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Virginia Statutes
The Revised Code

OF THE

LAWS OF VIRGINIA :

BEING

A COLLECTION OF ALL SUCH ACTS

OF THE

GENERAL ASSEMBLY,

OF A PUBLIC AND PERMANENT NATURE, AS ARE NOW IN FORCE ;

WITH A GENERAL INDEX.

TO WHICH ARE PREFIXED,

THE CONSTITUTION OF THE UNITED STATES ;

THE DECLARATION OF RIGHTS ;

AND

THE CONSTITUTION OF VIRGINIA.

Published pursuant to an act of the General Assembly, entitled: "An act providing for the re-publication of the Laws of this Commonwealth," passed March 12, 1819.

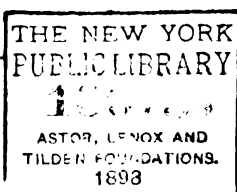
VOLUME I.

RICHMOND :

PRINTED BY THOMAS RITCHIE,

PRINTER TO THE COMMONWEALTH.

.....
1819.



W. W. W. W. W.
W. W. W. W. W.
W. W. W. W. W.

PREFACE.

THE Legislature having been pleased to direct, that the present publication of the laws should be made under my immediate superintendency, I thought myself hardly at liberty to decline this public service, however laborious and incompatible with my other avocations. The Code is now presented to the public, in as perfect a form, as the exertion of my best judgment and utmost industry, (aided by two very competent assistants, Mr. *Hening* and Mr. *Munford*,) could accomplish.

It has occurred to me, that a concise explanation of the plan of the edition may answer a good purpose.

I have, in obedience to the directions of the Legislature, prescribed the order, in which the several laws should be published in the Code, classing them, without regard to their dates, according to their subject matter, as far as it was practicable so to class them, and at the same time preserve each statute entire. The provisions of some of the laws are in themselves miscellaneous; for example, the act for *arranging the counties into districts for the election of Senators*, and for *equalizing the land tax*. The classification is, therefore, in some measure, unavoidably imperfect. In order to facilitate the use of the Code, I have placed running titles over the several laws, and prefixed a table to the first volume, shewing, in a very small compass, the contents and arrangement of the whole Code.

THIS novel order of publication rendered it impossible to designate the year of the Commonwealth, at the top of the page, as in all the other publications of our laws since the revolution. Loath to deviate from the custom of dating all public acts from the epoch of our independence, (a custom grateful to public feeling, and, in my opinion, of real utility,) I have placed the year, of the foundation of the republic, as well as the year of our Lord, in the side margin.

MINUTE and accurate references have been made, with much pains, to the original acts from which the particular provisions of the revised acts have been compiled; and references are also made, (from the titles,) to all former general laws relating to the same subjects;

and, in both cases, the editions, or sessions acts, in which the original or former acts are to be found, are carefully cited. I have also added references, (in the side margin,) to the English statutes *in pari materia*.

IN regard to most of the important provisions of the laws, especially those affecting the rights of property, I have made an essay to give, in the notes, such a concise history of our statute law, (from very early periods, often from the first institution of the colonial legislature,) as may serve all general purposes, and assist more minute and particular investigations.

SUCH of the amendments made at the late revision, as consist in new provisions, are distinguished by being printed within single inverted commas. But very many of the amendments consist in the substitution of new for old provisions; in the striking out of former provisions altogether; and in alterations of the language of former laws, very slight at first view, but often very important in effect: these also are noted, and explanations of them attempted, where they could be made without a too prolix annotation.

WHEREVER I found that the Legislature struck out any provision reported by the revisors, in a revised bill reducing into one act all former acts on the subject, and omitted to insert it in any other act, I have considered the provision so struck out, as intentionally rejected and repealed. I have, therefore, omitted all such rejected provisions.

IT is proper to mention, that, in the interpretation I have given (and have followed in the publication) to one very material provision of the act by authority of which this edition is published, I am not sure, that I have not gone beyond the legislative intention in one respect, and stopt short of it in another: I mean the provision, which directs the publication of "the several other acts, not therein enumerated, concerning the entering, surveying, and acquiring title to lands, the property of the Commonwealth." In the first place, as all laws relating to the acquisition, in any manner, of titles to any lands, the property of the Commonwealth, fall within the general description of the provision; and as, in truth, all laws falling within that description, according to the most liberal interpretation of it, are equally proper to be preserved in a Code which may readily be consulted; I have concluded, that not only the series of laws relating to grants of waste and unappropriated lands, but of such as relate to grants of escheated and forfeited lands, and to sales of lands by revenue officers for taxes, ought to be inserted in this Code. In the next place, I have concluded, that only the series of land-laws enacted since the foundation of the

Commonwealth, are required to be published ; because the laws described are those only that relate to lands the property of the *Commonwealth* ; and because the insertion of the land-laws passed before the revolution, would swell the edition far beyond the limits of two octavo volumes, the form of publication prescribed by the act. I have therefore published, in three copious appendices, the series of land-laws passed since the revolution, the series of laws relating to escheated or forfeited lands, and the series of laws relating to forfeitures and sales of lands for taxes : and to make amends for my mistake of the intention of the Legislature, (if I have made a mistake,) in omitting the land-laws passed before the revolution, I have prefixed to the series of land-laws which I have inserted, *references* to all the land-laws passed before the revision of 1705, and *summaries* of those passed at that revision, and thenceforth to the revolution.

In general, I have endeavoured to supply whatever I myself have regarded, or heard others mention, as *desiderata* in other editions. Nothing has been inserted and nothing excluded, without my own careful examination. It was allowed me to divide the labor, but not the responsibility. The provision that repeals all acts of a general nature, which shall not be published in this Code, either entire or by their titles, pursuant to the directions of the act concerning the publication, has been continually present to my mind. I am sensible of the danger, as well as of the honor, of the confidence thus reposed in me. For my own credit, and yet more from a sense of public duty, I have laboured, most assiduously, to collect all the public laws now in force ; weighing with due deliberation, those concerning which there could be a doubt, whether they were repealed or superseded by subsequent laws or not ; and always prudently inclining to insert, rather than to exclude. Nevertheless, I may have fallen into errors of judgment : and, in the dispatch which was requisite to complete the publication within the time prescribed, some laws that ought to have been inserted, may have escaped me, and therefore be omitted. They are very few, I hope, and very inconsiderable ; and if, at any time, I shall discover such omissions, I will not fail to bring them, in a proper manner, to the notice of the Legislature.

B. W. LEIGH.

Richmond, 1819.

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Appendix I.

XXV. SERIES OF LAND LAWS ; including all the laws concerning the grant of waste and unappropriated lands, passed since the revolution ; with a preface, containing <i>references</i> to the land laws, passed before the revision of 1705, and <i>summaries</i> of the several land laws passed at that revision, and thenceforth to the revolution,	Appendix II.
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I, Benjamin Watkins Leigh, appointed by the act of Assembly, providing for the re-publication of the Laws of this Commonwealth, passed March 12, 1819, superintendent of the said publication, do hereby certify, that the Laws printed in this first volume, have been carefully examined, and that (with the exception of the errors noted in the table of errata,) I find them correctly printed.

B. W. LEIGH.

Richmond, 1819.

ERRATA.

- Page 64, § 5, line 18, for *Lackland*, read *Markland*.
68, § 1, line 7, before word *be*, read *for remedy whereof*.
116, § 69, line 9, for *of the fines*, read *of all the fines*.
181, § 3, line 10, for *proceed to all*, read *proceed to do all*.
209, § 61, last word, for *according*, read *accordingly*.
220, line 24, before the word *general*, read *judges of the*.
225, c. 68, § 1, line 3, after *Harrison*, read *Wood*.
272, § 19, line 2, before *to inspect*, read *freely*.
277, § 5, line 2, before *required*, read *empowered and*.
314, § 8, line 43, after "for serving an attachment on the body," read
63 instead of 53 cents.
325, § 13, line 8, for *next neighbouring*, read *next or neighbouring*.
336, line 3, for *land lies*, read *lands lie*.
376, § 3, line 12, for *he or she have*, read *he or she shall have*.
378, § 16, lines 5 and 6, for *in one*, read *in any one*.
416, line 1, for *one*, read *the*.
438, § 67, line 7, omit word *free*, at the end of the line.
466, c. 119, § 1, line 10, between the words *patent*, *grant*, read *or*.
479, line 8, (from bottom,) for *attained*, read *obtained*.
548, § 1, line 8, after *under-sheriff*, read *serjeant*.
599, line 12, omit word *any*, at the beginning of the line.

REVISED CODE

OF THE

LAWS OF VIRGINIA.

C. 1.

An Act providing for the re-publication of the Laws.

[Passed March 12, 1819.]

A. D. 1819.
A. R. C. 43.

1. *BE it enacted by the General Assembly*, That there shall be published an edition of the laws of this Commonwealth, in which shall be contained the following matters, that is to say: New edition of the laws to be published.

The constitution of the United States, and the amendments thereto. Contents.

A declaration of rights made by the representatives of the good people of Virginia, assembled in full and free convention, which rights do pertain to them, and their posterity, as the basis and foundation of government.

The constitution or form of government agreed to, and resolved upon, by the delegates and representatives of the several counties and corporations of Virginia.

An ordinance, to enable the present magistrates and officers to continue the administration of justice, and for settling the general mode of proceedings in criminal and other cases, 'till the same can be more amply provided for. The sixth section only. Passed July third, seventeen hundred and seventy-six.

An act, repealing, under certain restrictions, all statutes or acts of the parliament of Great Britain, heretofore in force within this Commonwealth. Passed December the twenty-seventh, seventeen hundred and ninety-two.

An act, to supply the defect of evidence of the royal assent to certain acts of Assembly under the former government. Passed December the fourteenth, one thousand seven hundred and eighty-seven.

An act, to provide against the appropriation of money by resolution of the two Houses of Assembly. Passed December the third, one thousand seven hundred and eighty-nine.

An act, for confirming and better securing the titles to lands

A. D. 1819.
A. R. C. 43.

in the Northern Neck, held under the Right Honorable Thomas Lord Fairfax, Baron of Cameron, in that part of Great Britain called Scotland. Passed in one thousand seven hundred and thirty-six.

An act, for confirming the grants made by his majesty, within the bounds of the Northern Neck, as they are now established. Passed in one thousand seven hundred and forty-eight.

An act, for the safe-keeping the land papers of the Northern Neck, in the Register's office. Passed in seventeen hundred and eighty-five.

An act, concerning certain lands lying in the Northern Neck. Passed December the tenth, one thousand seven hundred and ninety-six.

A resolution, requesting the Executive to take measures to carry into effect the act concerning certain lands in the Northern Neck. Agreed to by both Houses, December twenty-third, seventeen hundred and ninety-seven.

An act, to authorise the delegates of this State, in Congress, to convey to the United States, in Congress assembled, all the right of this Commonwealth to the territory north-westward of the river Ohio. Passed December the twentieth, one thousand seven hundred and eighty-three.

An act, concerning the territory ceded by this Commonwealth to the United States. Passed December thirtieth, seventeen hundred and eighty-eight.

An act, authorising the Executive to appoint commissioners, to unite with commissioners on the part of the United States, in running a line between the lands reserved and the lands ceded by this Commonwealth, in the State of Ohio. Passed February twenty-second, eighteen hundred and thirteen.

An act, for the cession of ten miles square, or any lesser quantity of territory, within this State, to the United States, in Congress assembled, for the permanent seat of the general government. Passed December the third, one thousand seven hundred and eighty-nine.

An act, concerning the erection of the District of Kentucky into an independent State. Passed December the eighteenth, seventeen hundred and eighty-nine.

An act, for confirming and establishing the boundary line between this State and the State of Kentucky, ascertained and fixed by certain commissioners appointed by both States; and for other purposes. Passed January the thirteenth, one thousand eight hundred.

An act, concerning the southern boundary of this State. Passed December the seventh, one thousand seven hundred and ninety-one.

An act, for confirming and establishing the boundary line between this State and the State of Tennessee, as ascertained and adjusted by certain commissioners. Passed January the twenty-second, one thousand eight hundred and three.

A resolution, for settling the disputed boundary between this State and Pennsylvania. Agreed to by both Houses, December eighteenth, seventeen hundred and seventy-six.

Report of the commissioners appointed by the States of Virginia and Pennsylvania, to run the boundary line between the

two States. Recorded in the journal of the governor and council, October eighth, seventeen hundred and eighty-five.

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A. R. C. 43.

An act, to approve, confirm and ratify the compact made by certain commissioners, appointed by the General Assembly of the State of Maryland, and commissioners appointed by this Commonwealth. Passed January the third, one thousand seven hundred and eighty-six.

An act, authorising the governor of this Commonwealth to convey certain land to the United States for the purpose of building a light-house. Passed November the thirteenth, seventeen hundred and eighty-nine.

An act, to empower the president of the United States to purchase a tract of land within this State, for the purpose of erecting a public arsenal thereon. Passed November twenty-eighth, seventeen hundred and ninety-four.

An act, authorising the governor of this Commonwealth to convey to the United States, certain land on Old Point Comfort, for the purpose of building a light house. Passed January second, seventeen hundred and ninety-eight.

An act, authorising the governor of this Commonwealth to convey to the United States, upon certain conditions, the property of this Commonwealth, called Gosport. Passed January twenty-fifth, one thousand eight hundred.

An act, authorising the governor of this Commonwealth to cede to the United States the jurisdiction over certain lands, on New Point Comfort, and on Smith's Point, for the purpose of building light-houses. Passed January the fifteenth, one thousand eight hundred and two.

An act, making provision for the disposal of the Marine Hospital, and the exoneration of the commissioners. Passed January the twentieth, one thousand seven hundred and ninety-eight.

An act, establishing religious freedom. Passed December the twenty-sixth, one thousand seven hundred and eighty-five.

An act, to repeal certain acts, and to declare the construction of the bill of rights and constitution, concerning religion. Passed January the twenty-fourth, one thousand seven hundred and ninety-nine.

An act, concerning the glebe lands and churches within this Commonwealth. Passed December nineteenth, seventeen hundred and ninety-six.*

An act, declaring that none shall be condemned without trial, and that justice shall not be sold or deferred. Passed December the fifth, one thousand seven hundred and eighty-five.

An act, to prevent frauds and perjuries. Passed November the thirtieth, one thousand seven hundred and eighty-five.

An act, for the relief of creditors against fraudulent devises. Passed December the seventeenth, one thousand seven hundred and eighty-nine.

An act, forbidding and punishing affrays. Passed November the twenty-seventh, one thousand seven hundred and eighty-six.

An act, against conspirators. Passed November the twenty-seventh, one thousand seven hundred and eighty-six.

* So in roll—the law was passed January 12, 1802.

A. D. 1819.
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An act, prescribing the punishment of those who sell unwholesome meat or drink. Passed November twenty-seventh, seventeen hundred and eighty-six.

An act, providing that actions popular, prosecuted by collusion, shall be no bar to those which be pursued with good faith. Passed November the twenty-eighth, seventeen hundred and eighty-six.

An act, for the suppression and punishment of riots, routs and unlawful assemblies. Passed December the fourth, seventeen hundred and eighty-six.

An act, concerning homicide by misfortune. Passed November the eighteenth, one thousand seven hundred and eighty-nine.

An act, against those who counterfeit letters, or privy tokens, to receive money or goods, in other men's names. Passed November the eighteenth, one thousand seven hundred and eighty-nine.

An act, concerning the benefit of clergy. Passed November the twenty-seventh, one thousand seven hundred and eighty-nine.

An act, to punish bribery and extortion. Passed October the nineteenth, seventeen hundred and ninety-two. The first, fourth and fifth sections.

An act, against buying and selling of offices. Passed October the nineteenth, one thousand seven hundred and ninety-two.

An act, declaring at what time restitution shall be made of goods stolen. Passed October twenty-second, seventeen hundred and ninety-two.

An act, against champerty. Passed December the eighth, one thousand seven hundred and ninety-two.

An act, against divulgers of false news. Passed December the twenty-seventh, one thousand seven hundred and ninety-two.

An act, for the effectual suppression of vice, and punishing the disturbers of religious worship and sabbath-breakers. Passed December the twenty-sixth, seventeen hundred and ninety-two.

An act, concerning stealing tobacco on the highways. Passed December the fifteenth, one thousand seven hundred and ninety-two.

An act, concerning prison-breakers. Passed December the thirteenth, one thousand seven hundred and ninety-four.

An act, in addition to the act, entitled "an act to amend the penal laws of this Commonwealth." Passed January the twenty-first, eighteen hundred and one. The first, second, and fourth sections.

An act, to suppress duelling. Passed January the twenty-sixth, one thousand eight hundred and ten.

An act, concerning partitions and joint rights and obligations. Passed November twenty-eighth, one thousand seven hundred and eighty-six.

An act, declaring when the death of persons absenting themselves shall be presumed. Passed December first, seventeen hundred and eighty-six.

An act, against conveying, or taking, pretended titles. Passed December the sixth, one thousand seven hundred and eighty-six.

A. D. 1819.
A. R. C. 43.

An act, for completing the revision of the laws. The fifth section.

An act, to authorise the establishment of fire companies. Passed January the seventh, one thousand seven hundred and eighty-eight.

An act, to prevent the importation of convicts into this Commonwealth. Passed November the fifteenth, one thousand seven hundred and eighty-eight.

An act, concerning awards. Passed December the seventeenth, one thousand seven hundred and eighty-nine.

An act, declaring the law concerning the escape of debtors, and other prisoners. Passed November twenty-fourth, seventeen hundred and ninety-two.

An act, reducing into one the several acts concerning the manner of authenticating foreign deeds, records, and other instruments of writing. Passed December the eighth, seventeen hundred and ninety-two.

An act, to reduce into one, all acts and parts of acts relating to dower. Passed December the sixth, seventeen hundred and ninety-two.

An act, declaring who shall be deemed citizens of this Commonwealth, and pointing out the mode by which the right of citizenship may be acquired or relinquished. Passed December twenty-third, seventeen hundred and ninety-two.

An act, concerning the right of entry, and giving remedy against collusive judgments of lands, and wrongful alienations thereof in certain cases. Passed December the nineteenth, seventeen hundred and ninety-two.

An act, concerning waste. Passed December the twenty-sixth, one thousand seven hundred and ninety-two.

An act, declaring what remedy the Commonwealth shall have in certain cases. Passed December twenty-fifth, seventeen hundred and ninety-two.

An act, declaring what acts of the present session shall be immediately in force, and to suspend the operation of all other acts, of the present session, which are of a public and permanent nature. Passed December the twenty-eighth, one thousand seven hundred and ninety-two.

An act, to amend the act, prescribing the mode of ascertaining the taxable property within this Commonwealth, and of collecting the public revenue. Passed December the nineteenth, seventeen hundred and ninety-four. The third section.

An act, prescribing a mode for making a title to the purchasers of lands, heretofore sold by sheriffs for arrears of taxes. Passed December the twelfth, one thousand seven hundred and ninety-five.

An act, authorising certain proceedings on the writ of mandamus. Passed January the twenty-second, one thousand seven hundred and ninety-nine.

An act, declaring the law in cases of discounts and offsets. Passed December the twenty-ninth, one thousand eight hundred and six.

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An act, to explain and amend an act, reducing into one the several acts concerning forcible entries and detainers. Passed February the twelfth, one thousand eight hundred and fourteen.

An act, concerning wrecks. Passed June the twentieth, one thousand seven hundred and eighty-two. The first and second sections.

An act, to regulate the inspection of hemp. Passed December the twenty-fourth, one thousand seven hundred and ninety.

An act, reducing into one the several acts for regulating the inspection of pork, beef, tar, pitch and turpentine. Passed December the twenty-sixth, one thousand seven hundred and ninety-two.

An act, for the inspection of fish. Passed December the twenty-eighth, one thousand seven hundred and ninety-five.

An act, regulating the inspection of salt, in certain counties therein mentioned. Passed January the eighth, eighteen hundred and fourteen.

An act, to amend the act, reducing into one the several acts concerning the inspection of lumber. Passed February fifteenth, eighteen hundred and seventeen.

An act, to prevent unlawful hunting and ranging. Passed December the fourth, one thousand seven hundred and ninety-two.

An act, to prevent unlawful hunting. Passed December the twenty-third, one thousand seven hundred and ninety-two.

An act, to prevent killing of deer, within certain periods annually. Passed January the sixteenth, one thousand eight hundred and one.

An act, to prevent the burning of the woods. Passed January the sixteenth, one thousand eight hundred and two.

An act, for improving the breed of horses. Passed December the twenty-fourth, one thousand seven hundred and ninety-two.

An act, to prevent the destruction of sheep in this Commonwealth. Passed January the twenty-sixth, one thousand eight hundred and fourteen. The sixth section.

An act, concerning tributary Indians. Passed December the twenty-fourth, one thousand seven hundred and ninety-two.

An act, reducing into one the several acts concerning servants. Passed December the twenty-sixth, one thousand seven hundred and ninety-two.

An act, concerning weights and measures. Passed December the twenty-sixth, one thousand seven hundred and ninety-two.

An act, making provision for the re-payment of monies paid into the treasury, in pursuance of an act, "for sequestering British property; enabling those indebted to British subjects to pay off such debts; and directing the proceedings in suits where such subjects are parties." Passed December the nineteenth, one thousand seven hundred and ninety-six.

An act, for calling in and registering certificates of the public debt of this state. Passed January the twenty-eighth, eighteen hundred and two.

An act, concerning certificates. Passed December the twenty-ninth, one thousand eight hundred and nine.

An act, for incorporating the Bank of Virginia. Passed January the thirtieth, one thousand eight hundred and four.

An act, incorporating the Farmers' Bank of Virginia. Passed February the thirteenth, one thousand eight hundred and twelve.

An act, concerning the Farmers' Bank of Virginia. Passed February the nineteenth, one thousand eight hundred and twelve.

An act, authorising the Bank of Virginia and the Farmers' Bank of Virginia to make loans to the government of the United States. Passed February the twentieth, one thousand eight hundred and twelve.

An act, for extending the charter of the Bank of Virginia, and for other purposes. Passed January the twenty-fourth, eighteen hundred and fourteen.

An act, to amend an act, entitled, an act incorporating the Farmers' Bank of Virginia. Passed January the twenty-seventh, eighteen hundred and fourteen.

An act, concerning the Bank of Virginia and the Farmers' Bank of Virginia. Passed October the nineteenth, eighteen hundred and fourteen.

An act, to provide more effectually for the payment of specie by the several Banks of this Commonwealth. Passed February the twenty-third, one thousand eight hundred and sixteen.

An act, more effectually to prevent the circulation of notes emitted by unchartered Banks. Passed February the twenty-fourth, eighteen hundred and sixteen.

An act, to establish two new banks within this Commonwealth. Passed February the fifth, one thousand eight hundred and seventeen.

An act, for regulating inland navigation on Potowmac river above tide water. Passed December the ninth, seventeen hundred and ninety three.

An act, for regulating the navigation of James river above the falls of said river. Passed December the seventeenth, seventeen hundred and ninety-one.

An act, to amend an act, entitled, "an act for regulating the navigation of James river above the falls of the said river." Passed February the ninth, one thousand eight hundred and eleven.

An act, to prevent the hauling of seines at certain places within certain periods annually. Passed January the fourth, one thousand eight hundred and five.

An act, concerning seamen. Passed January the nineteenth, one thousand eight hundred and five.

An act, concerning certain corporation courts. Passed December the twelfth, one thousand seven hundred and ninety-three.

An act, for giving further time to the owners of lots, in the town of Cartersville, in Cumberland county, to build thereon; and for other purposes. Passed December the twenty-first, seventeen hundred and ninety-five. The fourth section.

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An act, concerning corporations. Passed December the twenty second, one thousand seven hundred and ninety-six.

An act, providing for the election of sergeants of corporations in certain cases. Passed February the twenty-second, eighteen hundred and thirteen.

An act, to regulate the proceedings in suits against corporations. Passed February the nineteenth, eighteen hundred and sixteen.

An act, authorising the president of the United States to open an inland navigation, from the Chesapeake bay, or the port of Norfolk, to the channel of Currituck sound, and from Lynhaven bay to the eastern branch of Elizabeth river. Passed January the thirtieth, eighteen hundred and nine.

An act, to create a fund for internal improvement. Passed February the fifth, eighteen hundred and sixteen.

An act, prescribing certain general regulations for the incorporation of turnpike companies. Passed February the seventh, eighteen hundred and seventeen.

An act, to compel the manufacturers of salt-petre to keep their works enclosed. Passed February the fourth, eighteen hundred and fourteen.

An act, making further provision for furnishing the public officers of this Commonwealth with the laws thereof. Passed January twenty-sixth, eighteen hundred and two. The preamble, and the third section.

An act, authorising Samuel Pleasants, jr. to publish a collection of certain public laws of this Commonwealth, and for other purposes. Passed January the seventh, eighteen hundred and seven. The preamble, and first section.

An act, authorising William Waller Hening to publish an edition of the laws of this Commonwealth, and for other purposes. Passed February the fifth, one thousand eight hundred and eight. The preamble, and first section.

An act, making further provision for furnishing the public officers of this Commonwealth with the laws thereof. Passed February the tenth, one thousand eight hundred and twelve. The preamble and third section.

An act, to amend the act, "authorising William Waller Hening to publish an edition of certain laws of this Commonwealth, and for other purposes." Passed February the twelfth, eighteen hundred and thirteen.

An act, for reducing into one the several acts, and parts of acts, respecting the powers and duties of the Executive. Passed November the sixteenth, one thousand seven hundred and ninety-two.

An act, to prevent the Executive from remitting fines or amercements. Passed January the twenty-third, eighteen hundred and one.

An act, concerning appointments to civil offices. Passed November the twenty-fourth, one thousand seven hundred and ninety-four.

An act, concerning the credentials of the senators of this Commonwealth in congress. Passed December twenty-second, seventeen hundred and eighty-eight.

An act, for arranging the counties of this Commonwealth into districts to choose representatives to congress. Passed February the sixth, one thousand eight hundred and thirteen.

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An act, for arranging the counties into districts for the election of senators, and for equalizing the land tax. Passed February the eighteenth, one thousand eight hundred and seventeen.

An act, establishing a separate election on the south side of the river Roanoke, in the county of Mecklenburg. Passed January the twenty-eighth, one thousand eight hundred and twelve.

An act, establishing a separate election on the east side of Cheat River, in the county of Monongalia. Passed January the twenty-fifth, one thousand eight hundred and sixteen.

An act, establishing a separate election in the county of Cabell. Passed January the thirty-first, eighteen hundred and seventeen.

An act, authorising a separate election in that part of Bath county, lying west of the Alleghany, and for other purposes. Passed February the third, one thousand eight hundred and seventeen.

An act, reducing into one act the several acts concerning the election of members of the General Assembly, and for other purposes.

An act, reducing into one act the several acts concerning disputed elections of members of the General Assembly.

An act, for reducing into one act the several acts concerning the court of appeals, and special courts of appeals.

An act, reducing into one act all acts and parts of acts concerning the superior courts of chancery.

An act, reducing into one the several acts and parts of acts concerning the general court, and prescribing the manner of proceeding therein in certain cases.

An act, to reduce into one the several acts and parts of acts concerning the establishment, jurisdiction and powers of the superior courts of law.

An act, to reduce into one act the several acts and parts of acts concerning the county and other inferior courts of this Commonwealth.

An act, concerning the adjournments and places of sessions of certain courts, in certain cases.

An act, to reduce into one the several acts concerning grand juries, and petit juries.

An act, to reduce into one the several acts allowing a bill of exceptions to be sealed.

An act, declaring who shall be conservators of the peace within this Commonwealth.

An act, to reduce into one the several acts concerning counsel and attorneys at law.

An act, to reduce into one all acts and parts of acts relating to the appointment and duties of sheriffs.

An act, to reduce into one the several acts concerning coroners.

An act, to reduce into one act the several acts concerning escheators.

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An act, concerning clerks of courts.

An act, to reduce into one act the several acts concerning constables.

An act, reducing into one the several acts prescribing the oath of fidelity, and the oaths of public officers.

An act, to reduce into one the several acts and parts of acts ascertaining the salaries of the officers of civil government.

An act, to reduce into one act the acts to disable the officers of the continental government from holding offices under the authority of this Commonwealth.

An act, to reduce into one act the several acts and parts of acts concerning witnesses; and prescribing the manner of obtaining and executing commissions for taking their depositions, in certain cases.

An act, for limitation of actions; for preventing frivolous and vexatious suits, concerning jeofails, and certain proceedings in civil cases.

An act, reducing into one act the several acts directing the method of proceeding in courts of equity, against absent debtors or other absent defendants, and for settling the proceedings on attachments against absconding debtors.

An act, reducing into one all acts and parts of acts, providing a method to help and speed poor persons in their suits.

An act, to reduce into one the several acts and parts of acts prescribing a method of protesting inland bills of exchange, and allowing assignees of obligations to bring actions thereupon in their own names.

An act, for reducing into one act all acts and parts of acts, concerning suits brought for sterling money, and for ascertaining the rate of exchange, and damages upon protested bills of exchange.

An act, for reforming the method of proceeding in writs of right.

An act, to empower securities to recover damages in a summary way, and for other purposes.

An act, to reduce into one the several acts, for the better securing the payment of rents, and preventing the fraudulent practices of tenants, and to regulate the practice of suing out and prosecuting writs of replevin.

An act, to reduce into one act the several acts concerning executions, and for the relief of insolvent debtors.

An act, to reduce into one act the acts now in force, directing the mode of suing out and prosecuting writs of *habeas corpus*, and to annul the remedy by writ *de homine replegiando*.

An act, reducing into one the several acts concerning wills, the distribution of intestates' estates, and the duty of executors and administrators.

An act, to reduce into one the several acts, directing the course of descents.

An act, to reduce into one act the several acts, for regulating conveyances, and concerning wrongful alienations.

An act, to reduce into one act the acts concerning public notaries.

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An act, to reduce into one the several acts, concerning guardians, orphans, curators, infants, masters and apprentices.

An act, reducing into one act all acts, and parts of acts, making provision for the restraint, support and maintenance of idiots and lunatics, and the preservation and management of their estates.

An act, to reduce into one the several acts, to regulate the solemnization of marriages; prohibiting such as are incestuous or otherwise unlawful; to prevent forcible and stolen marriages, and for punishment of the crime of bigamy.

An act, to reduce into one the several acts, concerning mills, mill dams, and other obstructions of water courses.

An act, reducing into one the several acts, for the settlement and regulation of ferries.

An act, to reduce into one the several acts, giving power to the county courts to establish ferries, and to regulate the rates of ferriage.

An act, to reduce into one the several acts, concerning public roads, and for establishing public landings.

An act, reducing into one act the several acts, directing the manner of proceeding in cases of impeachment.

An act, reducing into one the several acts, declaring what shall be treason; for punishing certain offences injurious to the tranquility of the Commonwealth; concerning felonies and offences committed out of the jurisdiction of the same; and taking from the Executive the power of granting pardon to traitors.

An act, to punish arson, the burning or setting fire to houses in towns, the malicious burning any house, or houses, or stacks, and certain house breakers and accessaries to felonies, and receivers of stolen goods.

An act, reducing into one act the several acts, declaring the punishment in case of rape.

An act, declaring the punishment of the crime of buggery.

An act, reducing into one the several acts, for punishing persons guilty of certain thefts and forgeries, and the destruction or concealment of wills.

An act, reducing into one act the several acts, declaring the punishment of horse-stealers and their accessaries, and to encourage the apprehenders of horse-stealers.

An act, reducing into one the several acts, against hog-stealing.

An act, against the embezzling of records.

An act, reducing into one the several acts, directing what persons shall be let to bail.

An act, reducing into one the several acts, for the safe-keeping of prisoners committed, under the authority of the United States, into any of the jails of this Commonwealth.

An act, to reduce into one act, the several acts and parts of acts, to prevent unlawful gaming.

An act, to reduce into one act the several acts, against malicious or unlawful shooting, stabbing, maiming and disfiguring.

An act, to reduce into one act the several acts, concerning the method of proceeding against free persons charged with certain crimes; declaring the mode of proceeding on indictment.

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ments, informations, and prosecutions on penal statutes; and for preventing vexatious and malicious prosecutions, and moderating amercements.

An act, to reduce into one act the several acts, and parts of acts, for establishing a penitentiary-house, and for the punishment of crimes.

An act, to reduce into one the several acts, and parts of acts, concerning perjury, subornation of perjury, and embracery.

An act, to reduce into one the several acts, for preventing trespasses; declaring what shall be deemed a lawful enclosure; for preventing infection of horned cattle, and losses from drivers thereof passing through the Commonwealth.

An act, to reduce into one act the several acts, against usury.

An act, to reduce into one all acts, to prevent the circulation of private bank notes.

An act, to reduce into one the several acts of assembly, allowing a reward for killing wolves.

An act, to reduce into one act the several acts, concerning the land office; ascertaining the terms and manner of granting waste and unappropriated lands; for settling the titles and boundaries of lands; directing the mode of processioning, and prescribing the duty of surveyors.

An act, to reduce into one the several acts declaring and regulating the practice of suing out and prosecuting writs of *scire facias*, to repeal letters patent.

An act, reducing into one the several acts concerning slaves, free negroes and mulattos.

An act, reducing into one act the several acts for apprehending and securing runaways.

An act, to reduce into one act, the several acts now in force, concerning patroles.

An act, reducing into one act the several acts, providing for the poor, and declaring who shall be deemed vagrants.

An act, to reduce into one the several acts, for regulating ordinaries, and houses of private entertainment, and for the restraint of tippling-houses.

An act, to reduce into one act the several acts, for regulating the inoculation, and for the prevention of the small pox.

An act, to reduce into one the several acts, to oblige vessels coming from foreign ports to perform quarantine.

An act, to reduce into one the several acts concerning pilots, and regulating their fees.

An act, reducing into one the several acts, for unlading ballast, and burial of dead bodies from on board ships, and prohibiting the putting sick or disabled seamen and servants on shore, without providing for their maintenance.

An act, reducing into one act the several acts concerning the appointment of harbor-masters, and declaring their duties.

An act, to reduce into one act the several acts now in force, regulating impresses, and the compensation to individuals for property taken or occupied, for public uses.

An act, to reduce into one act all acts and parts of acts, concerning the office of trustees or directors of the several towns within this Commonwealth, and for supplying vacancies in the same.

