writ issued. *Den v. Manning, Spens. 612*. If admissible, it is not a ground to non-suit the plaintiff, but the evidence should go to the jury. *Id.* A publication of the writ, in such case, is unnecessary. *Haight v. Spader, 3 Hal. 132*. A return to the writ, "that the defendant hath nothing," is sufficient. *Id.*

carefully filed, and securely kept in the office of clerk of the court of common pleas in and for the same county; *provided*, that nothing in this section contained shall be construed to prevent the sheriff from removing his under-sheriff at pleasure. (a)

Proviso.

Act of persons as under-sheriff before filing oath, &c., to be void. *Ib.*, § 38.

44. That if any person shall proceed to execute the office of under-sheriff before he shall have received an appointment as aforesaid, and taken the oath or affirmation of office, and filed the same appointment and certificate of such oath or affirmation in the clerk's office as aforesaid then all such his acts and proceedings done under color of office shall be absolutely void. (b)

[For fees of sheriffs, see FEES AND COSTS.]

Supplement.

Approved February 7, 1883.

P. L. 1883, p. 21.

Office of sheriff not forfeited by failure to renew bond, &c.

45. SEC. 1. That in case the sheriff, for the time being, of any county in this state, shall have heretofore failed to renew his official bond, as provided in section two of the act to which this is a supplement, such failure shall not work, nor shall the same be held to have worked, ipso facto, a forfeiture of his said office; but the title of any such sheriff to his office shall be deemed and taken to be valid and subsisting, and his official acts, whether heretofore performed or hereafter to be performed, shall be held to be good as to all persons until after an information in the nature of a quo warranto shall have been filed against him by the attorney-general of this state, and judgment of ouster shall have been duly rendered thereon; *provided, however*, that nothing in this act shall be held to exempt any such sheriff from liability to indictment and punishment, as provided in the tenth section of the act to which this is a supplement, in case he shall continue to execute the office of sheriff after willful neglect or refusal to renew his bond.

Proviso.

Attorney-general may accept new bond before judgment of ouster.

46. SEC. 2. That in case any sheriff of any county in this state shall have heretofore failed to renew his bond as aforesaid, the attorney-general of this state shall have the power, in his discretion, at any time before judgment of ouster, to accept from the said sheriff an official bond, dating from the time of his default, and conforming, in all respects, to the provisions of section two of the act to which this is a supplement, save as to the time of executing and filing only; and that the acceptance of such bond by the attorney-general shall be held and taken to be an absolute waiver and cure of such forfeiture.

When evidence of failure to renew bond admissible.

47. SEC. 3. That it shall not be lawful or competent, in any suit or proceeding at law, whether civil or criminal, or in any suit or proceeding in equity, now instituted or hereafter to be instituted in this state, save only in a proceeding in the nature of a quo warranto or on an indictment against a sheriff, as mentioned in section one of this supplement, to admit evidence to show that any sheriff of any county of this state has failed to renew his official bond, as provided in section two of the act to which this is a supplement, or to permit such an issue or controversy to be raised or made in any way whatsoever.

Duty of courts in applying this act.

48. SEC. 4. That it shall be the duty of all the courts in this state, both civil and criminal, and of original and appellate jurisdiction, to introduce

(a) There are two kinds of deputies of a sheriff: a general deputy, or under-sheriff, who by virtue of his appointment has authority to execute all the ordinary duties of the office of sheriff, and a special deputy who is an officer *pro hac vice*, to execute a particular writ on some certain occasion. The former is bound to take an oath of office, and file his appointment; but the latter is not. *Allen v. Smith*, 7 Hal. 159. A general deputy may, in the name of the sheriff, delegate authority to a special deputy for the execution of process. *Allen v. Smith*, 7 Hal. 162. A deputy sheriff cannot act until sworn into office, and his swearing in will not have relation back, so as to validate previous acts. *Den, Lee v. Ewaul*, Cox 283. A sheriff cannot appoint a special deputy, *pro hac vice*, by parol. *Meyer v. Patterson*, 1 Stew. 239. See *Klopping v. Stellmacher*, 7 Vr. 176, 179. A sheriff cannot constitute a special deputy to serve even an original writ, by a mere verbal command, without delivery of the writ. *Meyer v. Bishop*, 12 C. E. Gr. 141, 1 Stew. 239. A special deputy of a sheriff is in no sense a public officer, but merely the private