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*An act, to reduce into one the several acts concerning es-
trays.*

*An act, to reduce into one act the acts, for the relief of per-
sons who have been, or may be, injured, by the destruction of the
records of certain courts of justice.*

*An act, to reduce into one the several acts, now in force,
concerning the inspection of tobacco.*

*An act, to amend and reduce into one act the several acts,
now in force, for regulating the inspection of flour, Indian meal
and bread.*

*An act, to reduce into one act the acts, now in force, to pre-
vent the destruction of oysters within this Commonwealth.*

*An act, to reduce into one act the several acts, concerning
the literary fund.*

*An act, to reduce into one all acts, and parts of acts, con-
cerning aliens.*

*An act, directing the manner in which the money of account
shall be expressed, in the accounts of the public offices, and in
the proceedings of the courts of this Commonwealth, and for
other purposes.*

*An act, reducing into one act, all acts and parts of acts con-
cerning the appointment, duties, and the salary of the public
printer.*

*An act, to reduce into one the several acts, concerning the
auditor and treasurer.*

*An act, reducing into one act the several acts concerning
titheables, and directing the mode of laying and collecting the
county levy.*

*An act, reducing into one the several acts, concerning the
fees of certain officers, and declaring the mode of discharging
the said fees.*

*An act, to reduce into one the several acts, concerning the
recovery of debts due to the public, and the sale of lands, for
judgments on behalf of the Commonwealth against public offi-
cers.*

*An act, to reduce into one act the several acts for enforcing
the payment of fines into the public treasury.*

*An act, reducing into one the several acts, prescribing the
mode of ascertaining the taxable property within the Common-
wealth, and of collecting the public revenue.*

*An act, to provide for the collection of the taxes on licenses
to merchants; to hawkers and pedlars; to keepers of ordina-
ries and houses of private entertainment; on law process; and
on certain other subjects.*

*An act, to reduce into one act the several acts, now in force,
providing for the appointment of electors to choose a president
and vice-president of the United States.*

*An act, to reduce into one all acts and parts of acts, for regu-
lating the militia of this Commonwealth.*

*An act, to reduce into one the several acts, for the govern-
ment and regulation of the manufactory of arms.*

An act, concerning the laws of this Commonwealth.

*An act, for adjusting and settling the titles of claimers to
unpatented lands, under the present and former government,*

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previous to the establishment of the Commonwealth's land-office. Passed in the year seventeen hundred and seventy-nine.

Land laws, not enumerated, to be inserted.

The several other acts, not herein enumerated, in relation to entering, surveying, and acquiring title to lands, the property of the Commonwealth.

Also, acts of a general nature, of the last and this Assembly.

All acts of a general nature, passed during the present and the last session of the legislature, not herein particularly enumerated, which have not been either repealed, or incorporated, in other acts.

Acts, for charts and map of the State.

The several acts, providing for a chart of each county, and a general map of the Commonwealth.

Other pretermitted acts, of a general nature.

All such other acts, of a general nature, now in force, not mentioned in the volume reported to the legislature, at their last session, by the committee of revisors, as may have been pretermitted in this act.

Titles and dates of private, local and temporary acts.

The titles and dates of all private, local and temporary acts, passed from the year eighteen hundred and twelve, to the year eighteen hundred and seventeen, such as is published at the end of the volume reported as aforesaid; with a similar list of the titles and dates of such acts, passed during the last and present session of the legislature.

Time of passage to be prefixed to each act.

2. IN publishing the laws aforesaid, the days upon which they respectively passed, shall be prefixed to each act immediately succeeding its title.

Style of publication.

3. THE said edition shall be published in two octavo volumes, printed in the best type, on good paper, well bound in calf skin, and lettered. It shall contain a complete index, and proper marginal notes and references.

To be superintended by Benjamin W. Leigh, or some other person appointed by the Executive, in the event of his refusal. Duties to be performed by such superintendent.

4. THE publication thereof shall be under the immediate superintendence of Benjamin Watkins Leigh; or on his failure to act, under the superintendence of such other fit person as the Executive may appoint for that purpose. It shall be his duty to prescribe the order, in which the several laws shall be published in the code; carefully classing them according to their subject matter, without reference to the time of their passage; to note particularly, the time of the enactment of each provision of the law, and to make such brief notes of explanation and reference, as he shall deem proper; he shall cause to be made proper marginal notes of the contents of each section, and a full and complete index to the whole code; and he shall cause the proof sheets to be carefully examined, during the publication. He shall be allowed to employ, with the approbation of the Executive, one or more clerks or assistants, to aid in the discharge of the duties aforesaid; and he, with the clerks or assistants aforesaid, shall be allowed, by the Executive, a reasonable compensation for their services, to be paid out of the public treasury. Upon his certificate that the laws aforesaid have been carefully examined, and that he finds them correctly printed, they shall be received in evidence in the same manner as the originals.

He may appoint one or more clerks to assist him.

Their compensation.

How the work shall be authenticated.

Contract with Thomas Ritchie to print such edition, recited.

5. AND whereas Thomas Ritchie hath agreed to undertake the publication of the code aforesaid, in manner aforesaid, and to deliver to the Executive, for the use of the Commonwealth,

four thousand copies thereof, well printed, bound and lettered as aforesaid, at the price of six dollars for each copy, three thousand copies whereof are to be delivered on or before the first day of December, and the residue, on or before the first day of January next:

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Be it therefore further enacted, That the Executive shall be and they are hereby authorised and required to contract with the said Thomas Ritchie, for the delivery of the said four thousand copies of the code aforesaid, at the times, and for the price aforesaid. When the said copies shall be received, it shall be the duty of the Executive to retain ten copies thereof, in the council chamber, for the use of the Executive department of the government, and to distribute the residue, or so many thereof as may be necessary, in the manner following: five copies to the clerk of each house of the General Assembly, for the use of the said houses, respectively; one copy to each of the judges of the court of appeals, general court, and superior courts of chancery; one copy to each of the judges of the courts of the United States resident within this State; one copy to the treasurer, auditor, and register, each, for the use of his department; one copy to the president and directors of the literary fund, and to the president and directors of the board of public works, each, for the use of their boards respectively; one copy to Thomas Jefferson, James Madison, and James Monroe, each; one copy to the superintendant of this edition of the laws; one copy to the attorney general, and to each attorney prosecuting for the Commonwealth, in any court within this State; one copy to each clerk of any court of record, within this Commonwealth, for the use of the court; and one copy to each justice of the peace, within this Commonwealth.

Duty of the executive in relation thereto.

How the copies shall be distributed.

6. THE sum necessary for the purchase aforesaid shall be paid out of any money in the treasury, not otherwise appropriated; and may be drawn for upon the order of the Executive, at any time after the said copies shall have been delivered: *Provided, however*, That it shall be lawful, at any time after the passage of this act, for the Executive to cause to be paid to the said Thomas Ritchie, in advance, for the purchase aforesaid, any sum not exceeding five thousand dollars; he the said Thomas Ritchie having first entered into bond with sufficient security, to be approved by the Executive, payable to the governor for the time being, and his successors, and conditioned for the due and faithful publication of the code aforesaid, and for the delivery of the said four thousand copies, within the times, and at the price aforesaid.

At what times they shall be paid for.

Proviso, that 5,000 dollars may be paid in advance; bond and security being given by Mr. Ritchie.

7. FOR the purpose of making the said advance of five thousand dollars to Thomas Ritchie; *Be it further enacted*, That the Executive of this Commonwealth shall be, and they are hereby authorised and required to borrow, on the credit of the State, the sum of five thousand dollars, until the first day of November, eighteen hundred and nineteen, of any one of the banks in the city of Richmond, of the board of public works, the president and directors of the literary fund, or of any person or persons:—*Provided*, That the interest to be paid for the said loan shall not exceed the rate of seven per centum per annum.

Executive authorized to borrow that sum on the credit of the State.

On an interest not exceeding 7 per cent.

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Revised bills passed the present session, not to be printed with the laws thereof.

Exception.

Repeal of all acts of a general nature not published in such Code.

Proviso.

Commencement.

8. *AND be it also enacted*, That the revised bills passed during the present session of the General Assembly, shall not be printed with the other laws passed at the present session, except such bills and parts of bills as take effect before the first day of January next.

9. ALL acts and parts of acts, of a general nature, which shall not be published in the code aforesaid, pursuant to the directions of this act, either entire or by their titles, shall be, and the same are hereby repealed, from and after the first day of January next: *Provided, however*, That such repeal shall not prevent the prosecution of any offence committed, or impair any right accrued before the said first day of January; but such offence may be prosecuted, and such right may be maintained and asserted, in the same manner as if this repealing section had never passed.

10. THIS act shall commence and be in force from and after the passage thereof.

C. 2.

A. D. 1788—9.
A. R. C. 13.

CONSTITUTION OF THE UNITED STATES.

WE, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE 1.

Section 1.

Legislative powers vested in congress.

1. ALL legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

Section 2.

House of representatives; its members; by whom chosen: qualifications of electors.

A representative to be aged 25; seven years a citizen of the United States, and an inhabitant of his state when elected. Representatives and taxes to be apportioned according to numbers.

1. THE house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. REPRESENTATIVES and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be de-

terminated by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three; *Massachusetts* eight; *Rhode Island* and *Providence Plantations* one; *Connecticut* five; *New York* six; *New Jersey* four; *Pennsylvania* eight; *Delaware* one; *Maryland* six; *Virginia* ten; *North Carolina* five; *South Carolina* five; and *Georgia* three.

A. D. 1788—9.

A. R. C. 13.

Actual enumeration every ten years.

Limitation of the ratio of representation, &c.

First apportionment of representatives.

4. WHEN vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Writs of election for filling vacancies.

5. THE house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

The house of representatives to choose their speaker, &c.

Section 3.

1. THE senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.*

Two senators chosen by the legislature of each state, for 6 years; each a vote.

2. IMMEDIATELY after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class, shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

[*See art. 5. cl. 1.] The senators divided into three classes.

One third of the senatorial seats vacated and filled, every two years.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

Executives of states to fill vacancies, in the recess of legislatures, &c.

4. THE vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

A senator aged 30; nine years a citizen of the United States, and an inhabitant of his state when chosen.

Vice-president to be president of the senate; to vote on an equal division only.

5. THE senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate to choose their president pro tempore, &c.

6. THE senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

The sole power to try impeachments, in the senate, &c.

A. D. 1788—9.
A. R. C. 13.

Extent of judgment in cases of impeachment. Party liable also to judgment, &c. according to law.

7. JUDGMENT in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Section 4.

Times, &c. of holding elections for senators and representatives, regulated by the states or by congress.

Congress to assemble annually on the first Monday in December, &c.

1. THE times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

2. THE congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5.

Each house judge of the election of its own members. Quorum.

1. EACH house shall be the judge of the elections, returns, and qualifications, of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house to determine its own rules, &c.

2. EACH house may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two thirds, expel a member.

Journals to be kept by each house, and published, &c.

3. EACH house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one fifth of those present, be entered on the journal.

Adjournment of both houses.

4. NEITHER house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6.

Senators and representatives to be paid, &c.

Privileged from arrest, &c.

1. THE senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Concerning the holding of offices by senators and representatives.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section 7.

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1. ALL bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Revenue bills to originate in the house of representatives, &c.

2. EVERY bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days, (Sundays excepted,) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Powers of the president and of congress in the enacting of laws, and the forms of proceeding on bills in that respect.

3. EVERY order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment,) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Joint resolutions, except for adjournment, to receive the same sanction as bills.

Section 8.

THE congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:

Congress have power to lay taxes, &c.

2. To borrow money on the credit of the United States:

To borrow money.

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

To regulate commerce.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

To establish the rule of naturalization, &c.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To coin money, &c.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

To provide for punishing counterfeiters.

7. To establish post-offices and post-roads:

To establish post offices, &c.

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

To promote science, &c.

9. To constitute tribunals inferior to the supreme court: To

To constitute inferior tribunals, &c.

- A. C. 1788—9.**
A. R. C. 13.
- To declare war. define and punish piracies and felonies committed on the high seas, and offences against the law of nations :
- To raise armies. 10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :
- To provide a navy. 11. To raise and support armies ; but no appropriation of money to that use, shall be for a longer term than two years :
- To make rules for governing army and navy. 12. To provide and maintain a navy :
- To provide for calling forth the militia. 13. To make rules for the government and regulation of the land and naval forces :
- To provide for organizing the militia, &c. 14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions :
15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States ; reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress :
- To exercise exclusive jurisdiction over a territorial district not exceeding ten miles square, &c. 16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States ; and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings :—and,
- To make all laws necessary to the execution of their powers. 17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Section 9.

- Importation of certain persons not to be prohibited until after 1808. 1. THE migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight ; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.*
- [*See art. 5, cl. 1.] The writ of habeas corpus recognized, &c. 2. THE privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.
- No bills of attainder, or ex post facto laws. 3. No bill of attainder or ex post facto law shall be passed.
- Direct taxes according to census. 4. No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration herein-before directed to be taken.
- No export duty, nor preference of one state to another in commerce. 5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another ; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.
- Money to be expended by legal appropriation only. 6. No monies shall be drawn from the treasury but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.
- No titles of nobility can be conferred by the United 7. No title of nobility shall be granted by the United States : and no person holding any office of profit or trust under them,

shall, without the consent of the congress, accept of any present, 'emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

A. D. 1788—9.
A. R. C. 13.

States; nor can its officers accept presents, &c.

[See amendments, art. 13.]

Powers withdrawn from the states individually.

Section 10.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Powers which the states can exercise only under the sanction of congress.

ARTICLE 2.

Section 1.

1. THE executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and together with the vice-president, chosen for the same term, be elected as follows:

Executive power vested in a president, &c.

2. EACH state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Electors of president and vice-president, &c.

3. THE electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for; and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed: and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then, from the five highest on the list, the said

Meeting of the electors of president, &c. Their proceedings.

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[² Annulled. See amendments, art. 12.]

Congress may determine the time of choosing electors of president, &c.

The president to be natural born, or a citizen in 1788; aged 35; and 14 years a resident of the United States.

In case of vacancy in the office of president, the vice-president to act, &c.

Compensation of the president.

The president to take an oath.

Form of the oath.

The president is commander in chief, &c.

He may require written opinions from principal executive officers. He can reprieve and pardon.

He may, in conjunction with the senate, make treaties, appoint ambassadors, &c.

house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice-president.*

4. THE congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president: neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. IN case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president; and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

7. THE president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

8. BEFORE he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the constitution of the United States."

Section 2.

1. THE president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. HE shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose

appointments are not herein otherwise provided for, and which shall be established by law. But the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

A. D. 1788—2.
A. R. C. 13.

Congress may vest certain appointments in the president alone, or otherwise.
The president may fill vacancies during the recess of the senate.

3. THE president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

Section 3.

1. HE shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

President to inform congress, and recommend measures; may convene and adjourn congress on certain occasions; receive ambassadors, &c.; shall see the laws executed, and commission all officers of the United States.

Section 4.

1. THE president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

President, &c. removable on impeachment and conviction.

ARTICLE 3.

Section 1.

1. THE judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Judicial powers vested in a supreme court, &c. Judges to hold their offices during good behaviour, &c.

Section 2.

1. THE judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.*

Extent of the judicial power.

[* See a restriction of this provision, amendments, art. 11.]

A. D. 1788—9.
A. R. C. 13.

Original and appellate jurisdiction of the supreme court.

Trial of crimes to be by jury, &c.

2. IN all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

3. THE trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Section 3.

Definition of treason.

1. TREASON against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Congress to declare the punishment of treason, &c.

2. THE congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE 4.

Section 1.

Credit to be given in one state to the public acts, &c. of another, &c.

1. FULL faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Section 2.

Reciprocity of citizenship throughout the states. Criminals flying from one state to another, to be delivered up on demand.

1. THE citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Runaway slaves, &c. to be delivered up.

2. A PERSON charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.

Section 3.

New states may be admitted into the union, &c.

1. NEW states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the

consent of the legislatures of the states concerned, as well as of the congress.

A. D. 1788—9.
A. R. C. 13.

2. THE congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this constitution shall be so construed, as to prejudice any claims of the United States, or of any particular state.

Congress to have power over territory, &c. Claims of the states, &c. not to be prejudiced.

Section 4.

1. THE United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or the executive (when the legislature cannot be convened,) against domestic violence.

Republican form of government guaranteed to each state, &c.

ARTICLE 5.

1. THE congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first* and fourth* clauses in the ninth section of the first article: and that no state, without its consent, shall be deprived of its equal suffrage in the senate.†

Mode of amending this constitution.

* Concerning the importation of certain persons, and direct taxes.]

† See ante, art. 1, § 3, cl. 1.]

ARTICLE 6.

1. ALL debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

Assumption of debts incurred under the confederation.

2. THIS constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

This constitution, acts of congress, and treaties, &c. supreme law, &c. The state judges bound thereby.

3. THE senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Senators, representatives, &c. bound by oath or affirmation to support this constitution. No religious test.

A. D. 1788—9.

A. R. C. 13.

Ratification of nine
states sufficient,
&c.

ARTICLE 7.

1. **THE** ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

DONE in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

William Samuel Johnson,
Roger Sherman.

NEW YORK.

Alexander Hamilton.

NEW JERSEY.

William Livingston,
David Brearley,
William Patterson,
Jonathan Dayton.

PENNSYLVANIA.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimmons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

DELAWARE.

George Read,
Gunning Bedford, jun.
John Dickinson,
Richard Bassett,
Jacob Broom.

MARYLAND.

James McHenry,
Daniel of St. Thomas Jenifer,
Daniel Carroll.

VIRGINIA.

John Blair,
James Madison, jun.

NORTH CAROLINA.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

SOUTH CAROLINA.

John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abraham Baldwin.

Attest,

WILLIAM JACKSON, Secretary.

IN CONVENTION,

MONDAY, SEPTEMBER 17, 1787.

Present, the states of New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Constitution to be
laid before con-
gress, &c.

1. **Resolved**, That the preceding constitution be laid before the United States, in congress assembled, and that it is the opinion of this convention, that it should afterwards be submitted to a convention of delegates chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention assenting to, and ratifying the same, should give notice thereof to the United States in congress assembled.

Congress to fix a
day for appointing

2. **Resolved**, That it is the opinion of this convention, that as soon as the conventions of nine states shall have ratified this

constitution, the United States in congress assembled, should fix a day on which electors should be appointed by the states which shall have ratified the same, and a day on which the electors should assemble to vote for the president, and the time and place for commencing proceedings under this constitution. That after such publication, the electors should be appointed, and the senators and representatives elected. That the electors should meet on the day fixed for the election of the president, and should transmit their votes, certified, signed, sealed and directed, as the constitution requires, to the secretary of the United States in congress assembled: that the senators and representatives should convene at the time and place assigned; that the senators should appoint a president of the senate, for the sole purpose of receiving, opening and counting the votes for president; and that, after he shall be chosen, the congress, together with the president, should without delay, proceed to execute this constitution.

A. D. 1788—9.

A. R. C. 13.

electors of president, &c.

Mode recommended for carrying the constitution into effect.

By the unanimous order of the convention.

GEORGE WASHINGTON, *President.*

WILLIAM JACKSON, *Secretary.*

IN CONVENTION,

SEPTEMBER 17, 1787.

SIR,

WE have now the honor to submit to the consideration of the United States in congress assembled, that constitution which has appeared to us the most advisable.

THE friends of our country have long seen and desired, that the power of making war, peace and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the union; but the impropriety of delegating such extensive trust to one body of men is evident; hence results the necessity of a different organization.

It is obviously impracticable in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all: individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several states, as to their situation, extent, habits and particular interests.

IN all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply

Letter from the convention that framed the constitution, to the president of congress.

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impressed on our minds, led each state in the convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the constitution which we now present, is the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable.

THAT it will meet the full and entire approbation of every state, is not, perhaps, to be expected; but each will doubtless consider, that, had her interests been alone consulted, the consequences might have been particularly disagreeable or injurious to others: that it is liable to as few exceptions as could reasonably have been expected, we hope and believe: that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

WITH great respect, we have the honor to be, Sir, your excellency's most obedient and humble servants,

By unanimous order of the convention,

GEORGE WASHINGTON, *President.*

His Excellency, the President of Congress.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE 1.

Congress prohibited from interfering with religion, with freedom of speech, of the press, and the right of petition.

CONGRESS shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE 2.

Right of the people to keep and bear arms, &c.

A WELL regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE 3.

No soldier to be quartered in any house, during peace, without consent, &c.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE 4.

No search warrant to issue, except on probable cause, oath, &c.

THE right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE 5.

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No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

No person to be held to answer for a crime, unless on presentment, &c. except in the land or naval forces, nor to answer for the same offence twice, &c.

ARTICLE 6.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

Assurances of speedy and public trial by jury, &c. in criminal prosecutions.

ARTICLE 7.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Right of trial by jury in suits at common law, above the value of \$ 20, &c.

ARTICLE 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Excessive bail, and unjust and cruel punishments, prohibited.

ARTICLE 9.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Rights enumerated, not to disparage those retained.

ARTICLE 10.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Powers not delegated, &c. are reserved to the states or people.

ARTICLE 11.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Restriction of judicial powers. [See ante, art. 3, § 2, cl. 1.]

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ARTICLE 12.*

[* See ante, art. 2.
§ 1, cl. 3.]
Actual mode of
electing the presi-
dent and vice pre-
sident of the Uni-
ted States.

1. THE electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest number, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president.

2. THE person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the senate shall choose the vice president: a quorum for the purpose shall consist of two thirds of the whole number of senators; and a majority of the whole number shall be necessary to a choice.

3. BUT no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

ARTICLE 13.

Citizenship forfeited by the acceptance, from a foreign power, of any title of nobility, or office, or emolument of any kind, &c. [See ante, art. 1, § 9, cl. 2.]

IF any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

C. 3.

A Declaration of Rights made by the Representatives of the good People of VIRGINIA, assembled in full and free Convention; which rights do pertain to them, and their Posterity, as the basis and foundation of Government.

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[Unanimously adopted, June 12, 1776.]

1. THAT all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

2. THAT all power is vested in, and consequently derived from, the people; that Magistrates are their trustees and servants, and at all times amenable to them.

3. THAT government is, or ought to be, instituted for the common benefit, protection and security, of the people, nation, or community: of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

4. THAT no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of Magistrate, Legislator, or Judge, to be hereditary.

5. THAT the Legislative and Executive powers of the state should be separate and distinct from the Judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

6. THAT elections of members to serve as representatives of the people, in Assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.

7. THAT all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives

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of the people, is injurious to their rights, and ought not to be exercised.

8. THAT, in all capital or criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land, or the judgment of his peers.

9. THAT excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

10. THAT general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

11. THAT, in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

12. THAT the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

13. THAT a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural and safe defence of a free state; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases, the military should be under strict subordination to, and governed by, the civil power.

14. THAT the people have a right to uniform government; and therefore, that no government separate from, or independent of, the government of *Virginia*, ought to be erected or established within the limits thereof.

15. THAT no free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

16. THAT religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.

C. 4.

The Constitution or Form of Government, agreed to and resolved upon by the Delegates and Representatives of the several Counties and Corporations of Virginia.

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[Unanimously adopted, June 29, 1776.]

1. WHEREAS George the third, King of Great Britain and Ireland, and Elector of Hanover, heretofore entrusted with the exercise of the kingly office in this government, hath endeavoured to pervert the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the public good: By denying his Governors permission to pass laws of immediate and pressing importance, unless suspended in their operation for his assent, and, when so suspended, neglecting to attend to them for many years: By refusing to pass certain other laws, unless the persons to be benefited by them would relinquish the inestimable right of representation in the Legislature: By dissolving Legislative Assemblies repeatedly and continually, for opposing with manly firmness his invasions of the rights of the people: When dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any Legislative head: By endeavoring to prevent the population of our country, and, for that purpose, obstructing the laws for the naturalization of foreigners: By keeping among us, in time of peace, standing armies and ships of war: By affecting to render the military independent of, and superior to, the civil power: By combining with others to subject us to a foreign jurisdiction; giving his assent to their pretended acts of Legislation; For quartering large bodies of armed troops among us: For cutting off our trade with all parts of the world: For imposing taxes on us without our consent: For depriving us of the benefits of the trial by jury: For transporting us beyond seas, to be tried for pretended offences: For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever: By plundering our seas, ravaging our coasts, burning our towns, and destroying the lives of our people: By inciting insurrections of our fellow subjects, with the allurements of forfeiture and confiscation: By prompting our negroes to rise in arms among us, those very negroes, whom, by an inhuman use of his negative, he hath refused us permission to exclude by law: By endeavoring to bring on the inhabitants of our frontiers, the merciless *Indian* savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions of existence: By transporting at this time, a large army of foreign mercenaries, to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy unworthy the head of a civilized nation: By answering our repeated petitions for redress with a repetition of injuries: And finally, by abandoning the helm of government, and declaring us out of

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Former govern-
ment dissolved.
Another declared.

Legislative, Exe-
cutive, and Judi-
ciary, separated,
with an exception.

Legislature; Gen-
eral Assembly,
formed of two hou-
ses, to meet once a
year.

House of Dele-
gates; its mem-
bers, how quali-
fied, by whom,
and how chosen.

When a corpora-
tion's right to re-
presentation shall
cease.

Senate; number
of members, how
qualified, by
whom, and how
chosen.

Rotation.

his allegiance and protection. By which several acts of mis-
rule, the government of this country, as formerly exercised
under the crown of *Great Britain*, is totally dissolved:

2. We, therefore, the Delegates and Representatives of the
good people of *Virginia*, having maturely considered the prem-
ises, and viewing with great concern the deplorable condition
to which this once happy country must be reduced, unless some
regular adequate mode of civil polity is speedily adopted, and
in compliance with a recommendation of the General Congress,
do ordain and declare the future form of government of *Vir-
ginia* to be as followeth:

3. THE Legislative, Executive, and Judiciary departments,
shall be separate and distinct, so that neither exercise the powers
properly belonging to the other; nor shall any person exercise
the powers of more than one of them at the same time, except
that the justices of the county courts shall be eligible to either
House of Assembly.

4. THE Legislative shall be formed of two distinct branches,
who, together, shall be a complete Legislature. They shall
meet once or oftener, every year, and shall be called the Gen-
eral Assembly of *Virginia*.

5. ONE of these shall be called the House of Delegates, and
consist of two Representatives to be chosen for each county,
and for the district of *West Augusta*, annually, of such men as
actually reside in and are freeholders of the same, or duly
qualified according to law, and also one Delegate or Represent-
ative to be chosen annually for the city of *Williamsburg*, and
one for the borough of *Norfolk*, and a Representative for each
of such other cities and boroughs as may hereafter be allowed
particular representation by the Legislature; but when any city
or borough shall so decrease as that the number of persons
having right of suffrage therein shall have been for the space of
seven years successively less than half the number of voters in
some one county in *Virginia*, such city or borough thencefor-
ward shall cease to send a Delegate or Representative to the
Assembly.

6. THE other shall be called the Senate, and consist of twenty-
four members, of whom thirteen shall constitute a House to pro-
ceed on business, for whose election the different counties shall
be divided into twenty-four districts; and each county of the
respective district, at the time of the election of its Delegates,
shall vote for one Senator, who is actually a resident and free-
holder within the district, or duly qualified according to law,
and is upwards of twenty-five years of age; and the sheriffs of
each county, within five days at farthest after the last county
election in the district, shall meet at some convenient place,
and from the poll so taken in their respective counties return
as a Senator the man who shall have the greatest number of
votes in the whole district. To keep up this Assembly by ro-
tation, the districts shall be equally divided into four classes,
and numbered by lot. At the end of one year after the general
election, the six members elected by the first division shall be
displaced, and the vacancies thereby occasioned supplied from
such class or division, by new election, in the manner aforesaid.

This rotation shall be applied to each division, according to its number, and continued in due order annually.

7. THAT the right of suffrage in the election of members of both Houses shall remain as exercised at present, and each House shall choose its own Speaker, appoint its own officers, settle its own rules of proceeding, and direct writs of election for supplying intermediate vacancies.

8. ALL laws shall originate in the House of Delegates, to be approved or rejected by the Senate, or to be amended with the consent of the House of Delegates, except money bills, which in no instance shall be altered by the Senate, but wholly approved or rejected.

9. A GOVERNOR, or Chief Magistrate, shall be chosen annually, by joint ballot of both Houses, to be taken in each House respectively, deposited in the conference room, the boxes examined jointly by a Committee of each House, and the numbers severally reported to them, that the appointments may be entered; (which shall be the mode of taking the joint ballot of both Houses in all cases;) who shall not continue in that office longer than three years successively, nor be eligible until the expiration of four years after he shall have been out of that office. An adequate, but moderate salary, shall be settled on him during his continuance in office; and he shall, with the advice of a Council of State, exercise the executive powers of government according to the laws of this commonwealth; and shall not, under any pretence, exercise any power or prerogative by virtue of any law, statute, or custom, of *England*: But he shall, with the advice of the Council of State, have the power of granting reprieves or pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct; in which cases, no reprieve or pardon shall be granted, but by resolve of the House of Delegates.

10. EITHER House of the General Assembly may adjourn themselves respectively. The Governor shall not prorogue or adjourn the Assembly during their sitting, nor dissolve them at any time; but he shall, if necessary, either by advice of the Council of State, or on application of a majority of the House of Delegates, call them before the time to which they shall stand prorogued or adjourned.

11. A PRIVY Council or Council of State, consisting of eight members, shall be chosen by joint ballot of both Houses of Assembly, either from their own members or the people at large, to assist in the administration of government. They shall annually choose out of their own members a President, who, in case of the death, inability, or necessary absence of the Governor from the government, shall act as Lieutenant Governor. Four members shall be sufficient to act, and their advice and proceedings shall be entered of record, and signed by the members present (to any part whereof any member may enter his dissent) to be laid before the General Assembly, when called for by them. This Council may appoint their own clerk, who shall have a salary settled by law, and take an oath of secrecy in such matters as he shall be directed by the Board to conceal. A sum of money appropriated to that purpose shall be divided

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Right of suffrage; each House may choose its Speaker and officers, and issue writs for supplying vacancies.

Laws shall originate in the House of Delegates; but, if not money bills, amendable by the Senate.

Governor, how chosen, method of balloting in this and other cases; his salary and powers; restrained from granting reprieves or pardons in certain cases.

When he may convoke the General Assembly.

Privy Council, number of; their duty, power, and term of office.

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annually among the members, in proportion to their attendance ; and they shall be incapable during their continuance in office, of sitting in either House of Assembly. Two members shall be removed by joint ballot of both Houses of Assembly at the end of every three years, and be ineligible for the three next years. These vacancies, as well as those occasioned by death or incapacity, shall be supplied by new elections, in the same manner.

Delegates to Congress, how chosen.

12. THE Delegates for *Virginia* to the Continental Congress shall be chosen annually, or superseded in the mean time by joint ballot of both Houses of Assembly.

Military regulations.

13. THE present militia officers shall be continued, and vacancies supplied by appointment of the Governor, with the advice of the Privy Council, or recommendations from the respective County Courts ; but the Governor and Council shall have a power of suspending any officer, and ordering a court-martial on complaint of misbehaviour or inability, or to supply vacancies of officers happening when in actual service. The Governor may embody the militia, with the advice of the Privy Council, and when embodied, shall alone have the direction of the militia under the laws of the country.

Courts of Appeals, General, of Chancery, and Admiralty, judges of ; Secretary, and Attorney General, how appointed ; salaries of ; excluded with some others, from the Legislative and Executive.

14. THE two Houses of Assembly shall, by joint ballot, appoint judges of the Supreme Court of Appeals, and General Court, Judges in Chancery, Judges of Admiralty, Secretary, and the Attorney General, to be commissioned by the Governor, and continue in office during good behaviour. In case of death, incapacity, or resignation, the Governor, with the advice of the Privy Council, shall appoint persons to succeed in office, to be approved or displaced by both Houses. These officers shall have fixed and adequate salaries, and, together with all others holding lucrative offices, and all Ministers of the Gospel of every denomination, be incapable of being elected members of either House of Assembly, or the Privy Council.

Counties, Justices of, how appointed ; shall appoint their clerks, recommend sheriffs and coroners to be commissioned by Executive ; and appoint constables.

15. THE Governor, with the advice of the Privy Council, shall appoint Justices of the Peace for the counties ; and in case of vacancies, or a necessity of increasing the number hereafter, such appointments to be made upon the recommendation of the respective County Courts. The present acting Secretary in *Virginia*, and clerks of all the County Courts, shall continue in office. In case of vacancies, either by death, incapacity, or resignation, a Secretary shall be appointed as before directed, and the clerks by the respective courts. The present and future clerks shall hold their offices during good behaviour, to be judged of and determined in the General Court. The Sheriffs and Coroners shall be nominated by the respective courts, approved by the Governor, with the advice of the Privy Council, and commissioned by the Governor. The Justices shall appoint constables, and all fees of the aforesaid officers be regulated by law.

Impeachments.

16. THE Governor, when he is out of office, and others offending against the state, either by mal-administration, corruption, or other means by which the safety of the state may be endangered, shall be impeachable by the House of Delegates. Such impeachment to be prosecuted by the Attorney General, or such other person or persons as the House may appoint, in

the General Court, according to the laws of the land. If found guilty, he or they shall be either for ever disabled to hold any office under government, or removed from such office *pro tempore*, or subjected to such pains or penalties as the law shall direct.

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17. If all, or any of the Judges of the General Court, shall, on good grounds (to be judged of by the House of Delegates) be accused of any of the crimes or offences before-mentioned, such House of Delegates may, in like manner, impeach the Judge or Judges so accused, to be prosecuted in the Court of Appeals; and he or they, if found guilty, shall be punished in the same manner as is prescribed in the preceding clause. Impeachments.

18. COMMISSIONS and grants shall run *In the name of the COMMONWEALTH of VIRGINIA*, and bear test by the Governor, with the seal of the Commonwealth annexed. Writs shall run in the same manner, and bear test by the clerks of the several courts. Indictments shall conclude, *Against the peace and dignity of the Commonwealth*. Commissions, grants and writs, style, and test of. Indictments, conclusion of.

19. A TREASURER shall be appointed annually, by joint ballot of both Houses. Treasurer.

20. ALL escheats, penalties, and forfeitures, heretofore going to the King, shall go to the Commonwealth, save only such as the Legislature may abolish, or otherwise provide for. Escheats, penalties, forfeitures.