agent or officer of the sheriff, and neither his appointment nor his relation to the sheriff can be presumed from his acts. *Ib.* The rule that the acts of *de facto* public officers are valid in respect to the public, and the rights of third persons, does not apply to deputy sheriffs. *Ib.* A general authority to an attorney to make special deputations, will not authorize him to appoint a deputy to serve process. *James ads. Cox*, 4 Hal. 385. It seems that a summons in ejectment may be served by any person by direction of the sheriff, and without any written deputation. *Klopping v. Stellmacher*, 7 Vr. 176. A writ of attachment may be executed by a deputy. *Morrill v. Gardner*, Spen. 673. A coroner may appoint a deputy to execute a writ of replevin. *Juell v. Hutchinson*, 2 Vr. 71. Parol evidence of a person acting as deputy sheriff, is sufficient. *Den, Lee v. Ewaul*, Cox 283. (b) See *Myer v. Bishop*, 12 C. E. Gr. 141. *Meyer v. Patterson*, 1 Stew. 239.

and apply the curative force of this act to all suits and proceedings heretofore instituted or hereafter to be instituted at any and every stage thereof; and this act shall be operative and effectual in all cases to cure the defaults hereinbefore mentioned, so far as they affect the public and third persons.

49. SEC. 5. That this act shall be most favorably construed to uphold the official acts of sheriffs heretofore done under color of office after failure to renew their bonds and before judgment of ouster in quo warranto.

To be favorably construed.

50. SEC. 6. That all acts and parts of acts inconsistent herewith be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

Supplement.

Approved March 26, 1888.

P. L. 1888, p. 248.

51. SEC. 1. That if any goods, chattels or real estate, levied upon by virtue of any valid writ or execution, by any sheriff whose term of office may since have expired, still remain unsold, or, if any goods, chattels or real estate, heretofore levied upon or which may hereafter be levied upon by virtue of any valid writ or execution, by any person now holding or who may hereafter hold the office of sheriff, remain unsold after the expiration of the term of office of such sheriff, the sale of such goods, chattels or real estate, and any and all adjournments thereof, so far forth as the same might legally be conducted and made by the person to whom, as sheriff, such writ or execution may have been or may hereafter be directed, may be conducted and made by any person appointed by a writing under the hand of the person to whom, as sheriff, such writ or execution may have been or may hereafter be directed, indorsed on such writ or execution, or attached thereto, and the person so in writing appointed shall have the same power and authority to conduct and make such sale, and any and all adjournments thereof, as fully and effectually as the same might have been conducted and made by the person to whom, as sheriff, such writ or execution may have been or may hereafter be directed, and any sale or adjournment conducted or made, by any person so in writing appointed, shall be and hereby is declared to be as valid and binding upon all the parties in interest as if conducted or made by the person to whom, as sheriff, such writ or execution may have been or may hereafter be directed; *provided, however,* that the person to whom, as sheriff, any such writ or execution may have been or may hereafter be directed, and his sureties, shall be responsible and liable for the proper conduct and making of such sale, or of any and all adjournments thereof, in like manner and to the same extent as if such sale or adjournments had been conducted and made by the person to whom, as sheriff, such writ or execution may have been or may hereafter be directed as aforesaid.

Sale of goods, lands, &c., remaining unsold after sheriff's term has expired, how conducted.

Proviso.

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

Repealer.

Amendatory act.

Approved April 18, 1891.

P. L. 1891, p. 508.

53. SEC. 1. [This section, amending Sec. 14, *ante*, is amended by Sec. 58, *post*.]

Supplement.

Approved March 10, 1893.

P. L. 1893, p. 189.

54. SEC. 1. That in case any sheriff before the expiration of his term of office hath heretofore died or removed out of the jurisdiction of the state or otherwise become disabled by law to execute the office, or shall hereafter die or remove out of the jurisdiction of the state, or otherwise become disabled by law to execute the office, it shall be the duty of the chief justice or any one of the associate justices of the supreme court, on being satisfied of the death, non-residence or disability of such sheriff, to designate by order, under his hand and the seal of the circuit court of such county, one of the coroners of the said county to act as sheriff of said county and perform the duties of the office of sheriff of the said county in

Provision for filling vacancy in office of sheriff.

all respects provisionally until a new sheriff shall be appointed or elected and duly qualified ; and when such new sheriff shall be appointed or elected and duly qualified the powers and duties of such coroner, so far as he shall have acted for the deceased, disqualified or disabled sheriff, shall cease, and all writs, processes, papers, belonging or appertaining to the office of sheriff, shall pass to and be vested in the said newly-appointed or elected sheriff as fully and as entirely as they were in the former sheriff when he ceased to act.

Provision for executing writs in sheriff's hands at time of his death, &c.