21. THE territories contained within the charters erecting the colonies of *Maryland, Pennsylvania, North and South-Carolina*, are hereby ceded, released, and for ever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction, and government, and all other rights whatsoever which might at any time heretofore have been claimed by *Virginia*, except the free navigation and use of the rivers *Potowmac* and *Pohomoke*, with the property of the *Virginia* shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon. The western and northern extent of *Virginia* shall in all other respects stand as fixed by the charter of King *James* the first, in the year one thousand six hundred and nine, and by the public treaty of peace between the Courts of *Great-Britain* and *France*, in the year one thousand seven hundred and sixty-three; unless, by act of Legislature, one or more territories shall hereafter be laid off, and governments established westward of the *Allegheny* mountains. And no purchase of lands shall be made of the *Indian* natives; but on behalf of the public, by authority of the General Assembly.* Territorial limits; cession to co-terminous states; future governments west of Mount Allegheny how to be established. No purchases from Indian natives, but for republic.

* The territory of Virginia, granted by the charters of King James I., was very extensive; see charters of April 10. 1606. § 4. Of May 23. 1609. § 6. Of March 12. 1611-12. § 4. 1 *Hen. st. at large*, p. 58. 88. 100. The first charter authorised a company to plant a colony in Virginia or America, any where between 34° and 41° N. latitude; and granted for that purpose, all the territory, extending from the first seat of the plantation, 50 English Statute miles to the West and 8. West, and 50 miles to the East and N. East or North, along the sea coast, and running back from that line of coast, 100 miles into the main land, with the islands opposite to and within 100 miles of the coast. Under this charter, the colony of Virginia was planted. The second charter granted the Virginia company, a much larger territory, extending from [old] Point Comfort, 200 miles to the South, and 200 miles to the North, along the Atlantic coast, and thence, a breadth of 400 miles, to the West and North West, quite through the continent, to the coast of the Pacific, with all the islands opposite to and within 100 miles of both coasts.

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22. In order to introduce this government, the representatives of the people met in Convention shall choose a Governor and Privy Council, also such other officers directed to be chosen by both Houses as may be judged necessary to be immediately appointed. The Senate to be first chosen by the people, to continue until the last day of *March* next, and the other officers until the end of the succeeding session of Assembly. In case of vacancies, the Speaker of either House shall issue writs for new elections.*

And the third granted the company, the islands within 300 leagues of both coasts. The extensive territory granted by these charters, was reduced before the revolution, by the charters granted to other colonies, and by the treaty of 1763, between France and Great-Britain, referred to in this article of the constitution; and, since the revolution, by the cession of the territory N. West of the Ohio to the United States, and the erection of Kentucky into a separate state. The boundaries of Virginia have also been adjusted on all sides; see *post*, c. 5. 15. 16. 17. 18. 19. 20. 21.

* As to the form of the Colonial government, for which this constitution was substituted, see 1 *Chart.* § 7. 8. 15. 1 *Hen. st. at lar.* p. 60, 1, 4. *Royal instructions for the government of the Colony, Ibid.* p. 67. 75. 2 *Chart.* § 8. 9. 10. 11. 12. 13. 14. 15. 23. *Ibid.* p. 89, 90, 1, 2, 5. 3 *Chart.* § 6. 7. 8. *Ibid.* p. 102, 3.—By the 14th Section of the second charter and the 8th of the third, the power of establishing a form of government and magistracy for the Colony, was vested in the council and general court of the Virginia company in England; which, on the 24th July, 1621, ordained a form of government accordingly; whereby the powers of the Colonial government were vested in a governor and council of state, appointed by the company in England and holding during its pleasure, and a house of burgesses, two from every town, hundred and particular plantation, to be respectively chosen by the *inhabitants*; and this council of state and house of burgesses formed the Colonial legislature, called the General Assembly. The Colonial government was directed to conform, in legislation and jurisprudence, to the English government and laws; and it was provided, that no law or ordinance made by the General Assembly, should be valid, unless ratified by the general court of the company in England, and returned so ratified under its seal. See *this Constitution, and the commission and instructions to the first governor under it*, 1 *Hen. st. at lar.* p. 110. 113. 114. In 1624, the crown suppressed the Virginia company by proclamation, and resumed the powers granted to the company; but the form of government it had given the Colony, remained in substance unchanged. It appears, that the constitution of the colonial government was amended by George I. and instructions were given by George II. to the governor Lord Albemarle, for the regulation of the government according to the amended constitution: but these papers are not to be found. The King always retained the control over the colonial laws, and even exercised the power of suspending and repealing them; powers, often exercised capriciously, always complained of as a grievance, sometimes disputed, and at length assigned as one of the causes of the revolution; see 5 *Hen. st. at lar.* 432. This royal prerogative had a most important influence on the legislation of the Colonial government. Counties or shires were first established in 1634. 1 *Hen. st. at lar.* p. 224. It seems from our ancient records, that at first, in practice, neither the towns, hundreds and plantations, while they were represented, nor the counties, after the burgesses were elected from them, were restricted to two or any fixed number of burgesses. In 1645, the number was limited to four for each county, except James City, which was allowed five, besides one for Jamestown, the seat of government; 1 *Hen. st. at lar.* p. 299. Afterwards, particular parishes, and then all parishes, were allowed to send one or two burgesses; *Ibid.* 250. 277. 421. In 1660, the number of burgesses was limited to two for each county and one for Jamestown in James City county, with like privilege to every county, that would lay out 100 acres of land, and people it with 100 tytheable persons; 2 *Ibid.* p. 20. 106.—The 7th article of the present constitution, provides that the *right of suffrage for members of both houses of Assembly, shall remain as exercised at present*. By the constitution of July 1621, above cited, the *right of suffrage* was given to the *inhabitants*; afterwards, it seems, only *freemen* were allowed to vote; 1 *Ibid.* p. 333, 4. then only *housekeepers*; *Ibid.* p. 412. then all *freemen* again, *Ibid.* p. 403. 475. then "*freeholders and housekeepers, who only are answerable for levies*;" 2 *Ibid.* 280. then, by Bacon's laws, all *freemen* again; *Ibid.* 356. But 1677, the King instructed the Governor, that the members of Assembly should be elected by *freeholders only*; *Ibid.* p. 425. In 1684, it was resolved, that all *tenants for life* had an undoubted *right of suffrage*; 3 *Ibid.* 26. In 1699, the right

C. 5.

A. D. 1783.

A. R. C. 8.

An act to authorise the Delegates of this State in Congress, to convey to the United States in Congress assembled, all the Right of this Commonwealth to the Territory North Westward of the River OHIO.

[Passed December 20, 1783.]

1. WHEREAS the Congress of the United States did, by their Preamble. act of the sixth day of *September*, in the year one thousand seven hundred and eighty, recommend to the several States in the Union, having claims to waste and unappropriated lands in the Western Country, a liberal cession to the United States, of a portion of their respective claims for the common benefit of the Union :

2. AND whereas this Commonwealth did, on the second day of *January*, in the year one thousand seven hundred and eighty-one, yield to the Congress of the United States, for the benefit of the said States, all right, title, and claim, which the said Commonwealth had to the territory North-west of the river *Ohio*, subject to the conditions annexed to the said act of cession :

3. AND whereas the United States in Congress assembled, have, by their Act of the thirteenth of *September* last, stipulated the terms on which they agree to accept the cession of this State, should the Legislature approve thereof, which terms, although they do not come fully up to the propositions of this Commonwealth, are conceived on the whole, to approach so nearly to them, as to induce this state to accept thereof, in full confidence that Congress will, in justice to this State for the liberal cession she hath made, earnestly press upon the other States claiming large tracts of waste and uncultivated territory,

of suffrage was confined to *freeholders* (excluding women, infants, and recusant convict) resident in the respective counties and towns; *Ibid* p. 238. In 1736, the right of suffrage was confined to *freeholders* of an hundred acres of unsettled land or twenty-five acres of improved land, and all freeholders in towns, but with a right to vote, only in the county where the land or the greater part of it lay; 4 *Ibid* 475, 6. The city of Williamsburg and the borough of Norfolk were allowed a representative, by their charters, by which the *right of suffrage* of the citizens and burghers was regulated, but afterwards somewhat narrowed by law; *Edi.* 1769. p. 122. 287. It seems, that till 1723, *free negroes, indians, and mulattoes*, might vote at elections; but by the acts of that year, c. 4. § 23. *Edi.* 1733. p. 344, they were disqualified; and that particular section of the act was not repealed, though the rest of it was by royal proclamation in 1724. *Edi.* 1769. p. 15. note (a). *Edi.* 1752. p. 103. By the act of 1769. c. 1, the quantity of unimproved land, necessary to qualify a freeholder to vote, was reduced to fifty acres; but this act was suspended until the royal approbation should be signified, and such approbation was never signified. The ordinance of the convention of 1775, providing for the election of delegates to the convention of 1776, extended the *right of suffrage* to free white men, inhabitants of Fincastle and West Augusta, in possession of the requisite quantity of land, and claiming freeholds therein, though they should have obtained no patents or legal titles to their lands.—Thus stood the *right of suffrage* when the constitution was adopted. By the act of 1785, c. 55. § 2. the qualification of the freeholder in respect to the quantity of unimproved land was reduced from 100 to 50 acres; the legislature either regarding the act of 1769, as effectual, notwithstanding the want of the royal assent; or, perhaps, considering that while the principle of freehold qualification was preserved, a change as to the quantity of land was consistent with the constitution.

A. D. 1783.

A. R. C. 8.

Delegates empowered to convey.

the propriety of making cessions equally liberal for the common benefit and support of the Union: *Be it enacted by the General Assembly*, that it shall and may be lawful for the Delegates of this State to the Congress of the United States, or such of them as shall be assembled in Congress, and the said Delegates, or such of them so assembled, are hereby fully authorised and empowered, for and on behalf of this State, by proper deed or instrument in writing, under their hands and seals, to convey, transfer, assign, and make over unto the United States in Congress assembled, for the benefit of the said States, all right, title, and claim, as well of soil as jurisdiction, which this Commonwealth hath to the territory or tract of country within the limits of the *Virginia* charter, situate, lying, and being to the North-west of the river *Ohio*, subject to the terms and conditions contained in the before recited Act of Congress of the thirteenth day of *September* last, that is to say: Upon condition that the territory so ceded shall be laid out and formed into States, containing suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit; and that the States so formed, shall be distinct Republican States, and admitted members of the Federal Union, having the same rights of sovereignty, freedom, and independence, as the other States; that the necessary and reasonable expenses incurred by this State in subduing any *British* posts, or in maintaining forts or garrisons within and for the defence, or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States; and that one Commissioner shall be appointed by Congress, one by this Commonwealth, and another by those two Commissioners, who, or a majority of them, shall be authorised and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this State, which they shall judge to be comprised within the intent and meaning of the Act of Congress of the tenth of *October*, one thousand seven hundred and eighty, respecting such expenses. That the *French* and *Canadian* inhabitants, and other settlers of the *Kaskaskies*, *St. Vincents*, and the neighbouring villages, who have professed themselves citizens of *Virginia*, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties. That a quantity not exceeding one hundred and fifty thousand acres of land, promised by this State, shall be allowed and granted to the then Colonel, now General *George Rogers Clarke*, and to the officers and soldiers of his regiment, who marched with him when the posts of *Kaskaskies* and *St. Vincents* were reduced, and to the officers and soldiers that have been since incorporated into the said regiment, to be laid off in one tract, the length of which is not to exceed double the breadth, in such place on the North-west side of the *Ohio* as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion according to the laws of *Virginia*. That in case the quantity of good lands on the South-east side of the *Ohio*, upon the waters of *Cumberland* river, and between the *Green* river and *Tennessee* river, which have been reserved by

Conditions.

Reservations.

law for the *Virginia* troops upon Continental establishment, should, from the *North-Carolina* line bearing in further upon the *Cumberland* lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops in good lands, to be laid off between the rivers *Scioto* and *Little Miami*, on the North-west side of the river *Ohio*, in such proportions as have been engaged to them by the laws of *Virginia*. That all the lands within the territory so ceded to the United States, and not reserved for or appropriated to any of the beforementioned purposes, or disposed of in bounties to the officers and soldiers of the *American* army, shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the Confederation or Federal Alliance of the said States, *Virginia* inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatsoever. *Provided*, that the trust hereby reposed in the Delegates of this State shall not be executed, unless three of them, at least, are present in Congress.

A. D. 1783.
A. R. C. 8.

All the lands ceded to be a common fund for the members of the federal alliance, and for no other use.

Three members at least to execute the trust.

C. 6.

An act concerning the Territory ceded by this Commonwealth to the United States.

A. D. 1788.
A. R. C. 14.

[Passed December 30, 1788.]

1. WHEREAS the United States in Congress assembled, did, Preamble. on the seventh day of *July*, in the year of our Lord one thousand seven hundred and eighty-six, state certain reasons, shewing that a division of the Territory which hath been ceded to the said United States by this Commonwealth, into States, in conformity to the terms of cession, should the same be adhered to, would be attended with many inconveniences, and did recommend a revision of the Act of cession, so far as to empower Congress to make such a division of the said Territory into distinct and republican States, not more than five, nor less than three in number, as the situation of that country and future circumstances might require: And the said United States in Congress assembled, have, in an ordinance for the government of the Territory North-west of the river *Ohio*, passed on the thirteenth of *July*, one thousand seven hundred and eighty-seven, declared the following as one of the articles of compact between the original States, and the People and States in the said Territory, viz.

THAT there shall be formed in the said Territory not less than three, nor more than five States; and the boundaries of the said States as soon as *Virginia* shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: The Western State in the said Territory,

A. D. 1788.

A. R. C. 14.

shall be bounded by the Mississippi, the Ohio, and Wabash rivers, a direct line drawn from the Wabash and Post Vincent's due North to the territorial line, between the United States and Canada, and by the said territorial line to the Lake of the Wood and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincent's to the Ohio, by the Ohio, by a direct line drawn due North from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The Eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line. Provided however, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said Territory which lies North of an East and West line, drawn through the Southerly bend or extreme of lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its Delegates into the Congress of the United States, on an equal footing with the original States in all respects whatsoever, and shall be at liberty to form a permanent Constitution and state Government, provided the Constitution and Government so to be formed shall be republican, and in conformity to the principles contained in these articles; and so far as it can be consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

And it is expedient that this Commonwealth do assent to the proposed alteration so as to ratify and confirm the said Article of Compact between the original States, and the People and States in the said Territory :

An article of the compact between the United States and the people and states North West of the Ohio, ratified by this Commonwealth.

2. BE it therefore enacted by the General Assembly, That the afore-recited Article of Compact between the original States, and the People and States in the Territory North-west of Ohio river, be, and the same is hereby ratified and confirmed, any thing to the contrary, in the deed of cession of the said Territory by this Commonwealth to the United States, notwithstanding.

C. 7.

A. D. 1813,
A. R. C. 37.

An act, authorising the Executive to appoint Commissioners, to unite with Commissioners on the part of the United States, in running a line between the lands reserved, and the lands ceded, by this Commonwealth, in the State of Ohio,

[Passed February 22, 1813.]

WHEREAS it appears to this General Assembly, that the Preamble. commissioners appointed, to act in conjunction with commissioners appointed on the part of the United States, to ascertain the true boundary line between the lands reserved by this Commonwealth for the benefit of the officers and soldiers of the state of Virginia, did, agreeably to the appointment of the President of the United States, meet, at Xenia, in the state of Ohio, on the twenty-sixth of October last, and commenced the performance of the duties assigned to them, but, differing in opinion as to the true line between the lands ceded to the general government and those reserved by this State, did not accomplish the object of their appointment: And whereas it is important, as well to this State as to the United States, that a line be run, separating the lands reserved by this State from the territory ceded to the United States by the deed of cession, executed the first day of March, seventeen hundred and eighty four:

1. *Be it therefore enacted*, That the Executive of this State commence a correspondence with the Executive of the United States, in order to effect the appointment of other commissioners, or the adoption of some other mode for the completion of the objects of this legislature, in relation to the permanent establishment of a line between the lands reserved by this Commonwealth for the benefit of the officers and soldiers of the Virginia line, and lying between the river Sciota and the Miami, in the state of Ohio, and the other lands ceded by this Commonwealth to the United States by deed bearing date the first of March, seventeen hundred and eighty four; and that, in the event of the consent on the part of the Executive of the United States to the appointment of other commissioners for the purposes aforesaid, that the Governor of this Commonwealth be, and he is hereby empowered, by and with the advice of the council, to appoint an equal number of commissioners on the part of this State, who, or any two of whom, acting in conjunction with an equal number of the commissioners so appointed on the part of the United States, shall ascertain and run the true line, and distinguish, clearly, throughout the whole course of said line, the lands reserved as aforesaid from the other lands ceded as aforesaid, according to the true intent and meaning of the said cession. And the better to enable the commissioners aforesaid to discharge the duties hereby assigned to them, the Governor, by and with the advice of the council, is authorised to appoint a surveyor to aid them in running said line, who shall be entitled to the same compensation, and take the same oaths, as a commissioner,

Correspondence to be commenced by executive, to effect appointment of commissioners.

In what event such appointment is to be made.

Number of commissioners.

Their duty.

Surveyor to be appointed to assist them.

His compensation.

A. D. 1813.
A. R. C. 37.

When line run by
the Commission-
ers is to be con-
sidered as estab-
lished.

Proviso.

Compensation to
commissioners.

Oath to be taken.

Commencement.

2. *Be it further enacted*, That the line, which may be run by the commissioners, appointed by virtue of this act, and the commissioners acting on the part of the United States, shall be considered hereafter as the true line between the lands reserved as aforesaid, and the lands ceded as aforesaid, unless the legislature of this Commonwealth shall, during its first or second session after the report of the said commissioners shall have been made to the Executive, disapprove the same: *Provided, however*, that nothing in this section contained shall be obligatory, unless the act of congress, under which the commissioners of the United States may be appointed, shall contain a provision to the same effect.

3. *Be it further enacted*, That the commissioners who may be appointed by virtue of this act shall be entitled to sixteen cents for every mile they may necessarily travel from their respective places of abode to the point at which the said line shall commence, and the sum of six dollars per diem during the time for which they may be actually engaged in running the said line.

4. *AND be it further enacted*, That each commissioner who may be appointed by virtue of this act, shall take and subscribe an oath, before the governor and council or before the court of the county in which he resides, to be certified by the clerk of the court to the governor and council, that he will, honestly, impartially and diligently perform the duty prescribed by this act.

5. THIS act shall be in force from the passing thereof.

C. 8.

A. D. 1789.
A. R. C. 14.

An act for the cession of ten miles square, or any lesser quantity of territory within this State, to the United States, in Congress assembled, for the permanent seat of the general government.

[Passed December 3, 1789.]

Preamble.

1. WHEREAS the equal and common benefits resulting from the administration of the general government will be best diffused, and its operations become more prompt and certain, by establishing such a situation for the seat of the said government, as will be most central and convenient to the citizens of the United States at large, having regard as well to population, extent of territory, and a free navigation to the Atlantic Ocean, through the *Chesapeake* bay, as to the most direct and ready communication with our fellow-citizens in the western frontier: and whereas it appears to this assembly, that a situation combining all the considerations and advantages before recited, may be had on the banks of the river *Potowmack*, above tide water, in a country rich and fertile in soil, healthy and salubrious in climate, and abounding in all the necessities

and conveniencies of life, where in a location of ten miles square, if the wisdom of Congress shall so direct, the States of *Pennsylvania, Maryland and Virginia* may participate in such location :

A. D. 1789.

A. R. C. 14.

2. *BE it therefore enacted by the General Assembly*, That a tract of country, not exceeding ten miles square, or any lesser quantity, to be located within the limits of this State, and in any part thereof as Congress may by Law direct, shall be, and the same is hereby for ever ceded and relinquished to the Congress and Government of the United States, in full and absolute right, and exclusive jurisdiction as well of soil, as of persons, residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of Government of the United States.

Tract of country within this state ceded to the United States for the seat of the general government.

3. *PROVIDED*, That nothing herein contained, shall be construed to vest in the United States, any right of property in the soil, or to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States.

Reservation of the rights of individuals to the soil.

4. *AND provided also*, That the jurisdiction of the laws of this Commonwealth, over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine, until congress, having accepted the said cession, shall by law provide for the government thereof, under their jurisdiction, in manner provided by the article of the constitution before recited.

When the jurisdiction of the laws of this Commonwealth over the same shall cease.

C. 9.

An act to empower the President of the United States to purchase a tract of land within this State, for the purpose of erecting a Public Arsenal thereon.

A. D. 1794.

A. R. C. 19.

[Passed November 28, 1794.]

1. *BE it enacted by the General Assembly of the Commonwealth of Virginia*, That it shall and may be lawful for the President of the United States, or any person by him appointed for that purpose, to purchase within the limits of this State a quantity of land, not exceeding six hundred and forty acres, for the use of the United States, for the purpose of erecting a magazine and arsenal thereon.

Sites ceded to U. S. for arsenal.

2. *THIS act to commence and be in force from and after the passing thereof.*

Commencement.

A. D. 1800.
A. R. C. 25.

C. 10.

An act authorising the Governor of this Commonwealth to convey to the United States, upon certain conditions, the property of this Commonwealth called Gosport.

[Passed January 25, 1800.]

Preamble.

WHEREAS it has been represented to the present General Assembly, that the government of the United States are desirous that certain lands, the property of this Commonwealth, commonly called and known by the name of Gosport, should be vested in the United States, for the purpose of establishing a navy-yard on the same :

Governor to convey Gosport to U. States on certain conditions.

1. *BE it enacted by the General Assembly*, That it shall and may be lawful for the Governor of this Commonwealth, and he is authorised to appoint some fit and proper person, to meet such person as shall be appointed on the part of the United States, to ascertain and fix the value of the property belonging to this Commonwealth, situate near the town of Portsmouth, in the county of Norfolk, commonly called and known by the name of Gosport. So soon as the value of the property shall be ascertained, and the Governor shall be satisfied that the government of the United States are willing to pay the amount thereof to this Commonwealth, then and in that case it shall be lawful for the Governor of this Commonwealth, and he is hereby authorised, for, and in behalf of this Commonwealth, by proper deeds in writing under his hand and the seal of the Commonwealth, to convey, transfer, assign and make over unto the United States, all interest in, and title to, as well as all the jurisdiction which this Commonwealth possesses over the public lands commonly called and known by the name of Gosport before mentioned, for the purpose of establishing a navy-yard : *Provided*, That nothing herein contained shall be so construed as to prevent the officers of this State from executing any process whatever within the jurisdiction hereby directed to be ceded,

In what case land ceded to revert to Commonwealth.

2. *AND be it further enacted*, That in case the government of the United States shall at any time hereafter abandon the design of establishing a navy-yard at the place hereby ceded to the United States, or after the establishment thereof shall discontinue the same, then and in that case the property in the soil, and the jurisdiction over the territory hereby directed to be vested in the United States, shall revert to this Commonwealth, and shall be considered as the property and subject to the jurisdiction of the same, in like manner as if this act had never been made : *Provided*, That in such case this Commonwealth will repay to the government of the United States, the sum or sums paid by the United States in consideration of the cession hereby directed to be made.

Commencement.

3. This act shall commence and be in force from and after the passing thereof,

A. D. 1798.

A. R. C. 23.

C. 11.

An act making provision for the disposal of the Marine Hospital, and the exoneration of the commissioners.

[Passed January 20, 1798.]

1. *BE it enacted by the General Assembly*, That the governor and council be, and they are hereby authorised and empowered, to cause the accounts of the commissioners appointed under the act, intituled, *an act for establishing a Marine Hospital for the reception of sick and disabled seamen*, to be adjusted; and so soon as the balance due by the commissioners to the contractor shall be ascertained, it shall be lawful for the governor to offer the marine hospital, together with its appurtenances, to the congress of the United States, to be applied to the benevolent purposes for which it was erected, at the sum which shall be found due from the commissioners to the contractor: And the governor is further authorised and empowered to cede to the United States, by deed, the lots and appurtenances aforesaid, on receiving from the commissioners of the marine hospital, or from any other source, satisfactory proof that the sum so ascertained to be due from the commissioners in consequence of their appointment, has been actually paid.

Executive to cause a settlement of commissioners' accounts, and offer and cede the building, &c. to the U. States for a marine hospital.

2. *AND be it further enacted*, That in case the government of the United States shall refuse to receive the said hospital with its appurtenances, on the terms before mentioned, then and in that case it shall be lawful for the governor to direct the commissioners, or any three of them, to dispose of the said hospital, with the appurtenances, for the best price that can be obtained; and the money arising from such sale, to be applied in the first place to the payment of the sum which shall be found due from the commissioners; and the balance shall be paid into the treasury, subject to the future direction of the General Assembly.

Hospital to be sold if the U. States refuse it on terms herein tendered.

3. *THIS act shall commence and be in force from and after* the passing thereof.

Commencement.

C. 12.

An Act authorising the Governor of this Commonwealth, to convey certain Land to the United States, for the purpose of building a Light-House.

A. D. 1789.

A. R. C. 14.

[Passed November 13, 1789.]

1. *BE it enacted by the General Assembly*, That it shall and may be lawful for the Governor of this Commonwealth, and he is hereby fully authorised, for and in behalf of this Commonwealth, by proper deeds and instruments in writing, under his

Governor to convey land at Cape Henry to the United States.

A. D. 1789.
A. R. C. 14.

United States to build thereon a light-house; to support, repair, and re-build it when necessary.

If not built within seven years, or rendered useless for same period, land to revert to the Commonwealth.

Right of the state to certain materials lying thereon, and of its citizens to fish on shores thereof, not to be affected.

hand and the seal of this Commonwealth, to convey, transfer, assign, and make over unto the United States in congress assembled, for the use of the said United States, all interest in, and right and title to, as well as all the jurisdiction which this Commonwealth possesses, over so much of the public lands, not exceeding two acres, situate, lying and being in the county of *Princess Anne*, at a place commonly called the head land of *Cape Henry*, as shall be sufficient to erect a light-house, subject to the terms and conditions following, that is to say: that a light-house shall be erected upon the said land, and that all charges and expenses of building, and re-building, when necessary, and keeping in good repair, the said light-house, together with the salaries, wages or hire of the person or persons appointed by the President of the United States for the superintendence and care of the same, and all the necessary supplies, with which a light-house ought to be furnished, shall be defrayed out of the treasury of the United States. If a light-house shall not be erected within the space of seven years, after the cession of the said two acres of land by this Commonwealth to the United States in congress assembled; or if at any time thereafter, the said light-house shall be suffered to fall into decay, or be rendered useless as to the purposes for which it is to be erected, and so continue for the aforesaid period of seven years, then, and in those cases, the property in the soil and jurisdiction, over the territory hereby directed to be vested in the United States in congress assembled, shall revert to this Commonwealth, and be considered as the property, and subject to the jurisdiction of the same, in like manner as if this act had never been made.

2. *PROVIDED*, That nothing in this act contained, shall be construed to affect the right of this State to any materials heretofore placed at or near *Cape Henry*, for the purpose of erecting a light-house; and that the citizens of this Commonwealth shall not, in consequence of this cession, be debarred from the privileges they now enjoy, of hauling their seines and fishing on the shores of the said land so ceded by this act, to the United States, for the purpose of building a light-house.

C. 13.

A. D. 1798.
A. R. C. 23.

An Act authorising the Governor of this Commonwealth to convey to the United States, certain Land on Old Point Comfort, for the purpose of building a Light-House.

[Passed January 2, 1798.]

Cession of Old Point Comfort to the United States.

1. *BE it enacted by the General Assembly*, That it shall and may be lawful for the Governor of this Commonwealth, and he is hereby fully authorised for and in behalf of this Commonwealth, by proper deeds and instruments in writing, under his hand and the seal of the Commonwealth, to convey, transfer,

assign and make over to the United States, in congress assembled, for the use of the said United States, all interest in, and right and title to, as well as all the jurisdiction which this Commonwealth possesses, over so much of the public lands, not exceeding two acres, situate, lying and being in the county of Elizabeth City, at a place commonly called Old Point Comfort, as shall be sufficient to erect a light-house, subject to the terms and conditions following, that is to say: That a light-house shall be erected upon the said land, and that all charges and expenses of building and re-building, when necessary, and keeping in good repair the said light-house, together with the salaries, wages and hire of the person or persons appointed by the President of the United States for the superintendence and care of the same, and all the necessary supplies with which a light-house ought to be furnished, shall be defrayed out of the treasury of the United States.

A. D. 1798.
A. R. C. 22.

2. If a light-house shall not be erected within the space of seven years, after the cession of the said two acres of land by this Commonwealth to the United States in congress assembled, or if at any time thereafter, the said light-house shall be suffered to fall into decay, or be rendered useless as to the purposes for which it is to be erected, and so continue for the aforesaid period of seven years, then and in those cases, the property in the soil, and jurisdiction over the territory hereby directed to be vested in the United States in congress assembled, shall revert to this Commonwealth, and be considered as the property, and subject to the jurisdiction of the same, in like manner as if this act had never been made: *Provided* always, That nothing in this act contained, or in the deed of cession to be made in pursuance thereof, shall be construed to deprive the citizens of this Commonwealth of the privilege they now enjoy of hauling their seines on the shores of the land to be ceded in pursuance of this act.

In what case land
to revert to the
State.

Provido.

C. 14.

An Act authorising the Governor of this Commonwealth to cede to the United States the jurisdiction over certain lands on New Point Comfort, and on Smith's Point, for the purpose of building Light-Houses.

A. D. 1802.
A. R. C. 26.

[Passed January 15, 1802.]

1. *Be it enacted by the General Assembly*, That it shall and may be lawful for the Governor of this Commonwealth, and he is hereby fully authorised, for and in behalf of this Commonwealth, by proper deeds and instruments of writing, under his hand and the seal of the Commonwealth, to convey, transfer, assign and make over to the United States, all the jurisdiction which this Commonwealth possesses, over so much of the lands lying on New Point Comfort in the county of Mathews, and

Cession of New
Point Comfort and
Smith's Point to
United States.

A. D. 1802.
A. R. C. 26.

on Smith's Point in the county of Northumberland, as may be necessary for the erection of a light-house and the appurtenant buildings thereto, on each of the said points: *Provided*, that a light-house shall be erected, kept in repair, and supported at the expense of the United States, on each of the said points.

In what case lands
to revert to the
State.

2. If a light-house shall not be erected on each of the said points, within the space of seven years after the cession aforesaid by this Commonwealth, or if at any time thereafter, the said light-house or houses, shall be suffered to fall into decay, or be rendered useless as to the purposes aforesaid, and so continue for the period of seven years, then and in those cases, the jurisdiction over such territory hereby directed to be vested in the United States, shall revert to this Commonwealth, and be subject to the jurisdiction of the same, in like manner as if this act had never been made: *Provided*, That nothing herein contained, shall be so construed as to prevent the officers of this State from executing any process whatever, within the jurisdiction hereby directed to be ceded to the United States.

Proviso.

Commencement.

3. THIS act shall commence and be in force from the passing thereof.

C. 15.

A. D. 1819.
A. R. C. 43.

An Act authorising the Governor of this Commonwealth to cede to the United States, the jurisdiction over a certain lot of land in the Borough of Norfolk, for the purpose of building a custom house and public stores thereon.

[Passed February 1, 1819.]

Governor authorised to cede Commonwealth's jurisdiction over a certain piece of land.

1. *Be it enacted by the General Assembly*, That it shall and may be lawful for the Governor of this Commonwealth, and he is hereby fully authorised, for and in behalf of this Commonwealth, by proper deeds and instruments of writing, under his hand and the seal of the Commonwealth, to convey, transfer, assign and make over, to the United States, all the jurisdiction which this Commonwealth possesses over a certain piece or parcel of land, lying in the borough of Norfolk, and lately purchased by the United States, for the purpose of building a custom house and public stores: *Provided*, That a custom house and public stores appurtenant thereto shall be erected, and supported at the expense of the United States on the said piece or parcel of land.

Proviso.

In what event, the jurisdiction may revert to this Commonwealth.

2. If a custom house and public stores shall not be erected thereon within the space of five years after the cession aforesaid, or if, at any time thereafter, the said custom house and public stores shall be suffered to fall into decay, or be rendered useless as to the purposes aforesaid, and so continued for the space of five years, then and in those cases, the jurisdiction over such territory, hereby directed to be vested in the United States, shall revert to this Commonwealth, and be subject to

the jurisdiction of the same, in like manner as if this act had never been made: *Provided*, that nothing herein contained shall be so construed as to prevent the officers of the State from executing any process whatever within the jurisdiction hereby directed to be ceded to the United States.

A. D. 1819.

A. R. C. 43.

Proviso.

3. THIS act shall commence and be in force from the pas-Commencement, sing thereof.

C. 16.

Resolutions on the subject of the disputed boundary between this State and the State of Pennsylvania.

A. D. 1776.

A. R. C. 1.

[Agreed to by both Houses, December 18, 1776.]

RESOLVED, That it is the mutual interest of the Commonwealths of *Virginia* and *Pennsylvania* that the boundaries between them be speedily settled and ascertained, in the most amicable and indisputable manner, by the joint agreement and concurrence of both; but that, this desirable end being unattainable by diffidence or reserve, your committee are concerned to find that the committee of the *Pennsylvania* convention have confined themselves to general observations on the cession and release made by the Commonwealth of *Virginia*, without attempting to show that the temporary boundary proposed was really inconsistent with the same, or offering any thing with certainty on the part of *Pennsylvania* in its stead, until the true limits of their charter could be authentically ascertained and settled.

RESOLVED, That, as the boundaries expressed in the *Pennsylvania* charter may admit of great doubt, and variety of opinions may arise on the construction, and it is expedient and wise to remove, as much as possible, all cause of future controversy, (the great principle upon which the *Virginia* convention acted in making the aforesaid cession and release,) to quiet the minds of the people who may be affected thereby, and to take from our common enemies an opportunity of fomenting mutual distrust and jealousy, this Commonwealth ought to offer such reasonable terms of accommodation, (even if the loss of some territory is incurred thereby,) as may be cordially accepted by our sister State, and an end put to all future dispute, by a firm and permanent agreement and settlement.

RESOLVED, therefore, That the *Virginia* delegates in congress be empowered and instructed to propose to the Commonwealth of *Pennsylvania* a final accommodation of our disputed boundaries, in the following manner:

THAT the meridian line, drawn from the fountain or head of *Potomack* river, shall be extended from the intersection of the line run between the proprietors of *Maryland* and *Pennsylvania* (commonly called *Mason and Dixon's line*) due north, until it intersects the latitude of forty degrees; and from

A. D. 1776.
A. R. C. 1.

thence the southern boundary of *Pennsylvania* shall be extended on the said fortieth degree of latitude until the distance of five degrees of west longitude from *Delaware* river shall be completed thereon, the same to be ascertained by proper astronomical observations; that from the completion of the said five degrees of longitude, upon the said fortieth degree of latitude, the western boundary of *Pennsylvania* shall be fixed at five degrees of longitude from its eastern, either in every point thereof, according to the meanders of *Delaware* river, or (which is perhaps easier, and better for both) from proper points or angles on the said *Delaware* river, with intermediate strait lines between; and whenever the said western boundary shall be run, that the degrees of longitude be also fixed by astronomical observations, at proper points or angles, on the said western boundary, answering to the points or angles on the said river *Delaware*; and from these, that there be strait lines run, corresponding as near as may be with the before mentioned strait lines, or reduced courses of the said river: for which purpose, if the Commonwealth of *Pennsylvania* shall accept this offer, and whensoever they shall have signified their agreement to the boundaries herein proposed, the Governor and Council are empowered and desired to appoint commissioners, to proceed with a proper mathematical apparatus, and in conjunction with commissioners to be appointed on the part of the Commonwealth of *Pennsylvania*, to ascertain and run the said southern or southern and western boundary, until the same shall strike the *Ohio* or *Allegheny* river, which it is apprehended is as far as they can yet be extended with safety, on account of the Indians. Saving their private property and rights to all persons who may have acquired titles, under either country respectively, previous to the ascertaining and running such boundary, although they should be found to fall within the other.

C. 17.

A. D. 1785.
A. R. C. 10.

Report of the commissioners, appointed by the States of Virginia and Pennsylvania, to run the boundary line between the two States.

[Recorded in the journal of the Governor and Council,
October 8, 1785.]

THE Governor laid before the board, the report of the commissioners, appointed to ascertain the boundary line, between this State and the State of *Pennsylvania*, which being read, is ordered to be recorded, as follows, to wit:

"WE, the subscribers, commissioners appointed by the states of *Virginia* and *Pennsylvania*, to ascertain the boundary between the said states, do certify, that we have carried "on a meridian line, from the south-west corner of *Pennsylvania*

"nia, northward, to the river *Ohio*, and marked it by cutting a "wide visto over all the principal hills, intersected by the said "line, and by falling or deadening trees, (generally) through "all the lower grounds: and we have likewise placed stones, "marked on the east side P. and on the west side V. on most "of the principal hills, and where the line strikes the *Ohio*; "which stones are accurately placed in the true meridian, "bounding the states as aforesaid.

A. D. 1785.
A. R. C. 10.

"WITNESS our hands and seals, this twenty-third day of "August, 1785."

"ANDREW ELLICOTT, (L. S.) "DAVID RITTENHOUSE, (L. S.)

"JOSEPH NEVILLE, (L. S.) "ANDREW PORTER, (L. S.)

"*Virginia.* "*Pennsylvania.*"

C. 18.

An act to approve, confirm, and ratify the Compact made by certain Commissioners appointed by the General Assembly of the State of Maryland, and Commissioners appointed by this Commonwealth.

A. D. 1786.
A. R. C. 10.

[Passed January 3, 1786.]

1 WHEREAS, at a meeting of the Commissioners appointed Preamble.
by the General Assembly of the State of *Maryland* and *Virginia*, to wit, *Daniel of St. Thomas Jenifer*, *Thomas Stone*, and *Samuel Chase*, Esquires, on the part of the State of *Maryland*, and *George Mason* and *Alexander Henderson*, Esquires, on the part of the State of *Virginia*, at *Mount-Vernon*, in *Virginia*, on the 28th day of *March*, in the year one thousand seven hundred and eighty-five, the following compact was mutually agreed to by the said Commissioners:

First,—THE Commonwealth of *Virginia* disclaims all right Articles of the
to impose any toll, duty, or charge, prohibition or restraint, compact,
on any vessel whatever sailing through the Capes of *Chesapeake Bay* to the State of *Maryland*, or from the said State through the said Capes outward bound; and agrees that the waters of *Chesapeake Bay*, and the river *Pocomoke*, within the limits of *Virginia*, be forever considered as a common high-way, free for the use and navigation of any vessel belonging to the said State of *Maryland*, or any of its citizens, or carrying on any commerce to or from the said State, or with any of its citizens; and that every such vessel inward or outward bound, may freely enter any of the rivers within the Commonwealth of *Virginia* as a harbour, or for safety against an enemy, without the payment of port duties, or any other charge; and also, that the before-mentioned parts of *Chesapeake Bay*, and *Pocomoke River*, be free for the navigation of vessels from one part of the State of *Maryland* to another.

Second,—THE State of *Maryland* agrees that any vessel belonging to the Commonwealth of *Virginia*, or any of its citi-

A. D. 1786.
A. R. C. 10.

zens, or carrying on commerce to or from the said Commonwealth, or with any of its citizens, may freely enter any of the rivers of the said State of *Maryland* as a harbour, or for safety against an enemy, without the payment of any port duty, or other charge.

Third,—VESSELS of war, the property of either State, shall not be subject to the payment of any port duty, or other charge.

Fourth,—VESSELS not exceeding forty feet keel, nor fifty tons burthen, the property of any citizen of *Virginia* or *Maryland*, or of citizens of both States, trading from one State to the other only, and having on board only the produce of the said States, may enter and trade in any part of either State, with a permit from the Naval-Officer of the district from which such vessel departs with her cargo, and shall be subject to no port charges.

Fifth,—ALL merchant vessels (except such as are described in the fourth article) navigating the River *Potowmack*, shall enter and clear at some Naval-Office on the said river, in one or both States, according to the laws of the State in which the entry shall be made. And where any vessel shall make an entry in both States, such vessel shall be subject to tonnage in each State only in proportion to the commodities carried to, or taken from, such State.

Sixth,—THE River *Potowmack* shall be considered as a common high-way, for the purpose of navigation and commerce to the citizens of *Virginia*, and *Maryland*, and of the United States, and to all other persons in amity with the said States, trading to or from *Virginia* or *Maryland*.

Seventh,—THE citizens of each State respectively shall have full property in the shores of *Potowmack* River adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river; but the right of fishing in the river shall be common to, and equally enjoyed by the citizens of both States: *Provided*, That such common right be not exercised by the citizens of the one State, to the hindrance or disturbance of the fisheries on the shores of the other State; and that the citizens of neither State shall have a right to fish with nets or seines on the shores of the other.

Eighth,—ALL laws and regulations which may be necessary for the preservation of fish, or for the performance of quarantine, in the river *Potowmack*, or for preserving and keeping open the channel and navigation thereof, or of the River *Pocomoke*, within the limits of *Virginia*, by preventing the throwing out ballast, or giving any other obstruction thereto, shall be made with the mutual consent and approbation of both States.

Ninth,—LIGHT-HOUSES, beacons, buoys, or other necessary signals, shall be erected, fixed, and maintained upon *Chesapeake* Bay, between the sea and the mouths of the rivers *Potowmack* and *Pocomoke*, and upon the river *Potowmack*, at the expense of both States; If upon *Potowmack* River, at the joint and equal charge of both States; and if upon the before-mentioned part of *Chesapeake* Bay, *Virginia* shall defray five

parts, and *Maryland* three parts of such expense; and if this proportion shall in future times be found unequal, the same shall be corrected. And for ascertaining the proper places, mode, and plans for erecting and fixing light-houses, buoys, beacons, and other signals, as aforesaid, both States shall, upon the application of either to the other, appoint an equal number of Commissioners, not less than three nor more than five from each State, to meet at such times and places as the said Commissioners, or a major part of them, shall judge fit, to fix upon the proper places, mode, and plans for erecting and fixing such light-houses, beacons, or other signals, and report the same, with an estimate of the expense, to the Legislatures of both States, for their approbation.

A. D. 1786.

A. R. C. 10.

Tenth,—ALL piracies, crimes, or offences committed on that part of *Chesapeake Bay* which lies within the limits of *Virginia*, or that part of the said Bay where the line of division from the South point of *Potowmack River*, (now called *Smith's Point*) to *Watkins's Point*, near the mouth of *Pocomoke River*, may be doubtful, and on that part of *Pocomoke River* within the limits of *Virginia*, or where the line of division between the two states upon the said river, is doubtful, by any persons not citizens of the Commonwealth of *Virginia*, against the citizens of *Maryland*, shall be tried in the Court of the State of *Maryland* which hath legal cognizance of such offence: And all piracies, crimes, and offences committed on the before-mentioned parts of *Chesapeake Bay* and *Pocomoke River*, by any persons not citizens of *Maryland*, against any citizen of *Virginia*, shall be tried in the Court of the Commonwealth of *Virginia* which hath legal cognizance of such offence: All piracies, crimes, and offences committed on the said parts of *Chesapeake Bay* and *Pocomoke River*, by persons not citizens of either State, against persons not citizens of either State, shall be tried in the Court of the Commonwealth of *Virginia* having legal cognizance of such offences: And all piracies, crimes, and offences committed on the said parts of *Chesapeake Bay* and *Pocomoke River*, by any citizen of the Commonwealth of *Virginia*, or of the State of *Maryland*, either against the other, shall be tried in the Court of that State of which the offender is a citizen. The jurisdiction of each State over the River *Potowmack*, shall be exercised in the same manner as is prescribed for the before-mentioned parts of *Chesapeake Bay* and *Pocomoke River*, in every respect, except in the case of piracies, crimes, and offences committed by persons not citizens of either State, upon persons not citizens of either State, in which case the offenders shall be tried by the Court of the State to which they shall first be brought. And if the inhabitants of either State shall commit any violence, injury, or trespass, to or upon the property or lands of the other, adjacent to the said Bay or Rivers, or to any person upon such lands, upon proof of due notice to the offender to appear and answer, any Court of Record, or Civil Magistrate of the State where the offence shall have been committed, having jurisdiction thereof, may enter the appearance of such person, and proceed to trial and judgment, in the same manner as

A. D. 1786.
A. R. C. 10.

if legal process had been served on such offender; and such judgment shall be valid and effectual against the person and property of such offender, both in the State where the offence shall have been committed, and also in the State where the said offender may reside, and execution may be issued by the Court, or Magistrate, giving such judgment, in the same manner as upon judgments given in other cases; or upon a transcript of such judgment, properly authenticated, being produced to any Court, or Magistrate, of the State where such offender may reside, having jurisdiction within the State, or county where the offender may reside, in cases of a similar nature, such Court, or Magistrate, shall order execution to issue upon such authenticated judgment in the same manner, and to the same extent, as if the judgment had been given by the Court, or Magistrate, to which such transcript shall be exhibited.

Eleventh.—ANY vessel entering into any port on the River *Potowmack*, may be libelled, or attached for debt, by process from the State in which such vessel entered. And if the commercial regulations of either State shall be violated by any person carrying on commerce in *Potowmack* or *Pocomoke* Rivers, the vessel owned or commanded by the person so offending, and the property on board, may be seized, by process from the State whose laws are offended, in order for trial. And if any person shall fly from justice, in a civil or criminal case, or shall attempt to defraud creditors by removing his property, such person, or any property so removed, may be taken on any part of *Chesapeake* Bay, or the rivers aforesaid, by process of the State from which such person shall fly, or property be removed; and process from the State of *Virginia* may be served on any part of the said rivers, upon any person, or property of any person not a citizen of *Maryland*, indebted to any citizen of *Virginia*, or charged with injury having been by him committed; and process from the State of *Maryland* may be served on any part of the said rivers, upon any person, or property of any person, not a citizen of *Virginia*, indebted to a citizen of *Maryland*, or charged with injury by him committed. And in all cases of trial in pursuance of the jurisdiction settled by this compact, citizens of either State shall attend as witnesses in the other, upon a summons from any Court, or Magistrate, having jurisdiction, being served by a proper officer of the county where such citizen shall reside.

Twelfth.—THE citizens of either State having lands in the other, shall have full liberty to transport to their own State, the produce of such lands, or to remove their effects, free from any duty, tax, or charge whatsoever, for the liberty to remove such produce or effects.

Thirteenth.—THESE articles shall be laid before the Legislatures of *Virginia* and *Maryland*, and their approbation being obtained, shall be confirmed and ratified by a law of each State, never to be repealed, or altered, by either, without the consent of the other.

2. AND WHEREAS this General Assembly are of opinion that the said compact is made on just and mutual principles

for the true interest of both governments, and the same having been confirmed by the General Assembly of the State of *Maryland*: *Be it therefore enacted*, That the said compact is hereby approved, confirmed, and ratified by the General Assembly of *Virginia*, and that every article, clause, matter and thing therein contained, shall be obligatory on this State and the citizens thereof, and shall be forever faithfully and inviolably observed and kept by this government, and all its citizens, according to the true intent and meaning of the said Compact; and the faith and honour of this State is hereby solemnly pledged and engaged to the General Assembly of the State of *Maryland*, and the government and citizens thereof, that this law shall never be repealed, or altered, by the Legislature of this Commonwealth, without the consent of the State of *Maryland*.

A. D. 1786.
A. R. C. 10.

C. 19.

An act concerning the erection of the District of Kentucky into an Independent State.

A. D. 1789.
A. R. C. 14.

[Passed December 18th, 1789.]

WHEREAS it is represented to this present General Assembly, that the Act of the last session, intituled, "*An act concerning the erection of the District of Kentucky into an Independent State*," which contains terms materially different from those of the act of *October* session, one thousand seven hundred and eighty-five, is found incompatible with the real views of this Commonwealth, as well as injurious to the good people of the said District:

1. *Be it enacted by the General Assembly*, That, in the month of *May* next, on the respective court days of the counties within the said District, and at the respective places of holding courts therein, representatives to continue in appointment for one year, and to compose a Convention with the powers, and for the purposes hereinafter mentioned, shall be elected by the free male inhabitants of each county above the age of twenty-one years, in like manner as delegates to the General Assembly have been elected within said District, in the proportions following: In the county of *Jefferson* shall be elected five representatives; in the county of *Nelson* five representatives; in the county of *Mercer* five representatives; in the county of *Lincoln* five representatives; in the county of *Madison* five representatives; in the county of *Fayette* five representatives; in the county of *Woodford* five representatives; in the county of *Bourbon* five representatives; and in the county of *Mason* five representatives: *Provided*, that no free male inhabitant above the age of twenty-one years, shall vote in any other county, except that in which he resides, and that no person

Preamble.

Representatives to compose a convention, to be elected in the Kentucky district.

Qualification of the electors.

Qualification of the representatives.

A. D. 1789.

A. R. C. 14.

Elections to be continued for 5 days.

Duty of the sheriffs conducting them.

Penalty on them for neglect.

The convention to determine on the expediency of erecting the said district into an independent state, on certain conditions.

Boundary between the proposed state and this commonwealth.

The proposed state to pay part of the debt of the U. States and of this Commonwealth.

Rights to lands derived from this Commonwealth to be secured.

How lands of non-resident proprietors are to be taxed,

when forfeited for neglect of cultivation.

Grants of land by this Commonwealth, and the

shall be capable of being elected, unless he has been a resident within the said District at least one year.

2. THAT full opportunity may be given to the good people of exercising their right of suffrage on an occasion so interesting to them, each of the officers holding such elections, shall continue the same from day to day, passing over *Sunday*, for five days including the first day, and shall cause this act to be read on each day immediately preceding the opening of the election, at the door of the court-house, or other convenient place. Each of the said officers shall deliver to each person duly elected a representative, a certificate of his election, and shall transmit a general return to the clerk of the Supreme Court, to be by him laid before the Convention.

3. For every neglect of any of the duties hereby enjoined on such officer, he shall forfeit one hundred pounds, to be recovered by action of debt, by any person suing for the same.

4. THE said Convention shall be held at *Danville*, on the twenty-sixth day of *July* next, and shall and may proceed, after choosing a President and other proper officers, and settling the proper rules of proceeding, to consider and determine whether it be expedient for, and the will of the good people of the said District, that the same be erected into an Independent State, on the terms and conditions following:

5. *First*—THAT the boundary between the proposed State and *Virginia*, shall remain the same as at present separates the District from the residue of this Commonwealth.

Second—That the proposed State shall take upon itself a just proportion of the debt of the United States, and the payment of all the certificates granted on account of the several expeditions carried on from the *Kentucky* District against the Indians, since the first day of *January*, one thousand seven hundred and eighty-five.

Third—THAT all private rights and interests of lands within the said District, derived from the Laws of *Virginia*, prior to such separation, shall remain valid and secure under the Laws of the proposed State, and shall be determined by the Laws now existing in this State.

Fourth—THAT the lands within the proposed State, of non-resident proprietors, shall not in any case be taxed higher than the lands of residents, at any time prior to the admission of the proposed State to a vote by its Delegates in Congress, where such non-residents reside out of the United States; nor at any time either before or after such admission, where such non-residents reside within this Commonwealth, within which this stipulation shall be reciprocal; or where such non-residents reside within any other of the United States, which shall declare the same to be reciprocal within its limits; nor shall a neglect of cultivation or improvement of any land within either the proposed State or this Commonwealth, belonging to non-residents, citizens of the other, subject such non-residents to forfeiture or other penalty within the term of six years, after the admission of the said State into the Federal Union.

Fifth—THAT no grant of land or land warrant to be issued by the proposed State, shall interfere with any warrant hereto-

fore issued from the Land Office of *Virginia*, which shall be located on land within said District now liable thereto, on or before the first day of *September*, one thousand seven hundred and ninety-one.

A. D. 1789.
A. R. C. 14.

Sixth—THAT the unlocated lands within the said District, which stand appropriated to individuals or description of individuals, by the Laws of this Commonwealth, for military or other services, shall be exempt from the disposition of the proposed State, and shall remain subject to be disposed of by the Commonwealth of *Virginia*, according to such appropriation, until the first day of *May*, one thousand seven hundred and ninety-two, and no longer; thereafter the residue of all lands remaining within the limits of the said District, shall be subject to the disposition of the proposed State.

proposed state not to interfere.
Unlocated lands appropriated to individuals for military services to be disposed of by this Commonwealth.

Seventh—THAT the use and navigation of the river *Ohio*, so far as the Territory of the proposed State, or the Territory which shall remain within the limits of this Commonwealth lies thereon, shall be free and common to the citizens of the United States; and the respective jurisdictions of this Commonwealth, and of the proposed State, on the river as aforesaid, shall be concurrent only with the States which may possess the opposite shores of the said river.

Navigation of the Ohio to be free and common.

Eighth—THAT in case any complaint or dispute shall at any time arise between the Commonwealth of *Virginia* and the said District, after it shall be an Independent State, concerning the meaning or execution of the foregoing articles, the same shall be determined by six Commissioners, of whom two shall be chosen by each of the parties, and the remainder by the Commissioners so first appointed.

Commissioners to settle disputes which may arise respecting the foregoing articles.

6. *PROVIDED, however*, That five members assembled shall be a sufficient number to adjourn from day to day, and to issue writs for supplying vacancies, which may happen from deaths, resignations or refusals to act; a majority of the whole shall be a sufficient number to choose a President, settle the proper rules of proceeding, authorise any number to summon a Convention during a recess, and to act in all other instances where a greater number is not expressly required. Two-thirds of the whole shall be a sufficient number to determine on the expediency of forming the said District into an Independent State, on the aforesaid terms and conditions: *Provided*, That a majority of the whole number to be elected concur therein.

What number of members necessary to proceed to business, and to determine the question concerning the erection of the said district into an independent state.

7. *AND be it further enacted*, That if the said Convention shall approve of the erection of the said district into an Independent State on the foregoing terms and conditions, they shall and may proceed to fix a day, posterior to the first day of *November*, one thousand seven hundred and ninety-one, on which the authority of this Commonwealth, and of its laws, under the exceptions aforesaid, shall cease and determine forever over the proposed State, and the said articles become a solemn compact mutually binding on the parties, and unalterable by either without the consent of the other.

When the authority of this Commonwealth over the said district shall cease.

8. *PROVIDED, however*, That prior to the first day of *November*, one thousand seven hundred and ninety-one, the general government of the United States shall assent to the erection

The assent of the general government to be obtained.

A. D. 1789.
A. R. C. 14.

of the said district into an Independent State, shall release this Commonwealth from all its Federal obligations arising from the said district, as being part thereof, and shall agree that the proposed State shall immediately after the day to be fixed as aforesaid, posterior to the first day of *November*, one thousand seven hundred and ninety-one, or at some convenient time future thereto, be admitted into the Federal Union.

The convention to provide for the establishment of a constitution of government for the proposed state.

9. AND to the end that no period of anarchy may happen to the good people of the proposed State, it is to be understood that the said Convention shall have authority to take the necessary provisional measures for the election and meeting of a Convention, at some time prior to the day fixed for the determination of the authority of this Commonwealth, and of its laws over said district, and posterior to the first day of *November*, one thousand seven hundred and ninety-one, aforesaid, with full power and authority to frame and establish a Fundamental Constitution of Government for the proposed State, and to declare what laws shall be in force therein, until the same shall be abrogated or altered by the legislative authority acting under the Constitution so to be framed and established.

Privileges of the electors, and of the representatives

10. *AND be it further enacted*, That the electors in going to, continuing at, and returning from an election of members to the said Convention, shall be entitled to the same privileges from arrest, as are by law allowed at an election of members to the General Assembly; and each person returned to serve as a member in said Convention, shall be entitled to the same privileges from arrest in going to, during his attendance on, and returning from said Convention, as are by law allowed to the members of the General Assembly.

The Executive to transmit this act to this Commonwealth's representatives in congress.

11. THIS act shall be transmitted by the Executive, to the representatives of this Commonwealth in congress, who are hereby instructed to use their endeavors to obtain from congress a speedy act to the effect above specified.

G. 20.

A. D. 1800.
A. R. C. 24.

An act for confirming and establishing the boundary line between this State and the State of Kentucky, ascertained and fixed by certain commissioners appointed by both States, and for other purposes.

[Passed January 13, 1800.]

Preamble.

WHEREAS the commissioners appointed to ascertain and adjust the boundary line between this State and the State of *Kentucky*, in conformity to the act of separation between the two States, have proceeded to the execution of the said business, and made a report thereof in the words following, to wit:—

Report of commissioners.

“ The commissioners for ascertaining and adjusting the boundary line between the States of *Virginia* and *Kentucky*, appointed pursuant to the act of separation between the two

"States, to wit, *Archibald Stuart, General Joseph Martin, and Creed Taylor*, Esquires, on the part of the former, and *John Coburn, Robert Johnston, and Buckner Thruston*, Esquires, on the part of the latter, having this day met at the forks of *Great Sandy* river, according to appointment, and taken into consideration the said act of separation, have, and by these presents do, unanimously, agree and declare, that the boundary line between the said States, is, and shall be, and remain as followeth, to wit: To begin at the point where the *Carolina*, now *Tennessee* line, crosses the top of the *Cumberland* Mountain, near *Cumberland Gap*; thence north eastwardly along the top or highest part of the said *Cumberland* Mountain, keeping between the head waters of *Cumberland* and *Kentucky* rivers, on the west side thereof, and the head waters of *Powell* and *Guest's* rivers, and the pound fork of *Sandy*, on the east side thereof, continuing along the said top or highest part of said mountain, crossing the road leading over the same at the *Little Paint* Gap, where by some it is called *Hollow* Mountain, to where it terminates at the west fork of *Sandy*, commonly called *Russel's* Fork; thence with a line to be run north forty-five degrees east, till it intersects the other great principal branch of *Sandy*, commonly called the north eastwardly branch; thence down the said north eastwardly branch to its junction with the main west branch, and down main *Sandy*, to its confluence with the *Ohio*:"

A. D. 1800.
A. R. C. 24.

And whereas *Brice Martin* and *Hugh Fulton*, the surveyors appointed by the said commissioners to run and mark the said line, did, on the second day of November, one thousand seven hundred and ninety-nine, certify, that they did run the same, beginning at a red oak, white oak, and two pines, marked V. K. on each, standing on a high clift, where the said *West* or *Russel's* fork of *Sandy* runs through the said *Cumberland* Mountain, near the mouth of a branch; thence with the said course to the said principal branch of *Sandy*, commonly called the north eastwardly branch, eight thousand six hundred and forty poles to a poplar, black gum, and two spruce pines, each marked with the letters V. K.; and that they had also marked the trees on the said line with four chops in the form of a diamond: And whereas it is deemed proper and expedient that the said boundary line so fixed and ascertained as aforesaid, should be established and confirmed on the part of this Commonwealth:

Surveyors' certificate.

1. *BE it therefore enacted by the General Assembly of the Commonwealth of Virginia*, That the said boundary line between this State and the State of Kentucky, as laid down, fixed, and ascertained by the said commissioners above named, in their said report above recited, shall be, and is hereby fully and absolutely, to all intents and purposes whatsoever, ratified, established, and confirmed on the part of this Commonwealth, as the true, certain, and real boundary line between the said States.

Boundary line between Virginia & Kentucky.

2. AND whereas the said commissioners have made a further report to the present General Assembly, in the words following, to wit: "And whereas doubts have hretofore prevailed, which of the main branches of *Sandy* the act for dividing the county of *Fincastle*, (which is the act referred to for the line be-

Report of commissioners respecting certain entries and locations.

A. D. 1800.
A. R. C. 24.

"tween the two States,) meant and intended that the line
"should run up; and locators have been led into errors in en-
"tering their land warrants; it is therefore further unanimous-
"ly agreed between the said commissioners, that no land claims
"founded on entries within the forks of *Sandy*, or east of the
"Cumberland Mountain, on the waters of *Sandy*, previous to
"the first day of October, one thousand seven hundred and
"ninety-nine, on either side of the before mentioned line, to be
"run from the end of the said Cumberland Mountain, to inter-
"sect the said main north eastwardly branch of *Sandy*, ought
"to be in any wise affected by the said doubts which have ex-
"isted respecting the said line, but that the said claims ought
"to remain valid and secure, as if no such doubts had existed,
"or as if the territory had been within the acknowledged limits
"of either State; that is to say, that all entries of land made
"in the offices of either State, which, by this adjustment of the
"line, falls into the other, shall be as valid as if made in the
"offices of that State in which the land lies, and that it be re-
"commended to the said States to pass mutual laws for the
"ratification of the said claims, pursuant to the meaning and
"intent of this agreement between us; and that until such laws
"shall be passed, this instrument shall not be in force, but
"shall take full effect immediately after the passage of such
"laws." And whereas it is deemed also proper and expedient
to confirm and validate all such entries above mentioned,
in conformity to the recommendation of the said commission-
ers, in their said report last above recited: *Be it further en-*
acted by the authority aforesaid, That all claims for entries of
lands made by any person or persons, in any surveyor's office
in the State of *Kentucky*, since the separation thereof from this
State, which said lands, by means of the adjustment and estab-
lishment of the said line above mentioned, have fallen into this
State, shall be as valid and sufficient to the several claimants
under such entries, to all intents and purposes, as if the same
had been made in the proper surveyor's offices of this State;
any thing in any law contained to the contrary notwithstanding.

Entries made in
Kentucky of lands
which fall into
this State, valid.

Commencement.

3. THIS act shall commence and be in force, from and after
the passing of a like law on the part of the State of Kentucky.

C. 21.

A. D. 1791.
A. R. C. 16.

*An Act concerning the Southern boundary of this State.**

[Passed December 7, 1791.]

Preamble.

1. WHEREAS official information hath been received by the
General Assembly, that the Legislature of the State of *North*
Carolina have resolved to establish the line commonly called

* 1791, c. 14; 1792, ed. 1794, 1803, and '14, c. 55.

Walker's line, as the boundary between *North Carolina* and this Commonwealth, and it is judged expedient to confirm and establish the said line on the part of this State: *Be it therefore enacted by the General Assembly*, That the line commonly called and known by the name of *Walker's line*, shall be, and the same is hereby declared to be the boundary line of this State.

A. D. 1791.

A. R. C. 16.

Walker's line declared to be southern boundary of this State.

2. *AND be it further enacted*, That in all courts of law and equity within this Commonwealth, the claims for lands lying between the line commonly called *Walker's line*, and the line commonly called *Henderson's line*, shall be decided in favor of the oldest title, whether derived from this Commonwealth, or from the State of *North Carolina*.

Claims to land between Walker's and Henderson's line, how to be settled.

C. 22.

*An Act for confirming and establishing the boundary line between this State and the State of Tennessee, as ascertained and adjusted by certain commissioners.**

A. D. 1803.

A. R. C. 27.

[Passed January 22, 1803.]

1. WHEREAS the commissioners appointed to ascertain and adjust the boundary line, between this State and the State of *Tennessee*, in conformity to the resolution passed by the Legislature of this State, for that purpose, have proceeded to the execution of the said business, and made a report thereof, in the words following, to wit: "The Commissioners for ascertaining and adjusting the boundary line between the States of *Virginia* and *Tennessee*, appointed pursuant to public authority on the part of each, namely, General *Joseph Martin*, *Creed Taylor* and *Peter Johnston*, for the former, and *Moses Fisk*, General *John Sevier* and General *George Rutledge*, for the latter, having met at the place previously appointed for that purpose, and not uniting, from the general result of their astronomical observations, to establish either of the former lines called *Walker's* and *Henderson's*, unanimously agreed, in order to end all controversy respecting the subject, to run a due west line equally distant from both, beginning on the summit of the mountain generally known by the name of the *White-top mountain*, where the north-eastern corner of *Tennessee* terminates, to the top of the *Cumberland mountain*, where the south-western corner of *Virginia* terminates, which is hereby declared to be the true boundary line between the said States, and has been accordingly run by *Brice Martin* and *Nathan B. Markland*, the surveyors duly appointed for that purpose, and marked under the directions of the said Commissioners, as will more at large appear

Line agreed upon.

* 1802, c. 39; edi. 1808, c. 13.

A. D. 1803.

A. R. C. 27.

Commissioners re-
commend laws to
secure titles to
lands :

And laws to con-
firm acts of offi-
cers.

To be ratified by
the Legislature.

Certificate of sur-
veyors appointed
to run the line.

Line as established
ratified.

" by the report of the said surveyors, hereto annexed, and bear-
ing equal date herewith.

2. " THE Commissioners do further unanimously agree, to
recommend to their respective States, that individuals hav-
ing claims or titles to lands on either side of the said line,
as now fixed and agreed on, and between the lines aforesaid,
shall not in consequence thereof, in any wise be prejudiced
or affected thereby; and that the Legislatures of their respec-
tive States, should pass mutual laws to render all such claims
or titles, secure to the owners thereof.

3. " AND the said Commissioners do further unanimously
agree, to recommend to their States respectively, that reci-
procal laws should be passed, confirming the acts of all pub-
lic officers, whether Magistrates, sheriffs, coroners, surveyors,
or constables, between the said lines, which would have been
legal in either of the said States, had no difference of opinion
existed about the true boundary line.

4. " THIS agreement shall be of no effect, until ratified by
the Legislatures of the States aforesaid, respectively, and
until they shall pass mutual laws for the purposes aforesaid.
Given under our hands and seals at William Robertson's,
near Cumberland Gap, December the eighth, eighteen hun-
dred and two.

" JOS. MARTIN, (L. S.)

" MOSES FISK, (L. S.)

" JOHN SEVIER, (L. S.)

" PETER JOHNSTON, (L. S.)

" CREED TAYLOR, (L. S.)

" GEORGE RUTLEDGE, (L. S.)"

5. AND whereas *Brice Martin* and *Nathan B. Markland*,
the surveyors duly appointed to run and mark the said line,
have granted their certificate of the execution of their duties,
which certificate is in the words following, to wit: " The un-
dersigned surveyors, having been duly appointed to run the
boundary line between the States of *Virginia* and *Tennessee*,
as directed by the commissioners for that purpose, have,
agrecably to their orders, run the same, beginning on the
summit of the *White-top* mountain, at the termination of the
north-eastern corner of the State of *Tennessee*, a due west
course to the top of the *Cumberland* mountain, where the
south-western corner of the State of *Virginia* terminates,
keeping at an equal distance from the lines called *Walker's*
and *Henderson's*, and have had the new line run as aforesaid,
marked with five chops in the form of a diamond, as directed
by the said Commissioners. Given under our hands and seals,
this eighth day of December, eighteen hundred and two.

" B. MARTIN, (L. S.)

NAT. B. LACKLAND, (L. S.)"

AND it is deemed proper and expedient, that the said bound-
ary line so fixed and ascertained as aforesaid, should be esta-
blished and confirmed on the part of this Commonwealth:

6. BE it therefore enacted by the General Assembly of the
Commonwealth of *Virginia*, That the said boundary line be-
tween this State and the State of *Tennessee*, as laid down,
fixed and ascertained by the said Commissioners above named,
in their said report above recited, shall be, and is hereby fully

and absolutely, to all intents and purposes whatsoever, ratified, established and confirmed on the part of this Commonwealth, as the true, certain and real boundary line between the said States.

A. D. 1803.
A. R. C. 27.

7. ALL claims or titles to lands derived from the government of *North Carolina* or *Tennessee*, which said lands by the adjustment and establishment of the line aforesaid, have fallen into this State, shall remain as secure to the owners thereof, as if derived from the government of *Virginia*, and shall not be in any wise prejudiced or affected in consequence of the establishment of the said line.

Titles to land granted by N. Carolina and Tennessee confirmed.

8. THE acts of all public officers, whether magistrates, sheriffs, coroners, surveyors or constables heretofore done or performed in that portion of territory between the lines called *Walker's* and *Henderson's* lines, which has fallen into this State by the adjustment of the present line, and which would have been legal if done or performed in the States of *North Carolina* or *Tennessee*, are hereby recognized and confirmed.

Acts of officers confirmed.

9. THIS act shall commence and be in force, from after the passing of a like law on the part of the State of *Tennessee*.

Commencement.

C. 23.

*An Act declaring who shall be deemed citizens of this Commonwealth, and pointing out the mode by which the right of citizenship may be acquired or relinquished.**

A. D. 1792.
A. R. C. 17.

[Passed December 23, 1792.]

1. BE it enacted by the General Assembly, That all free persons born within the territory of this Commonwealth, all persons not being natives, who have obtained a right to citizenship under former laws, and also all children wheresoever born, whose fathers or mothers are or were citizens at the time of the birth of such children, shall be deemed citizens of this Commonwealth, until they relinquish that character in manner hereinafter mentioned.

Who deemed citizens.

2. AND that all persons, other than alien enemies, who shall migrate into this State, and shall before some court of record give satisfactory proof by oath, or, being Quakers or Menonists, by affirmation, that they intend to reside therein, and also take the legal oath or affirmation for giving assurance of fidelity to the Commonwealth, (which oaths or affirmations the clerk of the court shall enter of record, and give a certificate thereof to the person taking the same, and shall, on or before the first day of October annually, transmit to the Executive a list of the persons who shall have taken the said oaths or affirmations,

Alien friends how naturalized.