55. SEC. 2. That all writs and processes which had been delivered to such deceased, disqualified or disabled sheriff to be executed, remaining unexecuted or partially unexecuted in his hands at the time of his death, disqualification or disability shall be executed or the execution thereof completed by the said coroner so designated to act as sheriff, and by the said newly-appointed or elected sheriff ; and all advertisements of sales of goods and chattels, lands, tenements, hereditaments and real estate shall be continued, and adjournments of such sales may be made, of which all persons shall take notice without any other than the usual notice required by law for such advertisements, adjournments and sales ; which said advertisements, adjournments and sales such coroner so designated to act as sheriff, or such newly-appointed or elected sheriff is hereby authorized and required to make in as full and ample manner to all intents and purposes as if the said writs and processes had been directed and delivered to such coroner or sheriff, without any scire facias or other order, and such coroner or sheriff shall be entitled to the same fees for their services, and be liable to all the penalties and consequences of law for neglect of duty, as if the said writs and processes had been originally directed and delivered to such coroner or sheriff.

Fees of such coroner.

Where sheriff has made levy and died, &c., a writ of venditioni exponas may be issued.

56. SEC. 3. That where any sheriff or coroner or other person to whom any writ of execution by fieri facias hath been heretofore directed, or shall hereafter be directed, hath levied, or shall levy the same execution on the goods and chattels, or on the lands, tenements, hereditaments and real estate of the party named therein, and such sheriff, coroner or other person hath died or shall die, or hath or shall become disabled by law to discharge the duties of their respective office or appointment, or hath removed or shall remove himself or themselves out of the jurisdiction of the state, and continue to reside thereout, without discharging the duties of their respective office or appointment by sale of the property or estate so levied on, then and in either of the said cases it shall and may be lawful for the party or parties in whose favor the said writ of execution shall have been issued, his, her or their legal representatives, without any proceedings on scire facias to sue out of the court out of which the said execution issued a writ of venditioni exponas, to be directed to the sheriff or coroner for the time being of the county where the levy was made, commanding the said sheriff or coroner to sell the property or estate so levied upon, or so much thereof as may be sufficient to satisfy the whole or the residue of the moneys due on said execution, which sale the said sheriff or coroner is hereby authorized and required to make in as full and ample manner, to all intents and purposes, as if the said execution had been originally directed to such sheriff or coroner, and they shall be entitled to the same fees for services done, and be liable to all the penalties and consequences of law for neglect of duty, as if the said execution had been originally directed to such sheriff or coroner.

Fees for services.

Fees to be for benefit of former sheriff.

57. SEC. 4. That all fees due for services rendered or expenses incurred by the deceased, disabled or disqualified sheriff shall be duly taxed and collected by the said coroner so acting as sheriff, or the said newly-appointed or elected sheriff, for the benefit of the said former sheriff or his legal representatives.

Amendatory act.

Passed May 16, 1894.

P. L. 1894, p. 378.

58. SEC. 1. That section fourteen of the act entitled "An act concerning sheriffs," approved March fifteenth, one thousand eight hundred and seventy-six [see Secs. 14 and 53, *ante*], be and the same is hereby amended to read as follows :

[That the sheriff of every county of this state shall have the custody, rule, keeping and charge of the jail or jails within such county and of all prisoners in such jail or jails, and shall be responsible for the conduct of any keeper whom he shall appoint for the same ; *provided, however*, that this section shall not apply to counties of the second or third classes, where the board of chosen freeholders of any such county may have appointed, or may hereafter appoint, a warden or keeper of such jail or jails ; *and provided, further*, the sheriff of any county may, by written notice, direct the board of chosen freeholders in said county, to take and have the custody, rule, keeping and charge of the jail or jails within said county, and upon such notice having been given by any sheriff to the board of chosen freeholders of this county, said board of chosen freeholders shall appoint a warden or jailer, and such keepers as may be necessary, and said board of chosen freeholders and such warden or jailers shall in receiving, custody and discharge of prisoners, and in their treatment and maintenance be subject to all laws and regulations to which sheriffs and their jailers are subject.](a)

Custody of jails and prisoners.

Proviso.

Proviso.

An act for the better protection of sheriffs.

Approved March 6, 1879.

P. L. 1879, p. 89.

59. SEC. 1. That hereafter all bonds required by law to be taken by any sheriff of this state shall be recorded in the clerk's office of the several counties, in a book to be provided and kept in said clerk's office for that purpose, and upon being so recorded, shall have the force and effect of a recognizance ; and that copies of said bonds, duly certified by said clerks under seal of office, shall be received as evidence in any court of this state, and be as good and available in law as if the original bonds were then and there produced and proved.

Bonds taken by sheriffs to be recorded and have effect of recognizances.