* Vkl. const. U. S. art. 1, § 2—Laws U. S. 3 Cong. 1 sess. c. 85—5 Cong. 1 sess. c. 71—7 Cong. 1 sess. c. 28—8 Cong. 1 sess. c. 47—13 Cong. 1 sess. c. 35. Former laws of Virginia on this subject; 1680, c. 2. 1705, c. 11. Edi. 1769, p. 11. 47. May 1779, c. 55. Oct. 1779, c. 18. 1783, c. 16, 17. Edi. 1785, p. 110, 213. 1786, c. 10; 1792, edi. 1794, 1803 and '14, c. 110.

A. D. 1792.
A. R. C. 17.

Exception as to of-
fices.

reciting their nation and occupation, (if any) to be by them entered in a book to be kept for that purpose, for which he shall receive the fee of one dollar) shall be entitled to all the rights, privileges and advantages of citizens, except that they shall not be capable of election or appointment to any office, legislative, executive or judiciary, until an actual residence in the State for five years after the time of taking such oaths or affirmations aforesaid; nor until they shall have evinced a permanent attachment to the State, by having intermarried with a citizen of this Commonwealth, or a citizen of any other of the United States, or purchased lands to the value of three hundred dollars.

3. *PROVIDED always*, That no person having or holding any place or pension from any foreign State or Potentate, shall be eligible to any office, legislative, executive or judiciary, within this Commonwealth.

Artizans, mecha-
nics, &c. migrating
to this State, ex-
empt from taxes
for a certain time.

4. AND for the encouragement of useful artizans, mechanics, and handicraft tradesmen, to migrate into this Commonwealth; *Be it further enacted*, That all and every such person or persons last mentioned, who shall hereafter migrate to this Commonwealth, shall be wholly exempt from the payment of any tax on his or their tools, or implements of trade, which he or they shall bring into this Commonwealth, at the time of his or their migration thereto; and shall moreover be exempted from all taxes whatsoever except the land tax, for the space of five years next thereafter, and if he or they shall so long continue the actual exercise of his or their trade or occupation therein.

Expatriation.

5. WHENSOEVER any citizen of this Commonwealth, shall, by deed in writing under his hand and seal, executed in the presence of, and subscribed by three witnesses, and by them, or two of them proved in the General court, any district court, or the court of the county or corporation where he resides, or by open verbal declaration made in either of the said courts, to be by them entered of record, declare that he relinquishes the character of a citizen, and shall depart out of this Commonwealth, such person shall, from the time of his departure, be considered as having exercised his right of expatriation, and shall from thenceforth be deemed no citizen.

Certain descrip-
tions of persons
prohibited from ac-
quiring citizenship.

6. ALL persons who having accepted a military commission from the United States, or any of them, or who having taken the oath of fidelity to any of the United States, or who having been natives of, or residents in any of the United States, on the nineteenth day of April, in the year one thousand seven hundred and seventy-five, or at any time since, have at any time during the late war, voluntarily joined themselves to the fleets or armies of the king of *Great Britain*, or have voluntarily borne arms against the United States, or any of them, in any garrison, port or fortification, or other place whatsoever, within their territories, or on their coasts; or have been owner, or part owner, of any privateer, or other armed vessel cruising against the said United States, or any of them; and all and every person and persons, who at any time acted as a member of the board, commonly called the board of refugee commissioners, at New York, or under the authority, or by the direction of the said board, shall be, and they are hereby prohibited

from migrating to, or becoming citizens of this Commonwealth; and all such persons shall be equally subject to the pains, penalties and disabilities of this act, although they have been heretofore, or shall be hereafter admitted to take the oaths of fidelity to this Commonwealth, in any court of record within the same, as if they had not taken the said oaths.

A. D. 1792.
A. R. C. 17.

7. ALL and every person and persons prohibited by this act, from migrating to this Commonwealth, who shall be found within the same, shall and may be prosecuted in the General Court of this Commonwealth, as for a misdemeanor; and if, upon trial, such person or persons be found guilty of a breach of this act, he or they shall be imprisoned, for a term not exceeding six months, in the public jail of this Commonwealth, without bail or mainprize, and may be fined at the discretion of the said court, in any sum not exceeding three hundred dollars, and shall moreover stand committed until such fine be paid; and if the person or persons so convicted, shall be found at large in this Commonwealth, after the expiration of one year, from the time of his or their conviction, or of one month from the time of his or their enlargement from jail, such person or persons shall be committed to the public jail; and upon proof being made of the identity of such person or persons, he or they shall be thereafter imprisoned in the public jail for the space of five years, without bail or mainprize, and shall moreover forfeit all his goods and chattels, lands and tenements, for the use of the Commonwealth; and if any person prohibited by this act from migrating to this Commonwealth, shall institute any suit or action whatsoever, in any of the courts of this Commonwealth, against any citizen or other person entitled to become a citizen thereof, the defendant or defendants may plead this act in bar of such action or suit; and if upon the trial of the cause, it shall appear that the plaintiff is by this act prohibited from migrating to this Commonwealth, and that the cause of action arose within the same, after the commencement of this act, the jury shall find for the defendant or defendants, and thereupon judgment shall be given against the plaintiff, with treble costs of suit; and the clerk of the court in which such cause shall be tried, shall, within one month thereafter, transmit a copy of the record, together with the names of the witnesses sworn on the part of the defendant or defendants, to the Attorney General; who shall, at the next succeeding session of the General Court, file an information, or prefer an indictment to the grand jury, against the person or persons against whom such verdict and judgment shall have been given.

How punishable for contravening this act.

In suits brought by them against citizens, judgment shall be rendered for defendants, with treble costs.

8. ALL persons resident in this, or any other of the United States, on the afore-mentioned nineteenth day of April, and not included in the above description, who are at present prohibited by law from migrating to this State, shall be, and they are hereby permitted to migrate into, and enjoy all the rights of citizenship, except that they shall not be capable of voting for members to either House of Assembly, or of holding or accepting any office of trust or profit, civil or military.

All other former residents allowed to return.

9. *PROVIDED*, That nothing herein contained, shall be construed so as to contravene the treaty of peace with *Great Britain*.

But not to vote at elections or hold offices.

Nothing herein to contravene the treaty with Great Britain.

A. D. 1792.

A. R. C. 17.

Repealing clause.
Commencement.

10. ALL and every act and acts, clause and clauses of acts, coming within the purview of this act, shall be, and the same are hereby repealed.

11. THIS act shall commence and be in force, from and after the passing thereof.

C. 24.

A. D. 1783.

A. R. C. 13.

An act to prevent the importation of Convicts into this Commonwealth.(a)*

[Passed November 13, 1788.]

Preamble.

No felons convict, under sentence of death, or other legal disability, to be brought into the state.

1. WHEREAS it hath been represented to this General Assembly, by the United States in Congress, that a practice has prevailed, for some time past, of importing felons convict into this State, under various pretences, which said felons convict so imported, have been sold and dispersed among the people of this State, whereby much injury hath been done to the morals as well as the health of our fellow-citizens: *Be it enacted*, that from and after the first day of *January* next, no captain or master of any vessel, or any other person coming into this Commonwealth, by land or by water, shall import, or bring with him, any person who shall have been a felon convict, or under sentence of death, or any other legal disability incurred by a criminal prosecution, or who shall be delivered to him from any prison or place of confinement, in any place out of the United States.

Punishment of those who bring them or offer them for sale.

2. *AND be it further enacted*, That every captain or master of a vessel, or any other person, who shall presume to import, or bring into this Commonwealth, by land or by water, or shall sell or offer for sale, any such person, as above described, shall suffer three months imprisonment, without bail or mainprize, and forfeit and pay for every such person so brought and imported, or sold or offered for sale, the penalty of fifty pounds current money of *Virginia*, one half to the Commonwealth, and the other half to the person who shall give information thereof; which said penalty shall be recovered by action of debt or information, in any court of record, in which the defendant shall be ruled to give special bail.

(a) Acts 1783, c. 12; 1792, edi. 1794, 1803 and '14, c. 35.

See a representation of the colonial council to the king, and an order against the importation of convicts (there called *Jail Birds* and *Newgate Birds*,) till the king's pleasure should be signified to the contrary, in 1670. 1 *Hen. st. at law*. 509.

C. 25.

*An act concerning Tributary Indians.**

A. D. 1792.

A. R. C. 17.

[Passed December 24, 1792.]

1. *Be it enacted by the General Assembly*, That it shall not be lawful for any *Indian* king, or any other tributary *Indians* whatsoever, upon any pretence, or upon any consideration, to bargain and sell, or demise to any person or persons, other than to some of their own nation, or their posterity, in fee, for life or for years, the lands laid out and appropriated for the use of such *Indians*, or any part or parcel thereof; or to bargain and sell as aforesaid any other land whatsoever now actually possessed, or justly claimed and pretended to by the said *Indians*, or any of them, by virtue of any articles of peace made and concluded with such *Indians* by this Commonwealth, or by the government existing previous to the establishment of this Commonwealth, or by virtue of any other right and title whatsoever; and every bargain, sale or demise, hereafter made contrary to this act, as aforesaid, shall be, and is hereby declared to be null and void, to all intents, constructions and purposes. (a)

2. If any person or persons (other than the *Indians* and their posterity) shall, from and after the publication of this act, presume to purchase or obtain any deed, or conveyance in fee, or any lease of years, from any of the tributary *Indians*, of any lands, tenements or hereditaments, laid out or appropriated, or now actually possessed, or justly claimed, or pretended to by the said *Indians*, or shall occupy or tend any of the said lands

Penalty for purchasing or occupying their lands.

* The act of 1661-2, c. 138, provided, that Indians brought in as servants should not be sold as slaves, nor for any longer term than English of like ages were bound to serve; that is, by act of 1661-2, c. 98, five years if above sixteen, and if under that age, till twenty-four years old; 2 *Hen. st. at lar. p.* 143, 113. The act of 1670, c. 12, provided, that servants, not being christians, imported by shipping, should be slaves for life; but, what should come in by land, should serve, if boys or girls, till the age of thirty; if men or women, twelve years and no longer; *Id. p.* 283. By one of Bacon's laws, 676, c. 11, it was enacted, that all Indians taken in war should be held and accounted slaves for life; and, by the act of 1679, c. 1, that Indians taken in war should be free purchase to the soldier taking the same; *Id.* 346, 404, 440. The act of 1682, c. 1, repealed the act of 1670, c. 12, and provided that all servants (except Turks and Moors whilst in amity with the king) which should afterwards be imported, either by sea or land, whether Negroes, Moors, Mulattoes or Indians, who and whose parentage and native country were not christian, at the time of the purchase of them by some christian, though such servants were, afterwards and before importation, converted to christianity, and all Indians, which should thenceforward be sold by our neighboring Indians, and others trafficking with us, as for slaves, should be slaves to all intents and purposes; *Id. p.* 491. But, by the acts of 1677, c. 3, and 1680, c. 9, a free and open trade was allowed, at all times and places, for all persons, with friendly Indians; *Id. p.* 410, 490, and by the act of 1698, c. 9, the several acts restraining trade with Indians, were repealed; and thenceforth a free and open trade was allowed, for all persons, at all times and at all places, with all *Indians* whatsoever; and the same provision was re-enacted by the act of 1705, c. 52, § 12. 3 *Id. p.* 69, 468. These acts have had a most important influence on the decision of claims to freedom of the descendants of Indians held in slavery, and are therefore here noted.

(a) Act of 1661-2 c. 138. 2 *Hen. st. at lar. p.* 138. Acts of 1705, c. 14, Ed. 1769, p. 53-4; 3 *Hen. st. at lar. p.* 464: 1792, edi. 1794, 1803, and '14, c. 122, § 1, 2, 3, 4.

A. D. 1792.
A. R. C. 17.

by permission of the said *Indians*, or otherwise, every person so offending, and being thereof lawfully convicted in any court of record within this Commonwealth, shall forfeit and pay the sum of one dollar and sixty-seven cents for every acre of land so purchased, leased or occupied, and so for every year such person or persons may hold possession of such lands, by virtue of such purchase or lease; one moiety of which penalty shall accrue to the Commonwealth, the other moiety to the informer; to be recovered by action of debt or information in any court of record within this Commonwealth.(a)

Indians' rights and
privileges secured.

3. THE *Indians* tributary to this government shall be well secured and defended in their persons, goods and properties; and whosoever shall defraud or take from them their goods, or do hurt or injury to their persons, shall make satisfaction, and be punished for the same according to law, as if the *Indian* sufferer had been a citizen of this Commonwealth.(a)

Repealing clause.

Proviso.

4. ALL acts or parts of acts, coming within the purview of this act, shall be and are hereby repealed: *Provided always*, that nothing in this act shall be construed to affect any rights, remedies, fines, forfeitures, penalties or amercements, which have accrued, been vested or incurred prior to the commencement of this act.

Commencement.

5. THIS act shall commence and be in force from and after the passing thereof.

(a) See note (a) on preceding page.

C. 26.

A. D. 1794.
A. R. C. 19.

*An act concerning Appointments to Civil Offices.**

[Passed November 24, 1794.]

Disability of senator or delegate for term for which he is elected.

1. *BE it enacted by the General Assembly*, That no senator or delegate, shall during the time for which he was elected, be appointed to any civil office under the authority of the Commonwealth, which shall have been created, or the emoluments whereof shall have been increased or decreased during such time.

Commencement.

2. THIS act shall be in force from and after the passing thereof.

* 1794, c. 22; ed. 1794, 1803, & '14. c. 166.

C. 27.

An act, to reduce into one act, the acts to disable officers of the Continental Government from holding offices under the authority of this Commonwealth.*

A. D. 1819.

A. R. C. 43.

[Passed January 16, 1819.]

WHEREAS the good people of this Commonwealth, in Convention assembled, did, on the twenty-fifth day of June, one thousand seven hundred and eighty-eight, ratify a Constitution for the Government of the United States of America; and whereas, it is judged expedient and necessary that all those who shall be employed in the administration of the said Government ought to be disqualified from holding or administering any office or place whatsoever under the Government of this Commonwealth:

1. *BE it therefore enacted*, That no person holding or accepting any office or place, or any commission or appointment whatsoever, legislative, executive, or judicial, civil or military, under the authority of the United States, whether any pay or emolument be attached to such office, place, commission, or appointment, or otherwise, or accepting or receiving any emolument whatsoever from the United States, shall be capable of holding any office legislative, executive, or judicial, or any other office, place, or appointment of trust or profit, under the Government of this Commonwealth: *Provided*, that nothing herein contained shall be so construed, as to prevent Members of Congress from sitting as county-court magistrates, or from holding offices in the militia, or so as to exclude any person receiving a pension from the United States, in consequence of any wound received in war, from any office under this Commonwealth, on account of such pension; or, so as to create any exclusion whatsoever, of militia officers or soldiers, on account of the recompense they may receive from the United States, when called out into actual duty.

Persons holding or accepting offices &c. under the U. States disqualified from holding any office under this State.

Exceptions as to members of Congress, military pensioners, militia officers and soldiers.

2. ALL acts and parts of acts, coming within the purview of this act, shall be and the same are hereby repealed: *Provided*, that nothing herein contained shall affect any forfeitures or prosecutions heretofore incurred or commenced.

3. THIS act shall commence and be in force, from and after the first day of January, eighteen hundred and twenty.

* Compiled from acts of 1788, c. 28, and 1798, c. 15, and amended at the late revision.—Vid. edi. 1794, 1803, and '14, c. 36, 251.

Disqualified from holding offices under the U. States
See Supplement to the Constitution 178

C. 28.

A. D. 1818.
A. R. C. 42.

*An act reducing into one the several acts prescribing the Oath of fidelity, and the Oaths of public officers.**

[Passed January 7, 1818.]

Form of oath of fidelity.

1. *BE it enacted by the General Assembly, That every person by law required to give assurance of fidelity shall for that purpose take an oath in this form :*

I, do declare myself a citizen of the Commonwealth of Virginia ; I relinquish and renounce the character of subject or citizen of any prince or other State whatsoever ; and abjure all allegiance which may be claimed by such prince or other state ; and I do swear to be faithful and true to the said Commonwealth of Virginia, so long as I continue a citizen thereof. So help me God.

No person to act in any office without having taken such oath.

2. No person shall have power to act in any office, legislative, executive, or judiciary, before he shall have given such assurance ; and shall moreover have taken such of the following oaths, if another be not specially prescribed, as is adapted to his case.

The oath of governor :

Governor's oath.

I, elected governor of Virginia by the representatives thereof, do solemnly promise and swear, that I will, to the best of my skill and judgment, execute the said office, diligently and faithfully, according to law, without favor, affection or partiality ; that I will, to the utmost of my power, protect the citizens of the Commonwealth in the secure enjoyment of all their rights, franchises and privileges, and will constantly endeavour that the laws and ordinances of the Commonwealth be duly observed ; and that law and justice, in mercy, be executed in all judgments ; and lastly, that I will peaceably and quietly resign the government to which I have been elected, at the several periods to which my continuance in the said office is or shall be limited by law and the constitution. So help me God.

The oath of a privy councillor :

Privy councillor's oath.

I, elected one of the privy council of Virginia by the representatives thereof, do solemnly promise and swear, that I will, to the best of my skill and judgment, execute the said office diligently and faithfully, according to law, without favor, affection or partiality, and that I will keep secret such proceedings and orders of the privy council, as the board shall direct to be concealed, unless the same be called for by the General Assembly. So help me God.

The oath of one not specially directed to take any other :

Of one not specially directed to take any other.

I, do solemnly promise and swear, that I will faithfully, impartially and justly perform the duty of my office of according to the best of my skill and judgment. So help me God.

* Former laws on this subject—ord. of convention, 1776, c. 3. Acts 1779, c. 5, 7, 1792, Edl. 1794, 1803 and 1814, c. 57.

† The words " either house of " omitted at the late revival.

3. EVERY person who shall be appointed to any office or place, civil or military, under this Commonwealth, shall, before he enters on the duties of his office or place, in addition to the oath of office prescribed by law, take the oath prescribed by the third section of the act entitled, "An act to suppress duelling." (b)

A. D. 1818.

A. R. C. 42.

Oath against duelling to be taken by every officer.

4. THE said oaths to be taken by a member or officer of either house of General Assembly shall be administered by any member of the privy council, and the taking thereof shall be certified to the clerk of such house; and the said oaths to be taken by any other person, if it be not otherwise directed, shall be administered in some court of record, or by any judge or justice thereof, and the taking thereof shall be recorded in the said court.

Official oaths, how to be administered.

5. ANY person refusing to take an oath in the manner the same hath heretofore been usually administered, and declaring religious scruples to be the true and only reason for such refusal, if he or she shall use the solemnity and ceremony, and repeat the formulary observed on similar occasions by those of the church or religious society of which such person professeth himself or herself to be a member, or to join in communion with, or shall use the solemnity and ceremony, and repeat the formulary which, in his or her opinion, is or ought to be observed on such occasions, according to the religion in which such person professeth to believe, he or she shall thereupon be deemed as competent a witness, or be as duly qualified to execute an office, or perform any other act, to the sanction whereof an oath is or shall be required by law, and shall be subject to the same rules, derive the same advantages, or incur the same penalties or forfeitures, as if he or she had sworn. In presentments, indictments, inquisitions, verdicts, examinations or other forms, the words "upon their oath," or "sworn," may be left out, and instead of them, "in solemn form," or "charged," (whichever may be adapted to the case) may be inserted; but if the ancient form be adhered to, it shall not be adjudged error. (c)

Provision concerning persons refusing to take any oath, from religious scruples.

6. ALL and every act and acts, clauses and parts of acts, containing any thing within the purview of this act, shall be, and the same are hereby repealed.

Repealing clause.

7. THIS act shall commence and be in force from and after the first day of January eighteen hundred and nineteen.*

Commencement.

(b) 1809, c. 10, § 3.

* Took effect January 1, 1820, vii.

(c) 1779, c. 7, 1792, Edi. 1794, 1803 post c. 45.

and 1814, c. 5, § 8. 1806, c. 9, § 1;

Edi. 1808, c. 90, § 1.

A. D. 1818.
A. R. C. 42.

C. 29.

An act to reduce into one the several acts and parts of acts ascertaining the salaries of the officers of civil government.

[Passed January 26, 1818.]

Salaries allowed
governor, council-
lors, clerk of council,
assistant clerk,
keeper of rolls,
and door-keeper of
capitol and of coun-
cil.

1. *BE it enacted by the General Assembly*, That the several officers hereinafter mentioned, shall receive for their annual salaries, in quarterly payments, after they shall have been audited according to law, the following sums of money: the governor or chief magistrate, the sum of three thousand three hundred and thirty-three dollars thirty-four cents; the members of the privy council, the sum of eight thousand dollars, to be divided equally amongst them, according to their attendance; the clerk of the council, who shall be keeper of the public seal, thirteen hundred and twenty dollars; the assistant clerk of the council, one thousand dollars; the keeper of the rolls, two hundred dollars; the door-keeper of the capitol and of the council, who shall also be the keeper of the keys of the capitol, whose duty it shall be to keep the capitol clean, and obey the orders of the Executive, five hundred dollars.

Judges of appeals,
and general court.

2. *THE* judges of the Court of Appeals, the sum of two thousand five hundred dollars each; the judges of the General Court, fifteen hundred dollars each, and three dollars for every twenty miles they may be compelled to travel to and from the respective courts they are by law required to attend: *provided*, that no allowance shall be made for any travelling which shall not be necessary in going, by the ordinary route, from the residence of the judge to the first court in his circuit, and then from court to court until the circuit shall be finished, and thence home, and then to and from the General Court; the chancellor of the districts of Richmond and Lynchburg, sixteen hundred and sixty-six dollars sixty-seven cents; the chancellor of the districts of Staunton, Wythe and Greenbrier, sixteen hundred and sixty-seven dollars; the chancellors of the Williamsburg and Fredericksburg districts, and of the Winchester and Clarksburg districts, sixteen hundred and sixty-seven dollars each; the attorney general one thousand dollars; the clerk of the General Court, for his *ex-officio* services, five hundred dollars; and the keeper of the public jail, eighty-four dollars.

Chancellors;

Attorney general;
Clerk of general
court, keeper of
public jail;

Speakers of Senate
and House of De-
legates;

Auditor, register,
treasurer, clerks in
auditor's, register's
and treasurer's of-
fices;

3. *THE* speaker of the Senate shall receive five dollars *per diem* during each session of the Assembly, including his daily pay; and the speaker of the House of Delegates, seven dollars *per diem* in like manner.

4. *THE* auditor of public accounts shall annually receive the sum of eighteen hundred dollars; the register of the land office, fifteen hundred dollars; the treasurer, two thousand dollars; the first clerk in the auditor's, register's and treasurer's offices, seven hundred and twenty-five dollars each; the first clerk in the auditor's office, when he performs the duties of auditor, one hundred and sixty-six dollars sixty-seven cents, in proportion to the time that he shall be employed therein; the second clerks

in the auditor's and register's offices, six hundred dollars; the second clerk in the treasurer's office, five hundred and sixteen dollars sixty-seven cents; the clerk of accounts in the auditor's office, eleven hundred dollars; and the assistant clerk of accounts, six hundred dollars; all of which salaries shall be paid quarterly, after being audited according to law.

A. D. 1818.
A. R. C. 42.

5. THE annual salaries of the officers of the manufactory of arms, to be paid to them quarterly, after being audited according to law, shall be as follows: the superintendant of the manufactory of arms, two thousand dollars; the master armorer, one thousand dollars; the assistant armorer, one thousand dollars; and the clerk to the manufactory of arms, five hundred dollars.

Officers of armory;

6. THE annual salaries of the officers of the penitentiary, to be paid quarterly, after being audited according to law, shall be as follows: the keeper of the public jail and penitentiary shall hereafter receive, for his services, the sum of fifteen hundred dollars per annum, with a *per centage*, to be paid out of the nett profits of the aforesaid institution, not exceeding annually the sum of seven hundred dollars, to be regulated by the Executive of this Commonwealth; the assistant keeper and turnkeys of the public jail and penitentiary shall receive, for their services, the sum of two hundred and fifty dollars *per annum*, with a *per centage*, to be paid out of the nett profits of the aforesaid institution, not exceeding annually the sum of two hundred dollars to each, to be in like manner regulated by the Executive of this Commonwealth. The compensation allowed, by the provisions of this act, to the keeper, assistant keeper, and turnkeys of the public jail and penitentiary, shall be received and taken in full for their services as aforesaid, without any other fee or emolument. The surgeon who attends the invalids in the public jail and penitentiary, and the public guard in the city of Richmond, shall hereafter receive for his services and medicine, the sum of seven hundred dollars *per annum*, to be paid as heretofore: and the clerk of the penitentiary, six hundred and twenty-five dollars.

Officers of penitentiary.

7. ALL acts and parts of acts, which authorised the Executive to fix the salaries of any clerk, shall be, and they are hereby repealed.

Executive not to fix the salary of any clerk.

8. ALL acts coming within the purview of this act, shall be, and the same are hereby repealed: *provided always*, that nothing in this act contained, shall be construed to affect any right which shall have accrued prior to the commencement of this act.

Repealing clause.

9. THIS act shall commence from the first day of April next.

Commencement.

C. 30.

A. D. 1819.
A. R. C. 43.

An act to regulate the salaries of the Officers of the Public Jail and Penitentiary House.

[Passed March 9th, 1819.]

Compensation of
keeper.

1. *BE it enacted*, That the keeper or superintendant of the Public Jail and Penitentiary House shall hereafter receive, for his services, the sum of two thousand dollars per annum, and his fuel.

First assistant
keeper:

2. *BE it further enacted*, That the first assistant keeper of the said Jail and Penitentiary House shall hereafter receive, for his services, the sum of six hundred dollars per annum, and the same per centage on the nett profits of the institution as he is now entitled to by law.

Second, third, and
fourth assistant
keepers ;

3. *BE it further enacted*, That the second assistant keeper shall hereafter receive, for his services, the sum of six hundred dollars per annum ; and that the third assistant keeper shall hereafter receive the sum of five hundred dollars per annum ; and that the fourth assistant keeper shall receive the sum of five hundred dollars per annum ; with the same per centage on the nett profits of the institution, as the said assistant keepers are now entitled to by law.

Delivery clerk and
turnkey ; And

4. *BE it further enacted*, That the delivery clerk and turnkey shall hereafter receive, for his services, the sum of five hundred dollars per annum ; and that the serjeant and turnkey shall receive for his services the sum of five hundred dollars per annum.

Serjeant and turn-
key.

No farther com-
pensation allowed.

5. *BE it further enacted*, That the compensation, allowed by the provisions of this act, to the superintendant, assistant keepers, turnkeys and surgeon of the said Public Jail and Penitentiary House, shall be received and taken in full for their services, as aforesaid, without any other fee or emolument.

Salary of Surgeon.

6. *BE it further enacted*, That the surgeon, who attends the Public Jail and Penitentiary House, and the public guard in city of Richmond, shall hereafter receive for his services and medicines, the sum of seven hundred dollars ; and that the clerk of the said Public Jail and Penitentiary House shall hereafter receive, for his services, the sum of seven hundred dollars.

And of clerk.

How payable.

7. *BE it further enacted*, That the salaries shall be paid as heretofore.

Commencement.

8. This act shall be in force from and after the passage thereof.

C. 31.

*An act for establishing Religious Freedom.**

A. D. 1785.

A. R. C. 10.

[Passed December 16, 1785.]

1. WHEREAS Almighty God hath created the mind free; Preamble. that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do; that the impious presumption of Legislators and Rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavouring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards, which, proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence, by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess, or renounce this or that religious opinion, is depriving him injuriously, of those privileges and advantages, to which, in common with his fellow-citizens, he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil Magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he, being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of Civil Government,

* 1785, c. 34; edi. 1794, 1803, and '14, c. 20.

A. D. 1785.
A. R. C. 10.

for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them:

No man compelled to frequent or support any religious worship.

2. *Be it enacted by the General Assembly*, That no man shall be compelled to frequent or support any religious worship, place, or Ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

All men free to profess, and by argument to maintain their religious opinions.

Declaration that the rights by this act asserted, are of the natural rights of mankind.

3. AND though we well know that this Assembly elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act to be irrevocable, would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted, are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right.

C. 32.^a

A. D. 1799.
A. R. C. 23.

*An act, to repeal certain acts, and to declare the construction of the Bill of Rights, and Constitution concerning Religion.**

[Passed January 24, 1799.]

Preamble.

1. WHEREAS the Constitution of the State of *Virginia*, hath pronounced the Government of the King of *England*, to have been totally dissolved by the revolution; hath substituted in place of the Civil Government so dissolved, a new Civil Government; and hath in the bill of rights, excepted from the powers given to the substituted Government, the power of reviving any species of ecclesiastical or church government, in lieu of that so dissolved, by referring the subject of religion to conscience: And whereas the several acts presently recited, do admit the church established under the regal government, to have continued so, subsequently to the constitution; have bestowed property upon that church; have asserted a legislative right to establish any religious sect; and have incorporated religious sects, all of which is inconsistent with the principles of the constitution, and of religious freedom, and manifestly

* 1798, c. 9; edi. 1803 and '14, c. 245.

tends to the re-establishment of a national church: For prevention whereof,

A. D. 1799.

A. R. C. 23.

2. *Be it enacted*, That the several laws, the titles whereof are as follows; "*An act for exempting the different societies of dissenters, from contributing to the support and maintainance of the church as by law established, and its ministers, and for other purposes therein mentioned*"—"An act, to repeal so much of the act, for the support of the clergy, and for the regular collecting and paying the parish levies, as relates to the payment of the salaries heretofore given to the clergy of the church of England"—"An act, for incorporating the Protestant Episcopal church"—"An act, to authorise the election of certain vestries"—"An act, to repeal the act, for incorporating the Protestant Episcopal church, and for other purposes"—and "An act, for giving certain powers to the trustees of the property of the Protestant Episcopal church," be and the same are hereby repealed, and declared to be void and of none effect. And it is further declared, that the law, intituled, "*An act for establishing religious freedom*," is a true exposition of the principles of the Bill of Rights and Constitution.

Certain acts here-
in mentioned re-
pealed.

C. 32.

*An act concerning the Glebe Lands and Churches within this Commonwealth.**

A. D. 1802.

A. R. C. 96.

[Passed January 12, 1802.]

1. WHEREAS the General Assembly, on the twenty-fourth day of January, one thousand seven hundred and ninety-nine, by their act of that date, repealed all the laws relative to the late Protestant Episcopal Church, and declared a true exposition of the principles of the Bill of Rights and Constitution respecting the same, to be contained in the act, intituled "An act for establishing religious freedom," thereby recognizing the principle, that all property formerly belonging to the said church, of every description, devolved on the good people of this Commonwealth, on the dissolution of the British government here, in the same degree in which the right and interest of the said church was derived therein from them. And although the General Assembly possesses the right of authorising a sale of all such property indiscriminately, yet being desirous to reconcile all the good people of this Commonwealth, it is deemed inexpedient at this time to disturb the possession of the present incumbents:

2. *Be it therefore enacted by the General Assembly*, That the Overseers of the Poor, and their successors, or a majority of them, within each county of this Commonwealth, wherein any glebe land is vacant, or shall become so by the death or

Overseers of Poor
to sell glebe lands
in certain cases.

* 1801, c. 5; ed. 1803, and '14, c. 289.

A. D. 1802.
A. R. C. 26.

To execute deeds
therefor.

To recover monies
held for use of
church.

Incumbent and tenants restrained
from committing
waste in glebe
lands, &c. and
from removing
personal property.

removal of any incumbent, shall have full power and authority, and they or a majority of them are hereby directed, on giving at least thirty days public notice, at the front door of the courthouse of their county, to sell all such lands and appurtenances, and every other species of property incident thereto, on the premises, to the highest bidder, on twelve months credit, taking bond with good security for the amount thereof, payable to themselves and their successors; provided that no sale of any such property shall take place, where any person is in possession thereof, under a lease from any person or persons in behalf of the said church, whether called trustees or not, prior to the passing of this act, until the said lease shall expire; and all sums of money or tobacco due thereon, or to become due, shall be recovered by action in the names of the said Overseers of the Poor or their successors, in any court of record within this Commonwealth; that the said Overseers of the Poor, or a majority of them, conducting every such sale, or their successors, on receiving satisfactory security for the amount thereof, be and they are hereby authorised and directed, to convey all such property, sold by them as aforesaid, to the purchaser or purchasers thereof, by good and sufficient deeds for that purpose; that in all cases where any person or persons may have received any sum or sums of money, or tobacco, for the use of the Episcopal Church, as established under the former government, and shall not have paid the same as directed by law, the said Overseers of the Poor, and their successors, or a majority of them, shall be entitled to receive the same, and on non-payment thereof, to recover it by action in any court of record within this Commonwealth: That when any person or persons, other than an incumbent or his tenant, shall have had the use of any glebe land or other property incident thereto, and may not regularly have accounted for the profits of the same, they shall hereafter account to the said Overseers of the Poor or a majority of them, of the county in which such property lies, and in case any such person or persons, their executors or administrators, refuse to account accordingly, the said Overseers of the Poor, or their successors, may sue for and recover the same in any court of record within this Commonwealth. That in all cases where such property is in possession of any incumbent or his tenant, either or both of them shall be restrained from the commission of waste, in like manner as other tenants for life or years may be, by the said Overseers, or their successors, in whom the right of action for that, and the purpose of carrying this act into effect, is hereby vested. That in every case where the Overseers of the Poor, or any one or more of them in any county, shall have good reason to believe that the incumbent therein shall be about to remove any, or the whole of the personal estate, which he holds as formerly belonging to the Episcopal Church, from such county, they or any one or more of them, shall, upon application to any magistrate therein, obtain from him an attachment, which he is hereby authorised to grant, against the estate so about to be removed, upon the execution of which, and the return thereof being made to the next court of such county, the said court may compel the said incumbent, on due proof thereof, to give bond with sufficient

security, not to remove the said property, or any part thereof, from the premises, and in case of refusal, the said court may order the said property to be delivered to the said Overseers of the Poor and their successors, or a majority of them, to be by them disposed of as in other cases: That in all cases where there shall be any just demand unpaid by any parish, the said Overseers of the Poor and their successors, or a majority of them, in every county comprehending such parish, or the greater part thereof, shall, from any of the funds aforesaid, before they are otherwise applied, pay the same; and shall then be entitled to a credit with the Overseers of the Poor of the county comprehending the residue of such parish, for their proportion thereof: That in cases where a glebe shall be in, or a parish run into, more counties than one, the Overseers as aforesaid of the county wherein the glebe or the greater part thereof shall lie, shall sell the same as aforesaid; and in all cases the said Overseers and their successors, or a majority of them, shall appropriate the money arising therefrom either to the poor of such parish, or to any other objects which a majority of the freeholders and house-keepers therein may direct, by a writing from under their hands directed to the said Overseers: And in all other cases, the money arising therefrom as aforesaid, shall be by the said Overseers of the Poor, or a majority of them in the counties respectively, applied in like manner, unless directed otherwise as aforesaid: *Provided*, That nothing herein contained shall authorise an appropriation to any religious purpose whatsoever. That the said Overseers of the Poor, or a majority of them, or their successors, shall meet as often as they may deem it necessary for the purpose of carrying this act into effect. That the Overseers of the Poor and their successors in each county where any such property remains, shall perform all the duties required of them respectively by this act, under the penalty of two hundred dollars each, to be recovered in any court of record, by any one who will sue for the same. That the said Overseers and their successors, or a majority of them, who shall perform the duties hereby required, shall be entitled to receive for advertising, selling and conveying, any of the said property, a commission of three per cent., and for collecting and appropriating any of the funds by them received, three per cent. more; and shall be accountable to their successors, as in other cases. That nothing herein contained shall authorise a sale of the churches and the property therein contained, or the church yards, nor in any manner affect* any private donation made prior to the first day of January, one thousand seven hundred and seventy-seven, for church and other purposes, where there is any person in being entitled to take the same under any private donor; nor to affect the property of any kind which may have been acquired by private donations or subscriptions by the said church, since the date last mentioned.

A. D. 1802.
A. R. C. 26.

Overseers of poor to pay debts due from parishes.

Glebe lying in more counties than one, how to be sold.

Appropriation of money.

Compensation to overseers of poor.

This act not to affect private donations in certain cases.

3. THIS act shall commence and be in force from and after Commencement the passing thereof.

* Effect in the roll.

C. 33.

A. D. 1819.
A. R. C. 43.

*An act to reduce into one act the several acts concerning the
Literary Fund.**

[Passed March 3, 1819.]

Escheats, confiscations, forfeitures, and derelict personal property,

Militia fines, and arrears thereof, due February 11, 1811, appropriated to encouragement of learning. Exception.

Also fines &c. (except militia fines,) since February 11, 1811.

Saving rights of informers, *qui tam* prosecutors and persons injured.

But Commonwealth may sue, at any time before prosecution commenced by informer.

Auditor to keep account of Literary Fund.

1. *BE it enacted by the General Assembly*, That all escheats, confiscations, forfeitures, and all personal property accruing to the Commonwealth as derelict and having no rightful owner, which have accrued since the second day of February one thousand eight hundred and ten, and which shall hereafter accrue to the Commonwealth, be, and the same are hereby appropriated to the encouragement of learning; and that all militia fines and the arrears thereof, due to the Commonwealth on the eleventh day of February one thousand eight hundred and eleven, and thenceforth accruing or to accrue, (except so much of such militia fines as have been, are, or may be otherwise appropriated,) be also, and the same are hereby appropriated to the encouragement of learning.(a)

2. *AND be it further enacted and declared*, That all fines and pecuniary penalties, imposed by any act of Assembly, or declared by the Common Law, and recoverable under the laws of this Commonwealth, (except militia fines,) shall, from and after the eleventh day of February one thousand eight hundred and eleven, be held to have accrued, and shall hereafter accrue to the Commonwealth, be paid into the public Treasury, and be also appropriated to the encouragement of learning: *Provided*, nevertheless, That nothing in this act contained, shall be construed to affect the rights of informers, or of persons prosecuting popular or *qui tam* actions, or of individuals suing for penalties appropriated by law to the party injured: *Provided*, That in all cases where, by law, any fine or penalty, either wholly or in part, is given to the informer, or to any person who will sue for the same, it shall be lawful for the Commonwealth, at any time before a prosecution or suit shall have been *bona fide* commenced and duly prosecuted by such informer or person entitled to sue, to sue for and recover such fine or penalty, by bill, plaint or information, presentment or indictment, as the case may require, in any court of record within this Commonwealth, having jurisdiction thereof; and every fine or penalty so recovered shall be also appropriated to the encouragement of learning.(b)

3. THE Auditor of Public Accounts shall be, and he is hereby required to open an account to be designated the Literary Fund, to which he shall carry every payment made, or to be made, on account of any of the said escheats, confiscations, forfeitures, fines and penalties herein above appropriated to the

* The amendments made at the late revisal, are distinguished as far as practicable, by being printed between single inverted commas.

(a) 1809, c. 14, § 1. 1810, c. 9, § 2. (b) 1810, c. 9, § 1, 3.

encouragement of learning, which may have accrued or may hereafter accrue to the Commonwealth.(c)

A. D. 1819.
A. R. C. 43.

4. THIS Act shall in no case change the mode of proceeding for the recovery of any of the subjects herein mentioned and appropriated, but they may be prosecuted in the same manner as if this act had not been passed.(d)

Mode of recovery, unchanged.

5. WHEN any person shall die intestate as to his goods and chattels or any part thereof, and, after the payment of funeral charges, debts and just expenses, there shall be no person entitled to take the residuum, under the laws of this Commonwealth directing the distribution of intestates' estates, such undisposed of residuum shall in no case go to the executor or administrator of the person so dying; but the same shall vest in the Commonwealth for the benefit of the Literary Fund; and may be recovered by bill in equity, in any court having jurisdiction thereof: *Provided*, That nothing in this Act contained shall be so construed as to affect the right of the husband to the personal estate of his wife dying intestate. When any suit shall be instituted in behalf of the Commonwealth, for the purpose of recovering such undisposed-of residuum, it shall be the duty of the court to cause publication to be made for three months in some newspaper published at the seat of government of this State, and in some newspaper published at the seat of government of the United States, setting forth the nature of the action, the name and nativity of the deceased person, and requiring of all persons claiming an interest therein as distributees of the deceased, to appear and make themselves defendants on a given day of some succeeding term. If no person shall appear accordingly, and shew a sufficient title in himself, the Court shall decree the undisposed-of residuum to the Commonwealth for the benefit of the Literary Fund. At any time after such decree shall have been pronounced, any person not a party thereto, claiming title as distributee of the deceased, shall be permitted to appear, make himself party to the suit, file his answer, and have his claim discussed and decided according to the rules and practice of the Court. If, upon the final hearing of the cause, it shall appear that such person is justly entitled to the whole, or any part of such undisposed-of residuum, it shall be decreed to him accordingly, but without interest or costs, and shall be refunded to him, out of any monies in the Treasury accruing for the benefit of the Literary Fund.(e)

Residuum of intestates' estates, where no distributees, shall go to the Literary Fund.

How recoverable. Saving husband's right to wife's estate.

Publication to be made.

Decree, if no person appear, and shew title.

Persons not parties, may afterwards appear, & defend the suit.

Decree on final hearing.

6. ALL sums of money which have accrued or may hereafter accrue to the Literary Fund, in consequence of the appropriations thereto, already, now, or hereafter to be made, shall be, and the same are hereby vested in the following persons, to wit: The Governor, Lieutenant Governor, Treasurer, Attorney General, and President of the court of Appeals of this Commonwealth for the time being, and they and their successors are hereby constituted a body corporate and politic under the denomination of the President and Directors of the Literary Fund, with power to sue and be sued, plead and be impleaded,

President & Directors of Literary Fund incorporated

Their corporate powers.

(c) 1800, c. 14, § 1.
(d) *Ibid*, § 2.

(e) 1812, c. 25, § 4, 5, 6.

A. D. 1819.

A. R. C. 43.

Board how constituted.

Governor to be President.
Clerk and other officers.

Annual report to General Assembly.

Agents in each county and corporation.

Their duty.

Proviso, that sheriffs may collect fines &c. as heretofore.

Warrants on treasury, by authority of president and directors.

Fund may be vested in bank stock.

Realty or personalty, how disposed of.

Appropriation, by act of February 24, 1816, of surplus of debt to the State from the U. States, in aid of the fund, recited,

and to hold lands and tenements, goods and chattels, and the same to sell, dispose of, or improve, for the purposes hereafter mentioned. And the said commissioners, or any three of them, shall have power to constitute a board for the transacting of all business relative to the said fund; of which board, when present, the Governor shall be president; and they shall have power to appoint a Clerk from without their own body, and such other officers as they may deem necessary, and make such rules and regulations for the better ordering of their proceedings, as to them may seem meet; provided, they be not inconsistent with the Constitution and laws of this Commonwealth. And the said President and Directors shall report to the General Assembly, once in every year, the state of the funds committed to their charge, with such recommendations with regard to the improvement thereof, as to them shall seem advisable.(f)

7. AND, for the more speedy and certain collection of the Literary Fund throughout the Commonwealth, the said President and Directors are authorised and required to appoint in each county and corporation therein, an attorney or agent for the collection of the funds of that county or corporation, who shall act without any fee or emolument, and whose duty it shall be to report to the President and Directors, from time to time, such portion of the said fund as any officer appointed to collect the same may have collected, and failed to pay into the Public Treasury, or such portion thereof, as may be uncollected in the hands of any person, and, (if no other mode of recovery be provided by law,) to authorise proper actions to be instituted for the recovery thereof in the name of the said President and Directors; the costs of which shall be defrayed by the said President and Directors, out of the Literary Fund: *Provided*, That nothing in this act, shall be construed to prevent the sheriffs of the respective counties from collecting such fines and other sums of money, as they are at present by law authorised and required to collect and account for.(g)

8. THE Auditor of Public Accounts shall be authorised and required at all times hereafter, to issue warrants on the Treasury, to satisfy orders drawn by the authority of the President and Directors of the Literary Fund, for payment of money, not exceeding the sum appropriated by law to the said Fund at the date of such orders.(h)

9. THE said President and Directors shall be, and they are hereby empowered to vest, in the stock of any bank or banks in this Commonwealth, any part or the whole of the Literary Fund, and at all times to change or alter, or dispose of any real or personal estate belonging to the said Fund, in such manner as may, in their opinion, be best calculated to improve the value thereof.(i)

10. AND whereas, by an act passed the twenty-fourth day of February, one thousand eight hundred and sixteen, entitled "*An act appropriating the public revenue*," it was enacted, that whatever surplus should remain of a certain debt then due to this Commonwealth, from the Government of the United States,

(f) 1810, c. 8, § 1.
(g) *Ibid*, c. 8, § 3.(h) 1811, c. 10, § 5.
(i) *Ibid* § 6.

after discharging the debt then due from the Commonwealth on account to the Farmers' Bank of Virginia, and defraying the current expenses of the year, ending on the thirtieth day of September, then next ensuing, should be, and was thereby appropriated to public education, and for that purpose vested in the President and Directors of the Literary Fund, to be thereafter applied as might be by law directed; *Provided*, that so much thereof as might be necessary should be applied by the said President and Directors, as soon as the same should be received from the Government of the United States, to the purchase of the certificates of the debts, amounting to seven hundred and fifty thousand dollars, due from the Commonwealth to the banks of Virginia, and the residue to the purchase of such shares of the stock of the James River Canal Company, as might be tendered for sale to the Treasurer of the Commonwealth, in conformity with the terms of the charter of the said company, or might be otherwise procured, and whatever part thereof might not be so invested, should be appropriated by the said President and Directors to the purchase of other productive stock; *Provided however*, that if, at any time before the debts then due to the Bank of Virginia and Farmers' Bank of Virginia, should be paid off under the provisions of the said act, the calamities of war should revisit the country, and render it necessary for the State of Virginia to again become a borrower of money, in such case, it should be lawful for the Legislature to withdraw from the Literary Fund, the amount of the said appropriation made to the said Fund by the said act: (k) *'Be it therefore hereby enacted and declared*, that the said appropriation by the said act so as aforesaid made to the Literary Fund be, and the same is hereby confirmed to the same, subject to the regulations, conditions and provisions in the said recited act contained and prescribed.'

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And confirmed.

11. 'AND whereas, by an act, passed the ninth day of February one thousand eight hundred and fourteen, entitled, "An act to amend and explain the act, entitled, an "Act concerning taxes on lands," it was enacted, that the sheriffs should advertise and expose to sale, certain lands and lots forfeited for non-payment of taxes, in the mode, and according to the directions in the said act prescribed and contained; and, by the thirtieth section of the said act, it was enacted and provided, that, if no person should agree to give for any tract of land or lot, so exposed to sale, the amount of taxes and damages for which it was thereby directed to be sold, the title to such tract of land or lot, should be thereupon vested in the President and Directors of the Literary Fund, in the same manner as if they had been purchasers thereof at the sale, and as if the sheriff had executed to them a deed therefor, and the taxes due thereon should be extinguished; and that such lands and lots, while they should remain the property of the Literary Fund, should not be chargeable with any tax; and, by the forty-eighth section of the same act, it was further enacted and provided, that all lands sold, or vested in

Recital of appropriation by act of February 9, 1814, concerning taxes on lands.

A. D. 1819.

A. R. C. 43.

Amended by act of
February 20, 1817,and farther a-
mended by act of
February 23, 1818.Titles to lands and
lots, &c. thereby
accruing, confirm-
ed to the fund.

the Literary Fund, according to the provisions of the said act, on account of delinquencies theretofore accrued, might be redeemed in the same manner, as lots and lands so sold and vested on account of delinquencies thereafter accruing; and the same time was thereby allowed to infants, *femes covert*, persons insane, imprisoned, or out of the Commonwealth, being engaged in the service of this State, or of the United States, to redeem the same after their disabilities should cease; and whereas also, by an act passed the twentieth of February, one thousand eight hundred and seventeen, entitled, *an act to amend the several laws concerning the arrearages of taxes upon lands, houses and lots*, it was enacted and provided, that all lands, houses and lots, vested in the President and Directors of the Literary Fund for the non-payment of taxes, should be, and the same were thereby made redeemable by the former owner or owners thereof, his, her or their heirs or assigns, by the payment of all taxes due thereon, at any time within one year from the passage of the said last mentioned act, with ten *per centum per annum* interest on the amount of such taxes, from the time when such taxes respectively became due and payable, until the said redemption should be effected, which payment should be made into the treasury, after the amount so to be paid should be audited by the Auditor of Public Accounts, in trust for the use of the President and Directors of the Literary Fund, or by making such payment to the clerk of the county where the land lay, in trust for the use aforesaid, to be by him accounted for and paid into the treasury, in manner prescribed by law: and whereas, by another act, passed on the twenty-third of February in the year eighteen hundred and eighteen, entitled, *an act to amend the several laws concerning arrears of land taxes*, it was provided, that the farther time of two years, from the passage of that act should be allowed for the redemption of all lands vested in the President and Directors of the Literary Fund, for the non-payment of taxes due thereon, and that such redemption should be effected according to the provisions of the first section of the act above recited, which passed on the twentieth of February eighteen hundred and seventeen, save only that such redemption should not be by payment to the clerk, but should be by payment into the treasury alone; and it was moreover provided by the said act, which passed in the year eighteen hundred and eighteen, that the forty-first and forty-second sections of the aforesaid act, which passed on the ninth of February eighteen hundred and fourteen, should be and continue in full force and operation, in relation to all lands and lots vested as aforesaid in the President and Directors of the Literary Fund, in the same manner as if such lands and lots had never been offered for sale under the said act: *BE it now therefore enacted and declared*, that the title of all lots and lands, vested in the President and Directors of the Literary Fund by virtue of the said recited acts, which have not been and shall not be redeemed according to the provisions of the same, and all monies paid for redemptions as aforesaid, shall be abso-

'lutely deemed and taken to be vested in the said President and Directors of the Literary Fund.'(l)

A. D. 1819.

A. R. C. 48.

12. THE said Literary Fund shall be divided and appropriated, as to the Legislature shall seem best adapted to the promotion of literature: *Provided always*, that the aforesaid fund (except that portion thereof, which has accrued, or may hereafter accrue, from the debt due to the Commonwealth from the Government of the United States,) shall be appropriated to the sole benefit of a school or schools, to be kept in each and every county within this Commonwealth, subject to such orders and regulations as the General Assembly shall hereafter direct. And whereas the object aforesaid is equally humane, just and necessary, involving alike the interests of humanity and the preservation of the constitution, laws and liberty of the good people of this Commonwealth; the present General Assembly solemnly protest against any other application of the said funds, 'with the exception aforesaid,' by any succeeding General Assembly, to any other object than the education of the poor.(m)

Fund how appropriated.

Proviso, as to schools for education of the poor.

Protest, against any other application of fund.

13. BE it further enacted, That for the purpose of duly applying a part of the income of the Literary Fund, to the primary object of its institution, it shall be the duty of the courts of the several counties, cities and corporate towns, represented in the General Assembly, and of the borough of Norfolk, in the month of October, or as soon thereafter as may be, to appoint not less than five nor more than fifteen discreet persons, to be called school commissioners for the counties, cities, the said corporate towns and borough of Norfolk respectively, in which they may be appointed; 'and shall moreover make an order directing their respective sheriffs or sergeants to notify such commissioners of their appointment.' The said commissioners for the counties, cities, corporate towns and borough of Norfolk respectively, or a majority of them, shall hold their meetings, at the court-houses of their respective counties and corporations, on the first day of the court of their county or corporation, 'which shall be holden annually in the month of November;' and they shall hold such *extra* meetings at the places aforesaid as they may deem necessary to be convened, at any time, on the application of any number of the said commissioners, not less than a third part of the whole, reasonable notice thereof having been first given by advertisement, at the door of the court-house, on some court day. A majority of the whole number of commissioners shall be, at all times, necessary to form a board for the transaction of business, or to adjourn, except from day to day; but any smaller number may adjourn from day to day; the board may adjourn from time to time, as they may think proper. The said commissioners shall annually appoint one of their own body treasurer, who, before he shall be entitled to receive any money by virtue of his office, shall give bond and good security, in the court of the county, city, corporate town or borough in which he may be appointed, payable to the President and Directors of the Lite-

School commissioners, when and how to be appointed.

Notice of appointment.

Their meetings, where and when.

Notice thereof.

Board of commissioners, how constituted.

Treasurer to be appointed.

To give bond and security.

(l) Compiled of 1813, c. 3, § 24, 25, 26, 27, 29, 30, 42—1816, c. 90, § 1—1818, c. 4.

(m) 1809, c. 14, § 3.
1810, c. 8, § 5.

A. D. 1819.

A. R. C. 43.

Powers of commissioners.

Poor children how to be sent to school and what to learn.

Treasurer's duties.

Accounts to be rendered annually and certified to President and Directors of Literary Fund.

Clerk's fee for copy and certificate.

Clerk to the commissioners.

Compensation to treasurer and clerk.

Annual appropriation for education of the poor, when and how payable.

Treasurer's bond, how suable.

rary Fund, in the penalty of two thousand dollars, conditioned for the faithful application and accounting for all monies which may come to his hands by virtue of his office; which bond shall be filed and recorded in the office of such court. The said commissioners shall have power to determine, what number of poor children they will educate; what sum shall be paid for their education; to authorise each of themselves to select so many poor children, as they may deem expedient; and to draw orders upon their treasurer, for the payment of the expense of tuition, and of furnishing such children with proper books and materials for writing and cyphering. The poor children selected in manner aforesaid, shall (with the assent of the father, or if no father, of the mother of such children respectively, or if no mother, with the assent of the guardian,) be sent to such school as may be convenient, to be taught reading, writing and arithmetic.(n)

14. *And be it enacted*, That the said treasurer shall pay all monies which may come to his hands in virtue of his office, to the order of the said commissioners, or of such of them as shall have been authorised at their lawful meetings to draw upon him, and shall annually render an account of his receipts and disbursements, supported by proper vouchers, to the said commissioners, who shall examine the same, and after correcting all errors, which may be found therein, shall return the same to the clerks of the courts for their counties, corporate towns, cities and borough of Norfolk respectively; and the said clerks shall certify a copy of such account to the President and Directors of the Literary Fund, for which copy and certificate the said clerks respectively shall be allowed by the said commissioners such fee, 'not exceeding three dollars,' as they may deem reasonable, to be paid by order on the said treasurer; and whenever such treasurer shall go out of office, he shall pay over any balance, which may be in his hands, to his successors in office.(o)

15. *And be it enacted*, That it shall and may be lawful for the said commissioners to appoint one of their own body as clerk; to fill all vacancies created by death, resignation or removal; to make such allowance to their treasurer 'and clerk, 'each,' as they may deem reasonable for his services, and to authorise their treasurer to pay their own reasonable expenses incurred in attending their meetings.(p)

16. *And be it enacted*, That the President and Directors of the Literary Fund shall annually pay to each of the said treasurers, or order, upon the production of a certificate from the proper clerk that he has given the bond required by this act, such portion of the sum of forty-five thousand dollars as the free white population of the county, city, corporate town or borough, in which such treasurers may have been respectively appointed, bears to the whole free white population of the Commonwealth, according to the last and every future census taken under the authority of the United States.(q)

17. *Be it enacted*, That the bonds given by the treasurers may be put in suit in the name of the President and Directors

(n) 1817, c. 11, § 1.

(o) *Ibid*, § 2.

(p) 1817, c. 11, § 3.

(q) *Ibid*, § 4.

of the Literary Fund for their benefit, or for the benefit, and at the costs, of any person or persons, who may sustain injury by a breach of the condition thereof. And if any treasurer appointed under the authority of this act, or his executors, administrators or other personal representative, shall, at any time, when duly required thereto, fail to pay any money, received by such treasurer by virtue of his office, it shall be lawful for the commissioners of schools, in the name of the President and Directors of the Literary Fund, or for the said President and Directors in their own name, by motion, on ten days' previous notice, in any court of record having jurisdiction thereof, to recover a judgment, and have execution for such money, with ten *per centum per annum* damages thereon, from the time of such failure till payment, together with costs, against the said treasurer and his securities, jointly or severally, or against the executors, administrators or other personal representative of such treasurer, or his securities, or any of them: and the money made upon such judgment or execution, shall be paid to the order of the board of commissioners, or of such person as they shall have authorised to receive it, pursuant to the provisions of this act.(r)

A. D. 1819.

A. R. C. 43.

Remedy by motion against him, and securities for delinquency.

18. *And be it further enacted*, That all money, funds, debts or other property now held by the overseers of the poor of any county or corporation, and derived from, or acquired by the sale or forfeiture of glebe lands, belonging to any county or corporation, 'or to any parish,' and which shall be unappropriated by the citizens of such county, corporation, 'or parish,' shall, after the passage of this act, be vested in the said school commissioners; the revenue or income of such money, funds, debts, or other property, to be used and applied by the said commissioners to the education of the poor youth of their county or corporation, in the same manner as they are directed by this act to apply that portion of the revenue of the Literary Fund to which their county or corporation may be entitled: *Provided*, That, before any such funds, money or other property shall be thus invested in the said commissioners, the citizens of such county or corporation 'or parish, as the case may be,' or a majority of them, shall assent to the said investment.(s)

Proceeds of sales of glebe lands, held by overseers of poor, vested in school commissioners, for education of poor children.

Proviso.—Assent of citizens of county, &c. required.

19. *And be it enacted*, That the school commissioners shall annually present a statement to the President and Directors of the Literary Fund, exhibiting the number of schools and indigent children in their county or corporation; the price paid for their tuition; the number of indigent children educated in such schools; and what further appropriation from the Literary Fund will, in their opinion, be sufficient to furnish the means of education to all the indigent children in their county or corporation.(t)

Annual reports, by school commissioners, to President and Directors of Literary Fund,

20. *Be it further enacted*, That there shall be appropriated out of the revenue of the Literary Fund, the sum of fifteen thousand dollars *per annum*, for the purpose of defraying the expenses of procuring the land, and erecting the buildings, and for the permanent endowment of the University of Virginia:

Annual appropriation for University of Virginia,

(r) 1817, c. 11, § 5.

(s) *Ibid.* § 6.

(t) 1817, c. 11, § 7.

A. D. 1819.
A. R. C. 43.

Proviso.

Special repealing
clause.

Additional appro-
priation for educa-
tion of the poor, in
the act for estab-
lishment of an U-
niversity, repeal-
ed.

Commencement.

Provided, however, That the appropriation hereby made to the University, shall in no manner impair or diminish the appropriations herein-before made, to the education of the poor in the several counties and corporations.(v)

21. ALL acts and parts of acts coming within the purview of this act, and especially so much of an act passed during the present session of the General Assembly, entitled, *an act for the establishment of an University*, as appropriates the additional sum of twenty thousand dollars annually, out of the revenue of the Literary Fund, to the education of the poor, shall be, and the same are hereby repealed: *Provided, That all rights and remedies, fines, penalties and forfeitures and proceedings, heretofore accrued, incurred or commenced, shall be, and remain in the same state and condition as if this act had never been passed.*

22. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty; except so much thereof as repeals the additional appropriation of twenty thousand dollars annually, out of the revenue of the Literary Fund: and so much of this act as repeals the said appropriation, shall commence and be in force from and after the passing thereof.

C. 34.

A. D. 1819.
A. R. C. 43.

An act for establishing an University.

[Passed January 25, 1819.]

Conveyance of
lands, &c. from
central college in
Albemarle, accep-
ted.

1. *Be it declared by the General Assembly of Virginia,* That the conveyance of the lands and other property appertaining to the Central College in the county of Albemarle, which has been executed by the proctor thereof, under authority of the subscribers and founders, to the President and Directors of the Literary Fund, is hereby accepted, for the use, and on the conditions in the said deed of conveyance expressed.

University of Vir-
ginia established
on site provided
for said college.
Seven visitors to
be appointed by
Executive.

2. *And be it enacted,* That there shall be established, on the site provided for the said college, an University, to be called, *The University of Virginia*; that it shall be under the government of seven visitors to be appointed forthwith by the Governor, with the advice of Council, notifying thereof the persons so appointed, and prescribing to them a day for their first meeting at the said University, with supplementary instructions for procuring a meeting subsequently, in the event of failure at the time first appointed.

And empowered
to appoint a rector
and secretary.
Other duties to be
performed by
them.

3. THE said visitors, or so many of them as, being a majority, shall attend, shall appoint a rector, of their own body, to preside at their meetings, and a secretary to record, attest, and preserve their proceedings, and shall proceed to examine into

(v) 1817, c. 11, § 9.

the state of the property conveyed as aforesaid; shall make an inventory of the same, specifying the items whereof it consists; shall notice the buildings and other improvements already made, and those which are in progress; shall take measures for their completion, and for the addition of such others, from time to time, as may be necessary.

A. D. 1819.

A. R. C. 43.

4. IN the said University shall be taught the Latin, Greek and Hebrew languages, French, Spanish, Italian, German and Anglo-Saxon, the different branches of mathematics, pure and physical; natural philosophy; the principles of agriculture; chemistry; mineralogy, including geology; botany; zoology; anatomy; medicine; civil government; political economy; the law of nature and nations; municipal law; history; ideology; general grammar; ethics; rhetoric; and belles lettres; which branches of science shall be so distributed, and under so many professors, not exceeding ten, as the visitors shall think proper and expedient.

Branches of science to be taught in the University.

Number of professors.

5. EACH professor shall be allowed the use of the apartments and accommodations provided for him, and those first employed, such standing salary as the visitors shall think proper and sufficient, and their successors such standing salary, not exceeding one thousand dollars, as the visitors shall think proper and sufficient, with such tuition fees from each student, as the visitors shall from time to time establish.

Their compensation.

6. THE said visitors shall be charged with the erection, preservation and repair of the buildings, the care of the grounds and appurtenances, and of the interests of the University generally: they shall have power to appoint a bursar, employ a proctor, and all other necessary agents; to appoint and remove professors, two thirds of the whole number of visitors voting for the removal; to prescribe their duties, and the course of education, in conformity with the law; to establish rules for the government and discipline of the students, not contrary to the laws of the land; to regulate the tuition fees, and the rent of the dormitories occupied; to prescribe and control the duties and proceedings of all officers, servants and others, with respect to the buildings, lands, appurtenances and other property, and interests of the University; to draw from the Literary Fund such monies as are by law charged on it for this institution; and, in general, to direct and do all matters and things which, not being inconsistent with the laws of the land, to them shall seem most expedient, for promoting the purposes of the said institution; which several functions they shall be free to exercise in the form of by-laws, rules, resolutions, orders, instructions, or otherwise, as they shall deem proper.

Powers of visitors.

7. THEY shall have two stated meetings in every year; to wit, on the first Mondays of April and October; and occasional meetings at such other times as they shall appoint, or on a special call, with such notice as themselves shall prescribe by a general rule; which meetings shall be at the University; a majority of them constituting a quorum for business; and on the death, resignation of a member, or failure to act for the space of one year, or on his removal out of the Commonwealth, or by the Governor, with the advice of Council, the Governor with like advice shall appoint a successor.

Their meetings, when and where to be held, and how constituted.

Vacancies among them to be supplied by Executive.

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A. R. C. 43.

Rector and visitors
to be a body cor-
porate.
Their powers as
such.

8. THE said rector and visitors shall be a body corporate, under the style and title of *The Rector and Visitors of the University of Virginia*, with the right, as such, to use a common seal; they shall have capacity to plead and be impleaded in all courts of justice, and in all cases interesting to the University, which may be subjects of legal cognizance and jurisdiction; which pleas shall not abate by the determination of their office, but shall stand revived in the name of their successors; and they shall be capable in law, and in trust for the University, of receiving subscriptions and donations real and personal, as well from bodies corporate, or persons associated, as from private individuals.

To be governed
by laws enacted by
Legislature, and
in all things sub-
ject to its control.
Reports to be
made by them to
President and Di-
rectors of the
Literary Fund.

9. AND the said rectors and visitors shall, at all times, conform to such laws as the Legislature may, from time to time, think proper to enact for their government; and the said University shall, in all things, and at all times, be subject to the control of the Legislature. And the said rector and visitors of the University of Virginia shall be, and they are hereby required to make report, annually, to the President and Directors of the Literary Fund, (to be laid before the Legislature at their next succeeding session,) embracing a full account of the disbursements, the funds on hand, and a general statement of the condition of the said University.

Majority of Visi-
tors required to
visit the Universi-
ty once a year at
least.

Their powers and
duties on such
occasions.

Appointments of
visitors to be made
every twenty-
ninth day of Feb-
ruary.

10. THE said board of visitors, or a majority thereof, by nomination of the board, shall, once in every year at least, visit the said University; enquire into the proceedings and practices thereat; examine the progress of the students, and give to those who excel in any branch of science, there taught, such honorary marks and testimonies of approbation as may encourage and excite to industry and emulation.

Powers of visitors
of central college,
until first actual
meeting of their
successors.

11. On every twenty-ninth of February, or, if that be Sunday, then on the next, or earliest day thereafter, on which a meeting can be effected, the Governor and Council shall be in session, and shall appoint visitors of the said University, either the same or others, at their discretion, to serve until the twenty-ninth day of February next ensuing, duly, and timely notifying to them their appointment, and prescribing a day for their first meeting at the University; after which, their meetings, stated and occasional, shall be as herein-before provided: *Provided*, That nothing in this act contained shall suspend the proceedings of the visitors of the said Central College of Albemarle; but for the purpose of expediting the objects of the said institution, they shall be authorised, under the control of the Governor and Council, to continue the exercise of their functions, and fulfil those of their successors, until the first actual meeting of their said successors.

Additional appro-
priation for edu-
cation of poor.

12. *AND be it further enacted*, That the additional sum of twenty-thousand dollars shall be, and the same is hereby appropriated to the education of the poor, out of the revenue of the Literary Fund, in aid of the sum heretofore appropriated to that object, and to be paid in the same manner, and upon the same conditions in all respects, as is prescribed by the fourth section of the act, entitled, *An act appropriating part of the revenue of the Literary Fund*, and for other purposes,

passed the twenty-first day of February, eighteen hundred and eighteen.*

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13. THIS act shall commence and be in force from and after the passing thereof.

Commencement.

* This section is repealed by c. 33, § 21. (the act immediately preceding) which was passed after this act.

C. 35.

*An act, to reduce into one, all acts and parts of acts, for regulating the Militia of this Commonwealth.**

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[Passed March 9, 1819.]

WHEREAS a well regulated Militia constitutes the great defence of a free people, and it is expedient to carry into effect the laws of the Congress of the United States, providing for the national defence by establishing an uniform Militia throughout the United States :

1. BE it therefore enacted, That the counties of *Accomack* and *Northampton* shall compose one Brigade: the counties of *Princess Anne*, *Norfolk*, and the Borough of *Norfolk*, shall compose one Brigade; the counties of *Nansemond*, *Isle of Wight*, *Southampton*, *Surry*, *Sussex* and *Prince George*, one Brigade; the counties of *Elizabeth City*, *Warwick*, *York*, *James City*, *Charles City*, *New-Kent*, *Hanover*, *Henrico*, and the Cities of *Richmond*, and *Williamsburg*, one Brigade; the counties of *Gloucester*, *Mathews*, *Middlesex*, *Essex*, *King William*, *King and Queen*, *Lancaster*, *Northumberland*, *Richmond* and *Westmoreland*, one Brigade; and the said Brigades shall compose one Division: That the counties of *Loudoun* and *Fairfax* shall compose one Brigade; the counties of *Fauquier*, *Prince William*, *Stafford* and *King George*, one Brigade; the counties of *Culpeper*, *Madison*, *Orange*, *Spottsylvania*, and *Caroline*, one Brigade; the counties of *Louisa*, *Goochland*, *Fluvanna*, *Albemarle*, *Nelson* and *Amherst*, one Brigade; and the said Brigades shall compose one other Division: The counties of *Frederick*, *Berkeley* and *Jefferson* shall compose one Brigade; the counties of *Augusta*, *Rockingham* and *Shen-*

Brigades and Divisions.

* For the general militia law passed at the revival of 1792, see edi. 1794, '03 and '14, c. 146, amended by acts of 1793, c. 1, 2, same edi. c. 152, 153, by acts of 1795, c. 1, 1797, c. 5, 1798, c. 1, 1799, c. 49, edi. '03 and '14, c. 182, 201, 241, 263, and by act of 1800, c. 24. In the session of 1803, a general law was passed, to amend and reduce into one the several laws concerning the militia; see acts of 1803, c. 1, edi. 1808, c. 36. Of this act, numerous amendments were soon after and ever since continually made; see acts of 1804, c. 4, 1805, c. 4, 1806, c. 6, 30, 1807, c. 7, edi. 1808, c. 53, 84, 110, 112, 131; 1808 c. 25; 1811, c. 6, 27; edi. 1812, c. 25, 86, 107, 1812, c. 24, May, 1813, c. 2, December, 1813, c. 4, 1814, c. 5, 24, 1815, c. 14, 16, 47, 1816, c. 19, 1817, c. 13. The present act is almost entirely a compilation of the act of 1803, c. 1, and the subsequent acts above referred to. References from the particular provisions of this act, to the original acts from which they are taken, would probably answer no useful end, and are therefore omitted.