60. SEC. 2. That upon satisfactory proof before any court in which the suit wherein the said bond has been taken is pending, that the conditions of said bond have been fully complied with, it shall be the duty of said court to order the clerk thereof to enter the same discharged in the book kept by the clerk for recording the same. [See Sec. 61, *post.*]

When court may order discharge to be entered.

Supplement.

Passed February 25, 1885.

P. L. 1885, p. 51.

61. SEC. 1. That when the condition of any bond, mentioned in section one of the act to which this is a supplement, has been or shall have been fully complied with, the sheriff to whom said bond has been or shall have been given, whether his term of office shall have expired or not, or his personal representative, if said sheriff be dead, shall have power and it shall be his duty to cancel the record of said bond, or give to the clerk of the county where the same is recorded a warrant for the cancellation of the record of said bond, which shall be duly acknowledged before some person authorized to take acknowledgments of deeds ; and in case such sheriff or ex-sheriff, or said personal representative of any deceased sheriff, shall neglect or refuse to cancel the record of any such bond, in a proper case, any justice of the supreme court may make an order directing such cancellation ; and whenever said record is canceled under this act, such record shall no longer have the force and effect of a recognizance and shall not operate as a lien upon real estate ; but the said bond shall continue to have the same force and effect as if the same had never been recorded under the act to which this is a supplement.

Sheriff may cancel record of bond when condition complied with.

When justice of supreme court may order cancellation.

(a) See *Daubman v. Smith*, 18 Vr. 200. *Stiles v. Freeholders of Union*, 21 Vr. 9.

An act to fix the fees of sheriffs of counties of the second class in which is or may be maintained a workhouse.

P. L. 1894, p. 370.

Approved May 16, 1894.

Sheriffs in second-class counties to transport to county workhouse persons sentenced thereto.

Fees for transportation.

Repealer.

62. SEC. 1. That when any of the courts of this state shall sentence any person to the county workhouse of any county of the second class in this state, it shall be the duty of the sheriff of the county in which such person shall be sentenced, or his deputy, to transport such person to such county workhouse within twenty days after the sentence, together with a certified copy of the sentence, and such person shall be safely kept at said county workhouse until the term of his or her imprisonment shall have expired; and the said sheriff or his deputy shall be entitled to receive compensation for the expense of transporting such person at the same rate per mile as is allowed for transporting offenders to the state prison, to be paid by the county collector upon the certificate of the master or keeper of such county workhouse.

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

Social and Literary Societies.

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| <ol style="list-style-type: none"> 1. Incorporation of conservatory of music and literature. 2. Conservatory may hold land, &c. 3. Amended by sections 9 and 10. 4. Form of certificate of incorporation. Record of. 5. Certified copy to be evidence. 6. Amended by section 11. 7. May make constitution and by-laws. 8. Election of officers. 9. Amended by section 10. 10. How societies or clubs for social, intellectual and recreative purposes may become incorporated. 11. Powers of corporation. | <ol style="list-style-type: none"> 12. Board of trustees, how chosen and qualified. 13. Powers of board. 14. How vacancies shall be filled. 15. Who to be president and vice president. 16. Election of other officers. 17. Duties of board as to the property of corporation. 18. Societies organizing under this act to transfer property to trustees. 19. Societies for promoting artistic taste and vocal music may hold real and personal estate. 20. Repealer. |
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An act to provide for the incorporation of conservatories of music and literature.

P. L. 1874, p. 111.

Approved March 27, 1874.

Incorporation of conservatory.

1. That any number of persons, not less than five nor more than thirteen, may be incorporated for the development of music and literature, upon filing with the secretary of state such articles of incorporation, with a list of the names and addresses of each incorporator, the location or proposed place of business and the purposes thereof.

Conservatory may hold lands, &c.

2. That the conservatory of music and literature, when fully organized, may hold real estate of the value of twenty thousand dollars (except in cities of fifty thousand inhabitants and upwards, where it may hold fifty thousand dollars), for the purposes of the society in the promotion of its business, and pass all necessary by-laws for the management of its affairs; dividends may be paid as provided by the directors, and annual reports shall be made to the secretary of state, to be filed.

An act to incorporate societies or clubs for social, intellectual and recreative purposes.

P. L. 1-78, p. 175.

Approved March 27, 1878.

Form of certificate of incorporation.

3. SEC. 1. [Amended and supplied by Secs. 9 and 10, *post.*]

4. SEC. 2. That the said certificate shall be in writing, shall be signed by the officers so as aforesaid elected, and shall set forth the name of such society or club and a copy of their official seal, which certificate shall be acknowledged or proven in the same manner as required for deeds of real estate, and shall be filed in the office of the clerk of the county in which said society or club shall have holden said meeting; and it shall be the