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andoah, one Brigade; the counties of *Wythe*, *Montgomery*, *Giles* and *Monroe*, one Brigade; the counties of *Washington*, *Russel*, *Lee*, *Scott*, *Grayson*, and *Tazewell*, one Brigade; the counties of *Rockbridge*, *Botetourt*, *Greenbrier*, *Bath*, *Kanawha*, *Cabell*, *Nicholas*, and *Mason*, one Brigade; the counties of *Hampshire*, *Hardy*, and *Pendleton*, one Brigade; the counties of *Monongalia*, *Preston*, *Ohio*, and *Brooke*, one Brigade; the counties of *Harrison*, *Tyler*, *Lewis*, *Randolph*, and *Wood*, one Brigade; and the said Brigades shall compose another Division: The counties of *Henry*, *Patrick*, *Franklin*, *Campbell* and *Bedford*, shall compose one Brigade; the counties of *Pittsylvania*, *Halifax*, *Charlotte*, and *Prince Edward*, one Brigade; the counties of *Dinwiddie*, *Greensville*, *Brunswick*, *Lunenburg* and *Mecklenburg*, one Brigade; the counties of *Chesterfield*, *Amelia*, *Nottoway*, *Powhatan*, *Cumberland* and *Buckingham*, one Brigade; and the said Brigades shall compose another Division.

Battalions and Regiments.

2. THE several counties and corporations within this Commonwealth, shall constitute the Battalions, portions of Battalions, Regiments or portions of Regiments, as now established: *Provided*, That it shall be lawful for the Executive to divide or alter the regimental districts in the several counties, as circumstances may require; and it shall be the duty of the Adjutant General annually to report to the Executive, such Regiments, as, in the two last returns, have been less in strength than three hundred rank and file, and such Regiments may be consolidated with some adjoining one, or such an alteration made in the bounds of the neighboring Regiments, as to make its strength at least three hundred rank and file.

Proviso. Executive may alter Regimental Districts. Annual report, concerning Regiments, by Adjutant General. When Regiments may be consolidated.

Companies.

Number of men.

3. AND every Battalion shall, if convenient, be formed into five companies; each company to consist of not less than sixty men, including non-commissioned officers, musicians and privates, nor more than one hundred and eight, officers included; and wherever any company district shall contain more than one hundred and eight militia men, officers included, a new company district shall be created, or such an arrangement of the bounds of the adjoining company district, at the discretion of the Board of Officers or Regimental Court of Enquiry, be made, as shall reduce their strength to some number within that limited by law; and in the event of the creation of a new company district, it shall constitute an additional company to the Battalion of which it is a part; and whenever any company of Militia shall be reduced to less than sixty, rank and file, such company shall be either apportioned amongst the other companies of the said Battalion, or such an alteration shall be made in the bounds of the other companies, at the discretion of a Board of Officers or the Regimental Court of Enquiry, as shall increase its strength to more than sixty rank and file.

How companies, when too numerous, may be reduced, or new companies formed.

Companies too small, to be apportioned among others, or enlarged; and how.

When Artillery, Grenadiers, Light Infantry, Riflemen, or Cavalry, may be enrolled in body of Militia.

And if such company consist of Artillery, Grenadiers, Light Infantry, Riflemen, or Cavalry, and the number be not increased to sixty, in six months from the passage of this act, and thereafter kept up, so that they be not at any time, for six months together, less than the number aforesaid, the said company shall, on the order of the commanding officer of the Regiment, be enrolled in the body of the Militia.

4. THERE shall be an Adjutant General for the Militia of the State, a Major General to each Division, and a Brigadier General to each Brigade, to be appointed by joint ballot of both Houses of the General Assembly, who shall reside within the limits of their respective commands; and there shall be a Colonel, Lieutenant-Colonel and Major to each Regiment, and a Captain, Lieutenant and Ensign to each company, who shall be appointed and commissioned agreeably to the constitution and laws of this Commonwealth; and whenever a vacancy shall exist, during the recess of the Legislature, in the office of Adjutant General, it shall be lawful for the Governor of this Commonwealth with the advice of Council, to fill such vacancy, and to issue a commission therefor, which shall expire at the end of the next session of the Legislature, or at such time previous thereto, as an appointment to the office shall be made by the General Assembly.

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Adjutant General,
Major Generals,
& Brigadiers how
to be appointed.
Where to reside.
Other field officers,
Captains, Lieuten-
ants and Ensigns.
Vacancy in office
of Adjutant Gene-
ral, in recess of
Legislature, how
to be filled.

5. THE Major Generals and Brigadier Generals of the Militia shall each appoint their own staff. The staff of a Major General shall consist of one Division Inspector, with the brevet rank, pay and emoluments of a Lieutenant Colonel of Infantry when in actual service, two Aids-de-camp, and one Division Quarter-master, each with the brevet rank, pay, and emoluments of a Major of Infantry, when in actual service. The staff of a Brigadier General shall consist of one Brigade Inspector, with the brevet rank, pay and emoluments of a Major of Infantry; one Aid-de-camp, with the rank, pay, emoluments and allowances of a Captain of Infantry, with an addition of sixteen dollars per month, pay and forage for two horses; and one Brigade Quarter-master, with the brevet rank, pay and emoluments of a Captain of Infantry, and forage for two horses, when in actual service. The Brigade Inspectors shall reside within the limits of the Brigades for which they are appointed; and the Governor, with the advice of Council, shall commission the several Major Generals, Brigadier Generals, and the Adjutant General who may be hereafter appointed, pursuant to this act; and all vacancies hereafter accruing in any of the said offices, shall be supplied by appointments in like manner to be made.

Generals to ap-
point their own
staff.
Major General's
staff.
Division Inspector,
Aids-de-camp, and
Quarter-master.
Their rank, pay,
&c.
Brigadier's staff;
Brigade Inspector,
Aid-de-camp, and
Quarter-master.
Their rank, pay,
&c.
Residence of Bri-
gade Inspectors.
Generals to be
commissioned by
Governor with ad-
vice of Council.
Vacancies how to
be supplied.

6. THE Adjutant General shall have the brevet rank of a Colonel of Cavalry in the army of the United States. He shall be, and is hereby, authorised and required, to direct returns and reports to be made to him of the strength and condition of the Militia, the state of the public arms and accoutrements, and other public property, applicable to military purposes, at least once a year, and whenever else he may be required by the Executive of the Commonwealth. It shall be his duty, to prepare general regulations defining and prescribing the respective duties of the different departments of the army, which, when approved by the Executive, shall be respected and obeyed, until altered or revoked by the same authority; and the said general regulations, thus prepared and approved, shall be recorded in the Adjutant General's office, and a copy thereof laid before the General Assembly at their next session.

Rank of Adjutant
General.
His powers and
duties;
To require returns
of strength of mi-
litia, state of pub-
lic arms, &c.
To prepare gene-
ral regulations for
different depart-
ments of army.
Such regulations
to be recorded in
his office, and laid
before General
Assembly.
To exercise func-
tions of Quarter-
master General, &c

7. THE offices of Quarter-master General and Commissary General of Ordnance, shall be attached to that of the Adjutant

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Commissary General of ordnance.
His salary.
His powers and duties in relation to the Quarter-master's department.

As Commissary General of ordnance.

Arms, &c. to be examined by him, at least once in every six months.

His duty to execute orders of Executive; to make returns to them at least once in every three months.

To inspect arms at the armory.

Regulations of such duties, how to be prescribed.

Public property in Richmond under his control.

His powers and duties in relation thereto.

Adjutant General to inspect public edifices and property, once in each month, and report their condition.

Where to reside and keep his office. Proviso.

General, who shall be held responsible for the performance of all the duties hereby attached to those offices; and he shall be allowed fifteen hundred dollars *per annum*, payable quarterly, in lieu of all other compensation.

8. THE Adjutant General shall take charge of the Quarter-master's department throughout the State; and shall have power to issue orders to all Quarter-masters, requiring of them such returns and reports, and giving them such instructions, as he may deem proper and necessary, for the security and preservation of the public property.

9. It shall be his duty, as Commissary General of Ordnance, to direct the inspection and proving of all pieces of ordnance, cannon-balls, shells and shot, procured for the use of the State, and to direct the construction of all carriages, and every apparatus for ordnance, for garrison and field service, and all ammunition waggons and travelling forges. He shall have the direction of the laboratories, their spection and proving of the public powder, and the preparing of all kinds of ammunition for garrison and field service, and shall, at least once in every six months, examine into the state and condition of all arms, ordnance, carriages, ammunition and apparatus in the respective fortresses, magazines and arsenals, and cause the same to be preserved and kept in good order. He shall also execute all orders issued by the Executive, and shall transmit to them, at least once in every three months, a correct return of all ordnance, arms, ammunition, military stores in the respective fortresses, magazines and arsenals, with a statement of their order, quality and condition; and, also, what may be necessary to keep up an ample supply of each and every article wanted for the public service. He shall also inspect, from time to time, the arms manufactured at the Armory, and report to the Executive any defect he may discover in them.

10. THE duties aforesaid shall be performed agreeably to the laws of the United States, and of this State, and such regulations as may be prescribed by the Executive of this State.

11. ALL the public property in the city of Richmond, shall be and the same is hereby placed under the immediate control of the Adjutant General, who is hereby charged with the preservation of the same in proper repair, and in proper order and cleanliness: and, to effect any of these purposes, the city-guard shall be placed under his command; subject, however, to the control of the Executive.

12. THE Adjutant General shall also be inspector of the public edifices and property in the city of *Richmond*; and, in that capacity, it shall be his duty to inspect the condition of the same, once in each month, or oftener, if required by the Executive, and to report the condition thereof to the Executive; to notice and report, especially, all defects of neatness and good order in the use of the same, and all neglect of duty on the part of any of the officers or agents employed therein,

13. HE shall reside and keep his office at the seat of the Government of this Commonwealth: *Provided, however, That, if at any time the public service shall render it expedient, the Governor, with the advice of Council, may direct the said Ad-*

jutant General, to remove with his office to any other place within this State.

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14. THE Governor of this Commonwealth, with the advice of Council, shall be, and he is hereby authorised, at any time, to bestow brevet rank upon any person in actual service, for distinguished military merit.

Executive may bestow brevet rank.

15. THE Governor, with the advice of Council, shall be, and he is hereby authorised and required, to appoint and commission, to each Division, one Colonel, one Lieutenant Colonel and one Major, to command the several companies of Artillery and Cavalry (as the case may be) annexed to each Division; and to arrange such companies of Artillery into Regiments and Battalions, in such manner as to them may seem most convenient, to be denominated the Regiment and Battalion of the Regiment of Artillery, or Cavalry (as the case may be); but it shall not be lawful for the Executive to organize or establish any Regiment, Battalion, or Company, or to commission any officer to command any Regiment, Battalion or Company, unless such Regiment, Battalion or Company shall have been previously established by the laws of this Commonwealth, or unless the Executive shall have been, or shall be expressly authorised to establish or organize the same; and every person, to whom any commission shall have been issued heretofore, contrary to the provisions of this section, shall not be exempt from militia duty, nor be entitled to any rank by virtue of such commission.

Field officers of artillery and cavalry, how to be appointed & commissioned.

Companies of artillery how arranged into regiments and battalions.

Executive prohibited from organizing or establishing regiments, &c. not authorised by law.

16. HEREAFTER the annual returns of the Militia of this Commonwealth, shall be as follows: On the first day of the training of the officers within every Regiment, the commanding officer of each company attached thereto, whether of cavalry, artillery, grenadiers, riflemen, light infantry, or infantry of the line, shall deliver to the commanding officer of the Regiment, a fair and correct return of the strength and condition of his company. The commanding officer of the Regiment shall cause the returns to be consolidated, and on the last day of the training, shall deliver to the Brigade Inspector a fair and correct return of the strength and condition of his Regiment, including every species of troops aforesaid. He shall invariably note therein, the failure of every commanding officer of a troop or company to make the return hereby required of him. He shall also enter and preserve a copy of his regimental return in a book which he shall keep for that purpose. When the training of the officers of the several Regiments in a Brigade shall have been finished, the Brigade Inspector shall consolidate the returns, which he shall have received from each Regiment; and, within thirty days, shall transmit to the Adjutant General, a fair and correct return of the strength and condition of the Brigade, distinguishing particularly the strength and condition of each Regiment therein, and noting the failure of every commanding officer of a Regiment, to make the return hereby required of him. He shall also enter and preserve a copy of such return, in a book, to be kept by him for that purpose. If, from any cause, the Brigade Inspector shall be prevented from attending the training of the officers in any Regiment, it shall be his duty, without delay, to cause application

Annual returns of Militia when and how to be made. Duty of commanding officers of companies;

Of commanding officers of regiments;

Of Brigade Inspectors.

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Forms of returns
how prescribed.
Adjutant General
to furnish them to
Brigade Inspect-
tors, &c.

Penalties on offi-
cers failing to per-
form these duties.

Courts to recom-
mend officers to be
commissioned.

Vacancies how to
be supplied.

When and how of-
ficers may resign.

Proviso, as to offi-
cers in actual ser-
vice.

Duty of officer re-
ceiving resignation
to notify the coun-
ty court.

Where change of
residence shall be
considered resig-
nation.

to be made to the commanding officer for his regimental return. The forms of the several returns hereby directed, shall be prescribed by the Adjutant General; subject, however, to the revision and control of the Executive; and, when so prescribed, shall be furnished, by the Adjutant General, to each Brigade Inspector in the Commonwealth. The Brigade Inspector shall furnish to the commanding officers of the Regiments in his Brigade, the forms of regimental company returns: and the commanding officer of the Regiment shall cause to be furnished the form of the company return, to the commanding officer of each troop and company attached to the Regiment. The several company, regimental, and brigade returns shall be according to the forms so prescribed and furnished. Any officer failing to perform the duties hereby required of him, in relation to the aforesaid returns, or in relation to other returns required by the Adjutant General, pursuant to law, shall forfeit and pay a fine as follows: the commanding officer of a troop or company, not less than five, nor more than twenty dollars; the commanding officer of a Regiment, not less than fifteen, nor more than seventy dollars; and the Brigade Inspector, not less than twenty-five, nor more than an hundred dollars. The officers aforesaid shall, moreover, be liable to be arrested for such offence, and cashiered, or punished with other inferior punishment, by the sentence of a court martial.

17. WHERE it has not already been done, the courts of the several counties and corporations, shall proceed to recommend to the Executive, the officers necessary to complete the Regiments, Battalions and Companies pursuant to this act; and the persons so recommended, shall be commissioned by the Governor, agreeably to the Constitution of this State. And all vacancies, thereafter happening in the said offices of the Militia, shall be supplied by appointment of the Governor, with the advice of the Council, or recommendation from the court of the respective county or corporation, where such vacancy happens; any thing in any act to the contrary notwithstanding.

18. ANY officer of the Militia, not under arrest at the time, may, whenever he shall think proper, resign his commission, by tendering the same, accompanied by a letter of resignation, to the Governor, or to the Commandant of the Regiment to which he may belong: *Provided, however,* That no officer in actual service shall avail himself of this privilege without the permission, in writing, of the officer commanding the troops with which he shall be serving. And the officer receiving such resignation, shall, in cases where the vacancy is filled on recommendation of the county courts, notify the same to the next succeeding court, in order that such vacancy may be supplied. And any officer who shall remove from his county, and the bounds of his Regiment, or shall have ceased to perform the duties of his office for eight months, and any Major General, Brigadier General, or other officer, who shall remain out of the limits of the State for more than eight months after he shall have been elected or appointed, shall be considered as having resigned his office; and the vacancy thereby occasioned, shall be filled as in other cases; unless such officer shall

be employed abroad, in the service of this State, or of the United States. And it shall be considered the duty of the clerks of the several counties within this Commonwealth, to enter of record the recommendations of officers proper to fill vacancies in the Militia, and qualify them, without any fee for the same. There shall be, in future, no supernumerary officers among the Militia: and the commissions of all those who hold no command, shall be deemed null and void, and the persons holding them, unless otherwise exempt, shall return to the ranks.

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Clerks to record recommendations, and qualify officers, without fee.

Commissions of supernumerary officers, void.

19. EACH and every officer, who may be hereafter appointed and commissioned in manner aforesaid, shall, previous to his entering on the execution of his office, take the following oaths, (to be administered by a justice of the peace, or the court of the county or corporation in which such officer resides,) to wit; *I, do swear that I will be faithful and true to the Commonwealth of Virginia, of which I profess myself to be a citizen, and that I will faithfully and justly execute the office of in the Militia thereof, according to the best of my skill and judgment. So help me God. I do solemnly swear or affirm, (as the case may be,) that I have not been engaged in a duel, by sending or accepting a challenge to fight a duel, or by fighting a duel, or in any other manner, in violation of the act, entitled, An act to suppress duelling, since the passage of that act, nor will I be so concerned, directly or indirectly, in such duel, during my continuance in office. So help me God.* If the said oath be administered by a justice of the peace, it shall be his duty to certify the same to the court of his respective county or corporation, there to be entered of record by the clerk. And the oaths aforesaid may be administered to such officer, by any justice of the peace of a county, or mayor or alderman of any corporation within this Commonwealth. And it shall be the duty of the officer, taking such oaths out of the county or corporation in which he resides, to transmit the certificate of such qualification, signed by such justice, mayor or alderman, to the court of the county where such officer may reside, there to be entered of record by the clerk. And every person hereafter commissioned as a field officer, captain or subaltern, shall, within one month after he shall have received his commission, take the oaths hereby prescribed; and, in case of failure, he shall be considered as having vacated his commission; and it shall be the duty of the court of the county wherein such person has been nominated, to proceed forthwith to nominate some other person to supply the vacancy; and, in such nomination, to certify the cause thereof to the Executive.

Oaths of Militia officers, by whom administered.

Form thereof.

To be certified, when taken out of court.

To be taken in one month after receipt of commission. Commission vacated by failure. Court's duty thereupon.

20. It shall be the duty of the Executive to number by ballot, where the same has not already been done, the several Divisions, Brigades and Regiments, and cause the same to be registered in the office of the Adjutant General; and every commission, hereafter issued by the Governor as aforesaid, shall express the number of the Division, Brigade and Regiment respectively, to which the person obtaining the same shall belong.

Divisions, Brigades and Regiments to be numbered and registered.

Commission to express number of division, &c.

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When commanding officers of Battalions and Companies shall be assembled to lay off or alter districts. Lines and bounds to be recorded by clerks of Courts of Enquiry.

Board, how organized, to be authorized to make alterations.

Divisions of Companies, by ballot from one to ten, for purpose of routine of duty. Returns of such divisions to commanding officers of Battalions and Regiments.

Provision, as to persons subsequently enrolled.

Persons removing out of company-bounds to get certificates from commanding officers ;

And produce them to commanding officers into whose bounds they remove.

Consequence of neglect.

Penalty on officer refusing certificate.

How men detailed to take the field, shall be mustered and inspected.

Court of Enquiry at time of such detail.

21. WHERE commanding officers of Regiments have failed to lay off their Regimental, Battalion and Company Districts, or where any alteration in Districts actually laid off, may hereafter be found necessary, commanding officers of Regiments shall assemble the commanding officers of Battalions and Companies, at some fit and convenient place, and may proceed to lay off or alter any such Battalion or Company District ; which Districts shall, in all cases, be designated by certain lines and bounds, and recorded by the clerks of the Courts of Enquiry, respectively : *Provided, however,* That no such alteration shall be made in any Battalion or Company Districts, unless the Board of Officers or Regimental Court Martial, by which it may be done, shall consist of at least two field officers, and a majority of the Captains or Commandants of Companies, attached to the Regiment in which such alteration may be made.

22. WHERE it has not already been done, it shall be the duty of the commanding officers of companies to proceed forthwith, to divide their companies into Divisions, by ballot, from one to ten, for the purpose of a regular routine of duty when called into actual service ; and to return a roster of each Division, and its number in rotation, within fifteen days thereafter, to the commanding officer of his Battalion, who shall forthwith transmit the same to the commanding officer of the Regiment, who shall direct the same to be recorded by the clerk of the Court of Enquiry. The same regulations shall be observed by every commanding officer of a Company, Battalion and Regiment, on the subsequent enrollment of any person therein, unless such person shall produce a certificate of his having been before drawn for the above purpose, in which case he shall be enrolled accordingly ; and every Militia-man removing out of the bounds of one company into another, shall apply to the commanding officer of the company to which he did belong, who shall give him a discharge, certifying the class wherein he was arranged, and whether he had performed his tour of duty or not, and also the time and date of such service ; which certificate the said Militia-man shall produce to the Captain or commanding officer of the company, into whose bounds he shall so have removed, within ten days after his settlement ; and such officer is hereby required to enroll him in the numerical class specified therein ; and every Militia-man, so removing, and failing to produce such certificate, shall be arranged and enrolled in the class destined to perform the next tour of duty. And if any Captain or commanding officer of a company, shall refuse to grant such certificate, upon application to him made for that purpose, he shall, for such refusal, incur a penalty of thirty dollars, to be assessed and applied as other fines imposed by this act.

23. THE commanding officer of the Regiment shall be, and he is hereby authorised and required, whenever a requisition is made for troops, to direct an officer to muster and inspect the men detailed from his regiment, to take the field, who, together with the Surgeon of the Regiment, shall certify to the court, herein directed to be holden, their opinions of the ability of the persons so detailed to perform military duty. The said commanding officer of the Regiment shall cause a Court of Enqui-

ry to sit at the time of such detail, or as soon as practicable thereafter, whose duty it shall be to hear and decide all questions which may arise in relation thereto. The officers of such courts shall receive the same compensation for their services as are allowed by law to the officers of other regimental Courts of Enquiry.

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Compensation to officers of such court.

24. No non-commissioned officer, musician or private, shall absent himself from his Regiment after the Commandant thereof has received an order, requiring a detail to be made, and of which the said non-commissioned officer, musician or private, shall have been, in any way, or by any means, informed, until such detail shall have been made. And every non-commissioned officer, musician or private, who shall absent himself as aforesaid, and who shall be subsequently detailed to march in requisition, shall be considered and treated as a deserter, unless he join the detachment, with which he is so detailed for duty, at the place appointed for the rendezvous of such detachment, or shew that he was prevented from so joining by some unavoidable cause.

Absence from Regiment, after order received for detail, forbidden.

Penalty on absentee, unless he join the detachment at place of rendezvous, &c.

25. EVERY officer, non-commissioned officer, or private, who shall fail to obey the orders of the President of the United States, when communicated by any officer in the service of the United States, or by the Executive of this State, or otherwise, (not having a reasonable excuse, to be judged of by the Court Martial herein after mentioned,) or who shall fail to obey the orders of the Executive of this State, or the orders of any officer of the Militia, duly authorised to issue the same, shall forfeit a sum not exceeding one year's pay, and not less than one month's pay, to be adjudged and determined by a Court Martial; and such officer shall, moreover, be liable to be cashiered by the sentence of such court, and be incapacitated from holding a commission in the Militia, for a term not exceeding twelve months, at the discretion of the said court; and such non-commissioned officer or private, as shall fail to appear at the place of rendezvous, when ordered as aforesaid, or failing to march when ordered, or to furnish a substitute as herein after prescribed, shall be liable to be imprisoned by a like sentence, on failure in payment of the fines adjudged as aforesaid, one calendar month for every five dollars of such fine, on the certificate of the clerk of the Court Martial assessing such fine; and shall, moreover, be enrolled in the division or class destined to perform the next tour of duty.

Penalties on officers, &c. for disobedience of orders.

On non-commissioned officers or privates, failing to appear at place of rendezvous, &c.

26. WHEN any Major General or Brigadier General shall fail to obey the orders issued and communicated, as aforesaid, it shall be the duty of the Governor, as soon as practicable after such failure shall have happened, to order for the trial of such Major General or Brigadier General, a court martial, to be composed, in the case of the trial of a Major General, of one Major General, at least, and as many Brigadier Generals, Colonels, Lieutenant Colonels and Majors, as shall form a court, to consist of thirteen members; and in the case of a trial of a Brigadier, to consist of at least one Brigadier, and as many Colonels, Lieutenant Colonels, Majors and Captains, as will form a court of not less than nine, nor more than thirteen members; and when a Colonel or other field officer shall

Court Martial, to try a Major General for disobedience of orders, how to be ordered and constituted:

How, for trial of a Brigadier General;

Of a Colonel, or other field officer.

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Of other officers,
non-commissioned
officers, musicians
or privates.

Such courts when
and where to sit.

Compensation to
Members, Clerks,
Recorder or Judge
Advocate, and
Provost Martial.
Duty of Clerk &c.
to certify lists of
fines, to the sher-
riff and auditor.

Provision where
person drafted
shall die, or fail
to march.

Next man to
march, in requis-
ition then ordered,
&c.

Absentees from
rendezvous, with-
out leave, may be
apprehended; and
how.

fail to obey the orders, issued and communicated as aforesaid, it shall be the duty of the commanding officer of the Brigade, to which such Colonel, or other field officer, shall belong, to order, as soon as practicable, a court martial for the trial of such Colonel or other field officer, to consist of, at least, one Colonel, Lieutenant Colonel, or Major, of the grade, as the case may be, of the officer to be tried, as President, and as many inferior officers, not under the rank of Lieutenant, as shall form a court, of not less than seven, nor more than thirteen members; and when any other officer, non-commissioned officer, musician or private, shall fail to obey the orders issued and communicated, as aforesaid, the Colonel, or commanding officer, of the Regiment to which such officer, non-commissioned officer, musician or private, shall belong, shall forthwith, or as soon as practicable, order for the trial of such officer, non-commissioned officer, musician or private, a court martial composed of the officers of the Regiment, and consisting of one Lieutenant Colonel, or Major, at least, (if there be such officer in commission in the Regiment,) and as many Captains and subaltern officers, as will form a court of not less than five, nor more than thirteen members. There shall be appointed to each of the aforesaid courts two supernumeraries; and they shall sit at such time and place, as the Governor, or officer ordering the same shall direct; and, in the trial of a Brigadier General, the said courts shall be composed of officers taken from the Division to which such Brigadier shall belong; and in the trial of a Colonel, or other field officer, they shall be composed of officers taken from the Brigade, to which such Colonel or other field officer shall belong. The aforesaid courts shall proceed as is directed, and the members, clerk, recorder or judge advocate and provost martial, shall be allowed the same compensation, and in the same manner, as is allowed in the case of other courts martial; and it shall be the duty of the clerk, recorder, or judge advocate, to make out lists of all fines which by the said courts may be assessed, and to certify them, to the sheriff of the counties, in which the delinquents may reside, and to the Auditor of Public Accounts, under the same penalties, and in the same manner, as is prescribed in the case of clerks of Regimental Courts of Enquiry.

27. WHERE a draft shall be made, from any company of Militia within this Commonwealth, and any of the persons drafted to perform a tour of duty, shall die before he or they shall march, or, from sickness, be unable to march, or from any other cause, shall fail to march when ordered, the next man or men, in the class or roll of the company, to which he or they shall belong, shall march in the requisition then ordered; and so on until the requisition be completed; taking from each company, in each Regiment, a sufficient number to make up the quota required from each company by the draft.

28. WHEN any non-commissioned officer, musician or private, shall fail to appear at the place of rendezvous appointed, when ordered, or absent himself without leave, it shall be the duty of the commandant of the Regiment to which he belongs, forthwith to order some commissioned officer, and as many men as may be necessary, belonging to the said Regiment, to appre-

hend and take such non-commissioned officer, musician or private, and deliver him to the commandant of the detachment with which he was detailed; and, in all such cases, every person so failing or absenting himself without a justifiable excuse, shall be deemed a deserter, and treated accordingly: *Provided, nevertheless*, That, if, in the opinion of such commissioned officer, the person so failing, shall not be able to march, such commissioned officer shall not be bound to execute such order: And *provided also*, That if any person so offending, shall be apprehended and delivered to the commanding officer of his corps, so that he perform his tour of duty, or stand his trial for the offence of desertion, he shall not be liable to the fine imposed by the twenty-sixth section of this act.

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Such persons to be treated as deserters.

Proviso, in favour of person not able to march.

Offender performing tour of duty, or standing trial for desertion, not fineable.

29. WHEN any Militia-man shall be detailed or drafted for service, he may furnish to the Commandant of the Regiment, from which he is so detailed or drafted, or to the Commandant of the company or detachment, or to the Commandant of the Regiment to which he may be transferred, at any time before the organization of the Regiment, an able-bodied man, well clothed; and if either the Commandant of the said Regiment, or the Commandant of the company called into service, on inspection, shall adjudge the man tendered as a substitute, able to perform the tour of duty, he may receive him as a substitute; and the Commandant of the Regiment, to which he may be transferred, may, at any time after the organization thereof, receive such substitute, provided, that in his opinion, the public service will be thereby promoted; and if it should so happen that the substitute, from his stand in his class roll, or division list of his company, should be called on to perform his own tour of duty, before the time for which he is so engaged shall expire, the person furnishing him as a substitute, shall march in his place, or furnish another substitute, or be liable to the fines and imprisonment provided for by this law; and the person furnishing a substitute, shall be liable to muster, and shall perform militia duty, in the absence of such substitute, in the same manner as if he had not furnished a substitute.

Substitutes, for men detailed or drafted, how to be furnished.

Provision where the substitute is called on to perform his own tour of duty, before his engagement has expired.

Person furnishing a substitute, liable to muster, &c. during his absence

30. THE fines, as well those heretofore, as those hereafter imposed by law, upon a non-commissioned officer, musician or private, for failing to appear at the place of rendezvous when ordered, or failing to march when ordered, or to furnish a substitute, shall be certified by the President of the court, before whom the same shall be assessed, to the sheriff of the county in which the delinquent shall reside, and also to the auditor of public accounts; noticing in the certificate to the auditor, the residence of the delinquent. The said sheriff shall proceed forthwith, upon such certificate, to levy the said fine, with costs, by distress and sale of the goods and chattels of the delinquent; and shall pay all such fines by him levied, into the public treasury, at the same time that the public revenue is payable; shall be entitled to the same commission thereon as for the collection of the said revenue, and liable to be proceeded against, for a failure to pay the same, in like manner as for a failure to pay the public revenue. And when any non-commissioned officer, musician or private, shall be adjudged to suffer imprisonment, there being no goods and chattels found whereof

Fines for failing to appear at rendezvous, &c. to be certified to sheriff and auditor by President of the court.

How and when to be levied, and paid into the treasury.

Sheriff's compensation, and liability

When delinquents may be committed to jail;

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How long to be confined.

Officers to command detachments to be detailed from the Division, Brigade or Regiment.

Field Officers and regimental staff, to be appointed by a Colonel called into service.

Pay-Master and Quarter-Master to give bond and security.

Term of service of Militia called out by state authority.

Proviso.

Companies of Artillery, Cavalry, &c. may be allotted, by entire companies, for routine of duty.

Such allotments to be recorded in Adjutant General's office.

Penalties on members of troops of Cavalry, &c. failing to march or furnish a substitute.

Who are exempted from military duty.

to levy the said fine, the said sheriff shall forthwith commit such delinquent to jail, there to be confined during the term for which he was adjudged to suffer imprisonment, or until he shall pay the fine with costs.

31. WHEN any detachment of Militia shall be hereafter called into the service of the United States, or of this State, from any particular Division, Brigade or Regiment, within this State, the officers intended to command such detachment, shall be detailed from the Division, Brigade or Regiment, from which such detachment shall be detailed.

32. WHEN any Colonel shall be called into the service of this State, he shall have the exclusive right to appoint his field and regimental staff officers, to consist of one Adjutant, one Quarter-master, one Pay-master, one Surgeon, two Surgeon's Mates, one Sergeant Major, one Quarter-master Sergeant, and two principal musicians: *Provided*, That the said Colonel shall cause the Pay-master and Quarter-master to give, when called into actual service of the State, bond and security to the Governor for the time being and his successors, in the sum of seven thousand dollars, for the faithful discharge of their respective duties.

33. THE Militia of this Commonwealth, when called out under state authority, shall serve six months after their arrival at the place of rendezvous, unless sooner discharged, and shall have credit only for the time actually served: *Provided, however*, that the Governor of this Commonwealth shall, at all times, have power to retain the Militia in the service of this State, for such period of time and no longer, as the President of the United States now is, or hereafter may be authorised, by the laws of Congress, to retain the Militia in the service of the United States.

34. THE Governor, with the advice of Council, shall and may cause the several companies of Artillery, Cavalry, Grenadiers, Light Infantry and Riflemen, to be allotted by entire companies into Divisions, from one to ten, for a regular routine of duty: and the said companies shall, in future, be called into actual service by entire companies, in such manner and proportion as the rest of the Militia, or as the nature of the service may require; and all such allotments shall be returned to the office of the Adjutant General, to be recorded by him.

35. WHERE a troop of Cavalry, company of Artillery, Light Infantry or Riflemen, shall be ordered to march, and any man belonging to such troop or company, shall fail to march or furnish a substitute as aforesaid, the Commandant of the company of infantry, in whose district he may reside, shall immediately enroll him, and put him in the division or class, to perform the next tour of duty; and he shall no longer be a member of such troop of Cavalry, company of Artillery, Light Infantry or Riflemen, as the case may be; and shall moreover be liable to the fines and penalties imposed by this act on non-commissioned officers and privates, who fail to appear at the place of rendezvous, or shall fail to march when ordered.

36. THE Members of the Council of State, Judges of the Superior Courts, Clerks of both Houses of the General Assembly, Clerks of the Superior and Inferior Courts, the Attorney

General, the Treasurer and his clerks, the Auditor of Public Accounts, the Register of the Land Office, and their clerks, all Inspectors of tobacco, all Professors and Tutors of the College of William and Mary, and all other public seminaries of learning, all ministers of the gospel licensed to preach according to the rules of their sect, who shall have previously taken, before the court of their county, the oath of fidelity to the Commonwealth, keepers of the public, county and corporation jails, and of the public hospital, the keeper of the Penitentiary and his assistants, and the door keepers to the Executive, shall be and are hereby exempted from the performance of all and any part of the duties required by this act; and the cryers of the Court of Appeals and Chancery District Courts, shall be exempt from fines for failing to attend musters which may happen during the sitting of their respective courts.

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Who from muster
fines in certain ca-
ses;

37. THE officers of the several banks established by authority of the Commonwealth, and their respective branches, and all millers necessarily and personally employed in any grist-mill, and all ferry-men necessarily and personally employed at any ferry established by law, shall be and are hereby exempted from the performance of the ordinary duties of Militia-men; but it shall be the duty of every Captain commanding a company, in the bounds of which any person so exempted shall reside, to enrol such person in his proper class in such company, as other persons are by law directed to be enrolled; and every such person shall be liable to be drafted and detailed for actual service, in the same manner as he would have been had this exemption not been made.

And who from or-
dinary duties of
Militia-men, re-
maining liable to
be drafted and de-
tailed for actual
service.

38. THE commanding officers of Companies shall enroll every able-bodied white male citizen, between the ages of eighteen and forty-five, (except such as are exempted by this act,) resident within his district; and in all cases of doubt respecting the age of any person, enrolled, or intended to be enrolled, in any Company of Militia, the party questioned shall prove his age, to the satisfaction of a majority of the officers of the Company, within whose bounds he may reside.

Who shall be en-
rolled in the Mili-
tia.

Burden of proof,
as to age of per-
sons claiming to be
exempt.

39. THE Governor, with the advice of Council, or on the recommendation of the county or corporation courts, shall issue commissions for one Captain, one Lieutenant and one Ensign to each Battalion, who shall proceed by voluntary enlistment, within their Battalion, to enroll a sufficient number of men to complete their Company or Companies, and be distinguished by the denomination of Grenadiers, Light Infantry or Riflemen, at the discretion of the commanding officer of the Regiment; and the Governor shall moreover, as aforesaid, issue commissions for officers of one troop of Cavalry to each Regiment; and with the advice of Council, at their own discretion, to appoint and commission the necessary officers for one or more Companies of Artillery, not exceeding one to a Regiment, in each Brigade; which said officers of Cavalry and Artillery, are hereby empowered to enlist, by voluntary enlistment, within their respective Regiments, a Company or Companies of Cavalry or Artillery, according to the tenor of the commissions, to be denominated respectively, the Company of Cavalry, or the Company of Artillery, as the

Executive to com-
mission officers of
companies of Gren-
adiers, Light In-
fantry or Riflemen.

Of troops of Cav-
alry;

And of Artillery
companies; not
exceeding one to
each regiment.

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Uniform of Grenadiers, Light Infantry or Riflemen.

Light companies to constitute part of Battalion. Cavalry and Artillery, when to parade.

Militia-men of the line prohibited from joining volunteer companies that have performed tour of duty. How long. Exception. Proviso, as to young men not enrolled.

Commissions may be issued to officers for new troops of Cavalry, &c.; old being dissolved.

Strength of volunteer companies.

Officers not to sit in Courts Martial,

Nor qualify to commissions till their companies are complete; And an order issued by Commandant of Regiment.

Enlistments into volunteer companies, how long. Cavalry and Artillery musters, when and where.

case may be. The said companies of Grenadiers, Light Infantry or Riflemen, shall wear, while on duty, such caps and uniform as the Executive shall direct, and shall, together with the said troops of Cavalry and companies of Artillery, perform the same routine of duty, and be subject to the same rules, regulations and orders, as the rest of the Militia. The said light companies shall constitute a part of the Battalion in which they are raised; and the said troops of Cavalry and companies of Artillery shall parade with the Regiment, out of which they have been enlisted, and with such Battalion as the Regimental Court of Enquiry shall direct; and the said troop and companies shall be governed by the same rules and regulations, and subject to the like penalties, as are by law directed with respect to the rest of the Militia.

40. It shall not be lawful for any Militia-man belonging to the Infantry of the line, to join any volunteer company, after such company shall have performed a tour of duty, either in the service of this State or of the United States, until twelve months after such volunteer company shall have been discharged from such tour of duty; unless such Militia-man shall previously have performed a like tour of duty: *Provided, however,* That nothing herein contained shall prevent young men, arriving at the age of eighteen years, and who have not been enrolled in any Militia company of the line, from joining any volunteer company within their county.

41. WHEN any troop of Cavalry or company of Artillery, Light Infantry, Grenadiers or Riflemen shall, on the order of the commandant of a Regiment, be dissolved and returned to the body of the Militia, in consequence of its strength not being kept up to the number required by law, the Governor, with the advice of Council, may issue commissions for officers to command another troop or company, to be annexed to the same Regiment.

42. NONE of the volunteer companies of Militia hereafter enlisted, shall consist of more than seventy-five men, rank and file; nor shall the volunteer companies, at present established, be increased in strength beyond that number.

43. OFFICERS, to whom commissions have issued to raise volunteer companies, attached to any Battalion or Regiment of the Militia of this Commonwealth, shall not sit in Courts Martial, till their companies are complete, and a return shall have been made of their strength to the Commandant of the Regiment. When commissions shall hereafter issue for the purposes aforesaid, the officers shall not qualify to their commissions, until their companies shall be complete, and a return thereof shall have been made as aforesaid; and until the Commandant of a Regiment shall have issued an order, declaring that a volunteer company has been completed, and a return made as aforesaid, no person thereto belonging shall be exempt from the Militia duty he was bound to perform in the company to which he belonged. Enlistments into volunteer companies shall be for three years at least, and not for more than five.

44. THERE shall be a muster of each troop of Cavalry and company of Artillery, in the months of April and October in

every year, at such places as a majority of the members constituting the said troop or company, shall, from time to time, fix upon; and it shall be the duty of the commanding officer of every such troop or company, and he is hereby required, at each and every muster, to call his roll, examine every person belonging thereto, and note down all delinquencies occurring therein, and make return thereof, to the commanding officer of the Battalion within whose bounds such delinquent may reside, to be reported and proceeded against, in like manner as other delinquents; and it shall be lawful for any commissioned officer of Cavalry or Artillery, to sit in any Court of Enquiry and assessment of fines, to which any person in their respective companies is reported a delinquent: *Provided*, That not more than one such officer sit in any such court at the same time.

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Duties of commanding officer at such musters.

Cavalry and Artillery officers to sit in Courts of Enquiry.
Proviso.

45. THERE shall be a muster of each company of Militia, including the light companies, in the months of April and October in every year, at such times and places as the Regimental Courts of Enquiry shall, from time to time, direct and appoint. And there shall be a muster of each Battalion, in the month of October or November in every year, to be appointed by the commanding officer of the Regiment, to which such Battalions respectively belong, at such place as the battalion Court of Enquiry shall hereafter appoint, within the Battalion district; and there shall be a muster of each Regiment, in the month of April or May in every year, to be appointed by the commanding officer of the Brigade to which such Regiments respectively belong, at such place as he shall think most convenient, within the Regimental district; which said Company, Battalion and Regimental musters shall continue one day, and no longer. The time of such Regimental musters shall be notified to the commanding officers of Regiments, forty days previous thereto: the commanding officers of Regiments shall give notice to the commanding officers of Battalions, of the time of Regimental and Battalion musters, at least thirty days; and the commanding officers of Battalions, to the commanding officers of companies at least twenty days; and the commanding officers of companies to their serjeants, at least ten days; and the serjeants to each person in their companies, at least three days before such musters. The notices given by the commanding officers of Brigades, Regiments and Battalions, shall be in writing, delivered to each person to be notified, or left at his usual place of abode: and every serjeant, failing to give notice agreeably to this act, shall forfeit and pay, for every offence, three dollars; nevertheless, all notices publicly given by the commanding officers of companies, at their respective musters, of any subsequent muster, shall be held and deemed as legal notice: *Provided*, That nothing herein contained, shall be so construed, as to make notices of company musters necessary. Every officer and soldier shall appear at his respective muster field, on the day appointed, by eleven o'clock in the forenoon. At every muster, the commanding officer of the company shall call his roll, examine every person belonging thereto, and note down all delinquencies accruing therein, and make return thereof, at or before the next Regimental or Battalion Court of Enquiry.

Other company musters, when and where.

Battalion musters, when, and by whom to be appointed.
At what place.

Regimental musters, when, and by whom to be appointed.
At what place.

Musters, how long to continue.

Notice of Regimental, and of Battalion, musters.

Such notices to be in writing.

Penalty on Serjeant failing to give notice.
Proviso.

Further proviso. At what hour officers and soldiers shall appear at muster.

Duties of captains at company musters.
Returns of delinquencies.

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Commandants of
Regiments, &c. to
return delinquent
officers to Courts
of Enquiry.

Return, how cer-
tified.

Serjeants, corpo-
rals, drummers
and fifiers, to be
appointed; and by
whom.

In case of death,
absence or resig-
nation of superior,
officer next in
command to act.

Training and ex-
ercising required
at musters.

Trainings of offi-
cers by Brigade
Inspectors, when
and where.

And how long.
Roll call, and re-
port of delinquents.

Penalty for non-
attendance.

Such training
where, if more
than one Regi-
ment in county.

Duty of artillery
and cavalry offi-
cers to attend.

ry, to the commanding officer of his Battalion, including those which occurred on the day of his last Regimental or Battalion musters; and the commanding officers of Regiments and Battalions shall, at their respective Regimental or Battalion musters, as the case may be, take notice of all the delinquent officers, and shall lay the same, together with the returns of delinquencies from the commanding officers of companies, before the Court of Enquiry under this act, to take cognizance of, and determine on them; and, to each of the said returns, shall be annexed the following certificate; to wit: *I, do certify that the returns hereto annexed, contain all the delinquencies which have occurred since my last return, having duly examined the same.*

46. EACH captain or commanding officer of a company, shall appoint to his company, four serjeants, four corporals, a drummer and fifer, to be approved of by the commanding officer of his Battalion.

47. IN all cases of death, absence or resignation of any Major General, Brigadier General, Colonel, Lieutenant-Colonel, Major, Captain or Lieutenant, the next officer in rank in his respective commands, shall be considered as the commanding officer during such vacancy, and liable to perform the duties required by this act; and for neglect therein, shall incur the penalties annexed thereto.

48. IT shall be the duty of every commanding officer of a Regiment, Battalion or Company, at their respective musters, to keep their respective corps under arms for a period of at least two hours, and to cause them to be trained and exercised, agreeably to the mode of discipline prescribed by Congress, under pain of being arrested and tried for breach of duty; and, for this purpose, the said officers are hereby authorised to order the most expert and fit officer, in their respective commands, to perform the duty.

49. AND, in order that a knowledge of the rules of discipline may be more readily obtained, the commissioned officers of the several Regiments shall meet once in every year, within their respective Regimental districts, for the purpose of being trained and instructed by the Brigade Inspectors; the days and place of meeting to be fixed on by the commanding officer of the Brigade to which the Regiments belong, within the months of April or May in each year, immediately preceding the Regimental muster; which training shall continue three days and no longer. The eldest officer present shall call the roll on each day, and report the delinquencies to the succeeding Regimental Court of Enquiry; and every officer, failing to attend such meeting, on being summoned, not having a reasonable excuse, to be adjudged of by a Court of Enquiry, shall forfeit and pay, for each day which he shall fail so to attend, five dollars, to be appropriated as the other fines are by this act: *Provided* always, That, where there is more than one Regiment in a county, the officers of each Regiment shall meet at the Court-house of said county, for the purpose of being trained by the Brigade Inspector, as prescribed by law. It shall be the duty of the officers of Artillery and Cavalry of every grade, to attend the training of officers in the Regiments

wherein they respectively reside ; and they shall be subject to the same penalties on failure, as other officers of equal rank.

50. EVERY Brigadier General failing to appoint or direct the training of officers in any Regiment, or failing to appoint regimental musters, as directed by law, shall forfeit and pay not less than fifty, nor more than two hundred dollars, for every failure, to be adjudged by the Court of Enquiry of the Regiment, within the limits of which he may reside. And it shall be the duty of the Colonel, in whose Regiment such failure shall happen, within thirty days thereafter, to certify the same to the President of such Court of Enquiry, whose duty it shall be to cause notice to be given to such Brigadier General ; and such Court of Enquiry shall, at their ensuing session, proceed to adjudge such fine, as in other cases ; saving to the party aggrieved, the right of appeal to the Executive, under the regulations herein mentioned. And the fines so imposed shall be collected and accounted for as other fines.

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Penalty on Brigadier General failing to appoint training of officers.

How recoverable.

Saving appeal to Executive.

51. EVERY Inspector of a Brigade shall employ a competent drum and fife major, to attend the training of the officers throughout the Brigade, who shall be allowed, each, four dollars per day for their services, and four cents for every mile they must necessarily travel, to be paid in the same manner as the compensation allowed the Brigade Inspector : and the drummers and fifers of each Regiment shall be summoned by the officer, having immediate command over them, to attend the training of the officers, to be taught the different beats and marches, by the drum and fife major aforesaid, whose duty it shall be to instruct them, under the direction of the Brigade Inspector. Any drummer or fifer so attending, shall be allowed by the Regimental Court of Enquiry, a reasonable compensation for his services, not exceeding two dollars per day ; and, for failing to attend the training of the officers as aforesaid, shall be subject to a fine, not less than three nor more than ten dollars, to be imposed and collected in the same manner as the fines on commissioned officers for failing to attend such training. And until a sufficient number of drummers and fifers, of buglers or trumpeters, shall be procured for each Regiment of Militia, it shall be lawful for each officer commanding a Battalion, Company, or troop of Cavalry, to employ a drummer and fifer, a bugler or trumpeter, as the case may be, to attend his musters ; and the drummer and fifer, bugler or trumpeter, so attending, shall be allowed by the Regimental Court of Enquiry, to which such Battalion, Company, or troop may belong, a sum not exceeding two dollars, each, for their services. And the Captains of Volunteer Companies are hereby authorised and empowered to enlist such musicians, not exceeding six in number, as they may think necessary, for the service of their respective companies ; but any musicians so enlisted, shall not be entitled to any compensation, unless when in actual service.

Brigade Inspector to employ drum and fife major to attend such trainings: their compensation.

Regimental drummers and fifers to attend, and for what purpose.

Their compensation.

Penalty for not attending.

Drummers, fifers &c. to be employed to attend battalions, companies &c.

Compensation.

Musicians enlisted for volunteer companies.

52. ANY officer who may be guilty of disobedience, or other misbehaviour, when on duty, or shall, at any time, be guilty of any conduct unbecoming the character of an officer, shall be put under arrest by his commanding officer, and tried as hereafter shall be directed.

Arrest of officers; when authorised.

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Punishment of
non-commissioned
officers or soldiers
for disobedience or
mutiny.

By-standers mis-
behaving, may be
confined for the
day.

Penalties for
breach of duty ;
On commandants
of Regiments ;

On Lieutenant
Colonels, or Ma-
jors ;

On Captains ;

53. If any non-commissioned officer or soldier shall behave himself disobediently or mutinously, when on duty, or before any Court or Board directed by this act to be held, the commanding officer, Court or Board, may confine him for the day ; and he may moreover be fined, at the discretion of the Court of Enquiry, in any sum not exceeding ten dollars, to be appropriated as other fines imposed by this act.

54. If any by-stander shall interrupt, molest or insult, any officer or soldier, while on duty, at any muster, or shall be guilty of like conduct before any Court or Board, the commanding officer, or such Court or Board, may cause him to be confined for the day.

55. AND, for enforcing obedience to this act, the following forfeitures and penalties shall be incurred for delinquencies ; viz. a Colonel or commanding officer of a Regiment, for failing to take an oath, to summon any Court or Board, to attend any Court or Board, to transmit any recommendation of an officer or officers to the Governor, to deliver a commission or commissions, to appoint a Battalion muster, or failing to give notice of a Regimental muster, to report delinquencies, to make returns of his regiment, as by this act directed, shall, for each and every such offence or neglect, forfeit and pay a sum not exceeding seventy dollars ; for failing to send into actual service any Militia legally called for, or to turn out his Militia upon any invasion or insurrection of his county, three hundred dollars ; for failing to appear while on duty in full uniform, for each article of dress in which he may be deficient, four dollars. A Lieutenant Colonel or Major, for failing to take an oath, to summon any Court or Board, to attend any Court or Board, to give notice of any Regimental or Battalion muster, to examine his Battalion, to report delinquencies, or to make any return as directed by this act, shall forfeit and pay, for each and every offence and neglect, a sum not exceeding thirty dollars ; for failing to call forth from his Battalion, with due dispatch, any detachment of men or officers, as shall be required from time to time by the commanding officer of his Regiment, or any call from the Governor, invasion of, or insurrection in his county, or requisition from any neighboring county, one hundred and fifty dollars ; for failing to appear, while on duty, in full uniform, for each article of dress in which he may be deficient, three dollars. A Captain, for failing to take an oath, to attend any Court, to enroll his company, to appoint private musters, to give notice of a Regimental or Battalion muster, to attend any muster, to call his roll, examine his company and report delinquencies, or to allot his company into divisions from one to ten, for a regular routine of duty, or to make any returns as directed by this act, shall forfeit and pay, for each and every offence and neglect, a sum not exceeding twenty dollars ; for failing to call forth such officers and men as shall, from time to time, be legally called from his company, upon any call from the Governor, invasion of, or insurrection in the county, or requisition from an adjacent county, or failing on such occasion to repair to the place of rendezvous, shall forfeit and pay seventy-five dollars ; for failing to make any report concerning the public arms, according to the directions of this act, a sum not ex-

ceeding fifty dollars; for failing to appear, while on duty, in full uniform, for each article of dress in which he may be deficient, two dollars. Any Adjutant who shall fail to attend any Regimental or Battalion muster, or any other meeting of the Regiment or Battalion, without having a reasonable excuse, shall forfeit and pay the sum of twenty dollars, to be assessed by the Regimental Court of Enquiry. The Quarter-master and Pay-master, the Surgeon and Surgeon's Mate, for failing to attend the Regimental muster, not having a reasonable excuse, shall forfeit and pay the sum of fifteen dollars; to be assessed in like manner. And the Serjeant-major, for failing to attend the Regimental or Battalion musters, or the annual training of the officers, not having a reasonable excuse, shall forfeit and pay the sum of five dollars, to be assessed by the Regimental Court of Enquiry. A subaltern officer, for failing to take any oath, to attend any court or muster, armed as directed, for each and every such offence, shall forfeit and pay a sum not exceeding ten dollars; for failing to repair to the place of rendezvous, armed as required, when ordered upon any call from the Governor, invasion of, or insurrection in the county, or requisition from a neighboring county, fifty dollars; for failing to comply with the directions of this act, (so far as the same relates to the public arms,) defining the duties of captains of companies, when such captain shall be absent, and the command of such company shall devolve on such subaltern, a sum not exceeding fifty dollars; for failing to appear, while on duty, in full uniform, for each article of dress in which he may be deficient, two dollars: *Provided*, that no officer shall be subject to a fine for failing to appear in uniform, until three months after he shall have qualified to his commission. A non-commissioned officer or soldier for failing to repair to the place of rendezvous, when ordered, upon any call from the Governor, invasion of or insurrection in the county, or requisition of a neighboring county, shall forfeit and pay a sum not exceeding eighty dollars, to be adjudged of and determined by their respective Battalion Courts of Enquiry; and, moreover, shall be enrolled in the class destined to perform the next tour of duty. And moreover, the said officers, for any of the said offences, shall be liable to be arrested and tried for the same as military offenders. Any non-commissioned officer or private, failing to attend at his Regimental, Battalion or Company muster, armed and equipped as the law directs, shall forfeit a sum not less than seventy-five cents, nor more than three dollars; and for failing to return the public arms and accoutrements, when legally required, for each and every such failure or neglect, he shall forfeit and pay one dollar. If any non-commissioned officer or private, at any muster, shall fail to go into the ranks when required, or to perform any order given, (not having a reasonable excuse, to be judged of by a Court of Enquiry,) such non-commissioned officer or soldier shall be fined in a sum not less than five, nor more than ten dollars. If any non-commissioned officer or private, shall be returned as a delinquent, in not appearing armed and accoutred as the law directs, the Court Martial, before whom the same shall be tried, may, if it shall appear reasonable, remit the fine incurred by

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On Adjutants;

Quarter-masters,
Pay-masters, Surgeons and Surgeons' mates;

On Serjeant-majors;

And Subaltern officers.

Fine for failing to appear in uniform, when incurred.

Penalty on non-commissioned officer or soldier, for failing to repair to place of rendezvous.

Officers liable, also, to be arrested and tried.

Penalty on non-commissioned officer or private, failing to attend muster;

To return public arms, when legally required;

To go into the ranks, when ordered, &c.

Fines on non-commissioned officers or privates for not appearing armed, &c. may be remitted.

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Persons not owning a firelock, not to be returned delinquent for appearing without one.

Artificers at public armory, to be formed into one or more companies of Militia.

Their officers, duties and liabilities as such.

For assessing fines on delinquents, their officers to be members of Courts of Enquiry, in 19th regiment.

Proviso.

Fines so imposed how to be collected and accounted for.

Courts Martial,

For trial of Adjutant General, Major General, or Brigadier General.

Powers of such courts.

Appeal to Executive.

For trial of a Colonel, Lieutenant Colonel, Aid-de-Camp, Brigade Inspector or Major.

him; *Provided*, every such delinquent, who hath a firelock of any kind, shall make it appear that he brought the same to muster; and provided also, that the commanding officers of companies shall not return any such non-commissioned officer or private, for failing to appear with a firelock at the muster, if it shall appear manifest to him that he does not own or possess any.

56. THE artificers employed in the Manufactory of Arms in the City of Richmond, shall be embodied in one or more companies, as the Executive may direct, and be commanded by such officers as the Governor, with the advice of Council may appoint and commission; and shall be an independent corps, and act as a guard to the Manufactory of Arms, whenever the Executive may direct or require the same; and shall be liable to the same fines and penalties, for failing or refusing to perform the duties required of them in pursuance of this act, as the officers and privates of the main body of the Militia are liable to, for failing or refusing to comply with the duties imposed on them by law. For the purpose of assessing the fines on such delinquent officers and privates, the officer or officers commanding such company or companies, shall be, and they are hereby authorised and required, to sit as members of the Battalion Courts of Enquiry held for the first Battalion of the nineteenth Regiment of Militia, and the Regimental Courts of Enquiry held for the said Regiments; and they shall make their return of delinquents to such courts, and the like proceedings shall be had in every respect, as is required by law with regard to the main body of the Militia: *Provided, nevertheless*, That nothing herein contained, shall be so construed as to require of the said company or companies of artificers, to perform any of the duties required by law as a part of the aforesaid Regiment, nor to require the performance of any duties other than those now required by law. The fines so imposed, shall be collected and accounted for in the same manner, as is prescribed by law in the case of fines imposed on the main body of Militia of this State.

57. AND whereas it is necessary, that certain tribunals be instituted for the trial of offences, as they are to be viewed in a military light, and for enquiring into certain delinquencies and assessing fines; the Governor or commanding officer of the Militia of this State, shall have power, for misconduct within his own knowledge, or upon complaint lodged in writing by any commissioned officer, to arrest and order a Court Martial of the State, for the trial of the Adjutant General, a Major General or Brigadier General, to be composed of one Major General, not more than four Brigadier Generals, and as many Colonels, Lieutenant Colonels and Majors, as shall make up a number not less than five, nor more than thirteen, and two supernumeraries; and such Courts Martial shall proceed to hear and determine on all offences under this act, and may censure or cashier any officer so tried; which sentence shall be final, saving an appeal to the Executive. And any Major General or Brigadier General, for misconduct within his own knowledge, or upon complaint lodged in writing by any commissioned officer, shall have power to arrest any Colonel,

Lieutenant Colonel, Aid-de-Camp, Brigade Inspector and Major, or any other inferior officer; and the commanding officer of the Division shall order a Court Martial for the trial of such Colonel, Lieutenant Colonel, Aid-de-Camp, Brigade Inspector or Major, to be composed of one Brigadier General, and as many Colonels, Lieutenant Colonels, Majors and Captains, as shall make up a number not less than five, nor more than thirteen, and two supernumeraries; and such Courts Martial shall proceed to hear and determine on all offences under this act, and may censure or cashier such officer; which sentence shall be final, saving to the party an appeal to the Executive. And any Brigadier General, Colonel, Lieutenant Colonel or Major, for misconduct in any Captain or subaltern, within his own knowledge, or upon complaint lodged in writing by any commissioned officer, may arrest such Captain or subaltern; and the Brigadier or commanding officer of the Brigade, shall order a Brigade Court Martial for the trial of such Captain or subaltern, to be composed of one or more field officers, and a sufficient number of Captains and subalterns to make up a number not less than five, nor more than thirteen, and two supernumeraries; and such Courts Martial shall proceed to hear and determine on all offences under this act, and may censure or cashier any officer so tried; which sentence shall be final, saving to the party an appeal to the Executive. Every person who may think himself aggrieved by the judgment of any Court Martial, shall, within ten days thereafter, file a notice in writing with the Judge Advocate, stating that he intends to appeal from such judgment, and shall, within ninety days after the filing such notice, prosecute his appeal; otherwise, the judgment of such court shall be final, as if the same had been approved by the Executive. And in all cases of appeal, the party making the appeal, may demand of the Clerk or Judge Advocate of the Court Martial, a full copy of the proceedings had thereon, to be laid before the Executive, who shall determine agreeably to the right of the case; and for obtaining the necessary evidences for the trials aforesaid, the commanding officer of the State, Division or Brigade, (as the case may be,) shall issue his summons; and every person so summoned, failing to attend, shall be subject to, and may be tried by a Court Martial, and, if an officer, may, at the discretion of the Court Martial, be cashiered, or fined, not exceeding six months' pay as by law allowed; and, if a non-commissioned officer or soldier, to be reported to the Court of Enquiry of the Regiment to which he shall belong, and be then subject to such fines and penalties, as they may think proper to inflict, not exceeding six months' pay.

58. WHEN any application shall be made for the arrest of any officer, in all such cases, the commanding officer to whom such application shall be made, shall determine whether the offence be cognizable before a military tribunal: and in all such cases, the charge or charges exhibited against such officer, shall be supported by affidavit.

59. No officer shall be arrested for any act, of which he may be alleged to have been guilty two years previous to the application for such arrest.

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Powers of such courts.

Appeal to Executive.

For trial of a Captain or subaltern.

Powers of such courts.

Appeal to Executive.

Written notice thereof.

Within what time it shall be prosecuted.

Copy of proceedings to be furnished appellants.

Witnesses how to be summoned.

Penalty for disobeying such summons.

Officer applied to for arrest, to judge whether offence be cognizable by Court Martial.

Affidavit required.

Limitation of time for arrest.

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Conviction of felony, &c. to annul commission of convict.

Court Martial to appoint clerk or judge advocate.

His compensation.

Allowance for copy of proceedings, where appeal is taken.

Proviso.

Not more than three witnesses to one fact to be paid by Commonwealth.

Rules by which Courts Martial shall proceed.

Oath to be taken on trial of officer for offence committed when not in actual service.

By whom administered.

Judge Advocate's oath.

Compensation to members of such court.

60. If any Militia officer shall be convicted of felony, or of any misdemeanor punishable by confinement in the Penitentiary-house, or by stripes, or of perjury or forgery, such conviction shall completely supersede and annul his commission, and the office which he filled shall be deemed vacant.

61. WHENEVER a Court Martial shall be convened for the trial of any commissioned officer, it shall be lawful for such court to appoint such person as the members thereof may think fit, to act as Clerk or Judge Advocate; and the Clerk or Judge Advocate so appointed, shall receive a compensation for his services, not exceeding ten dollars *per diem*, to be judged of by the court before whom he shall have rendered the same, and to be paid out of the contingent fund. And where any appeal is taken from the decision of a Court Martial, the said court shall make a reasonable allowance to the Clerk or Judge Advocate, for the copy of the proceedings of the said court, to which the party making the appeal is by law entitled, to be paid in like manner out of the contingent fund: *Provided, however,* That the said allowance shall not be paid, except upon production of the receipt of the party, for the copy of the said proceedings.

62. AND whenever a Court Martial shall hereafter convene, for the trial of any commissioned officer, it shall not be lawful to summon more than three witnesses to depose to the same fact; and if more be summoned, their attendance shall be paid by the party at whose instance they shall attend.

63. THE said Courts Martial shall, in the trial of any officer, proceed according to the rules and articles of war, as established by a resolution of Congress; except, when any officer shall be tried for any offence, committed while not in actual service, the officers convened for his trial, shall, instead of the oath prescribed by the said articles, take the following, viz.: *I, A. B. do swear, that I will well and truly try and determine, according to the evidence, the matter now depending between the Commonwealth of Virginia, and C. D., under arrest; and that I will duly administer justice, according to law, to the best of my knowledge, without partiality, favor or affection; nor will I, upon any account, at any time whatsoever, discover the vote or opinion of any particular member of the Court Martial, unless required to give evidence thereof, as a witness, by a court of justice, or in due course of law. So help me God.* Which said oath shall be administered by the Judge Advocate, to all the members of the Court Martial; and the president of such court shall thereupon administer the following oath to the Judge Advocate, to wit: *You, A. B., do swear, that you will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the Court Martial, unless required to give evidence thereof, as a witness, by a court of justice, or in due course of law. So help you God.*

64. OFFICERS attending a Court Martial for the trial of any arrested officer, shall receive the sum of three dollars, each, for every day they shall so actually attend; and one day shall be allowed for every twenty miles they shall necessarily travel, in going to and returning from the place appointed for such

trial. And the persons appointed to summon a Court Martial, and the witnesses to attend the same, shall receive as a compensation, eight cents for every mile they shall necessarily travel, in summoning such court and the witnesses. And every witness summoned and attending, shall be allowed one dollar and six cents *per diem*, for attendance, and eight cents per mile for travelling to such court, and the same for returning. Which attendance of the said officers and witnesses shall be certified by such court, if any shall be holden; if not, by any five officers summoned to attend as aforesaid, and paid out of the contingent fund.

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To persons summoning members and witnesses.
To witnesses.

Attendance how certified and paid.

65. THERE shall be Battalion Courts of Enquiry, to be appointed by the commanding officer of the Regiment, to which the Battalion is attached, for the assessment of fines incurred under this act in such Battalion: and such Courts of Enquiry shall be held within not less than ten, nor more than fifteen days after the Battalion musters, and to consist of the commanding officer of the Battalion and the commanding officers of companies, or a majority of them, who shall take the following oath, to be administered by the presiding officer, and afterwards, by any other officer of the said court, to him, to wit:

Battalion Courts of Enquiry,

When and how constituted.

I, _____ will truly and faithfully enquire into all delinquencies, which appear on the returns to be laid before me, and will assess the fines thereon as shall seem just, without favor, partiality, or affection. So help me God.

Oath of members

The commanding officer of the Battalion shall then lay before the said court, all delinquencies, as directed by this act; whereupon they shall proceed to hear and determine. And there shall moreover be a Regimental Court of Enquiry in each year, for the assessment of fines incurred by the officers of the Regiment. And such Court of Enquiry shall be held by appointment of the commanding officer, within fifteen days after the last Battalion Court of Enquiry; to consist of the commanding officers of the Regiment, Battalions and Companies, or a majority of them, who shall take an oath in manner and form as prescribed above: the commanding officer of the Regiment shall then lay before the said court, all delinquencies as directed by this act: whereupon they shall proceed to hear and determine. It shall be the duty of the presiding officer of each and every such Court of Enquiry, to return to the next Regimental Court of Enquiry, all delinquent officers failing to attend the preceding court; and such Regimental Court may, for good cause shewn, remit or moderate any fine imposed by the two preceding Battalion Courts, or the preceding Regimental Court of Enquiry. The said court may also exempt any Militia-man from duty, on account of bodily infirmity, and may again direct such person to be enrolled, when able to do duty.

Regimental Courts of Enquiry,

When and how constituted.

Oath of members.

Returns of delinquent officers, failing to attend such courts.

Power of regimental courts to remit or moderate fines.

To exempt from duty on account of bodily infirmity, &c.

66. WHENEVER a Regimental or Battalion Court shall be prevented from being holden, within the time now limited by law, by bad weather, or other unavoidable accident, the Commandant of any such Regiment or Battalion, as the case may be, is hereby authorised to appoint another day for holding such Regimental or Battalion Courts: *Provided*, such day shall not be within less than ten days, nor more than twenty days, after the days last appointed for holding such courts. And, if a

Provision where Court of Enquiry is prevented by bad weather, &c.

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Appointments renewable from time to time.

Fines on Commandants of Regiments, how to be imposed.

Duty of Brigadier General in relation thereto.

Duty of clerk of the court imposing such fine.

Surgeon and surgeon's mate to attend regimental courts.

Fine for failure.

Clerk and Provost Martial to regimental court, how appointed.

Tenure of office.

Clerk's duties.

Lists of fines for sheriff and auditor.

List, when to be transmitted to auditor.

Compensation to clerk, and Provost Martial.

Clerks to send auditor copies of sheriff's receipts for

sufficient number of officers shall again be prevented from attending, it shall be lawful for such Commandant to renew his appointment, from time to time, as above directed; reasonable notice being given to the officers and privates of such Regiment or Battalion, of the time and place of holding such courts.

67. No fine prescribed by law, for neglect, or breach of duty, of the commanding officer of a Regiment, shall be imposed by the Court of Enquiry for the Regiment commanded by such officer. But, it shall be the duty of the Brigadier General, within whose command such officer may be, whenever he shall know of any such neglect or breach of duty, or whenever he shall be informed thereof by any written statement, signed by any officer, to cause the matter, without delay, to be laid before the Regimental Court of Enquiry, for some adjoining Regiment, and to give notice to such commanding officer, that his case will be submitted to such Court of Enquiry. That there may be no delay in the decision of the said court, the Brigadier General shall, at the time of giving notice to the said commanding officer, also notify the commanding officer of the said adjoining Regiment, in order that he may summon the necessary witnesses, or direct the clerk of the Court of Enquiry to do so. And the court last mentioned shall have full power and authority, to hear and determine thereupon, according to law. If the sentence of such court shall inflict a fine, it shall be the duty of the clerk of such court, forthwith to certify such sentence, and deliver it to the sheriff of the county in which the officer fined may reside, and to certify such sentence also to the Auditor.

68. It shall be the duty of the Surgeon and Surgeon's mate to attend the Regimental Courts of Enquiry; and for failure thereof, he shall be fined in a sum not exceeding ten dollars, to be assessed and collected as other fines.

69. THE respective Regimental Courts of Enquiry, where it has not already been done, shall, at their first court to be held under this act, appoint by ballot, a Clerk and Provost Martial, who shall be removable at the pleasure of the said court, and who shall attend the courts herein before directed to be held. Such clerk shall keep a fair record of the proceedings of such courts, as also of the roster returned by the several captains or commanding officers of companies for regular routine of duty, and shall make out for the sheriff, a fair list of the fines assessed by the Regimental and Battalion Courts, and one other list, which shall be transmitted to the Auditor, on or before the first day of September next, after such Regimental Court of Enquiry was holden in each year, and do all other duties required by this act, and together with the Provost Martial, shall receive such allowance, to be paid out of the fines, as the court shall think reasonable; not exceeding to the clerks, ten dollars for each day they shall attend the said courts, and five dollars for each list of fines they shall make out, as required by law; and not exceeding to the Provost Martial, three dollars for each day he shall attend the Courts of Enquiry.

70. It shall be the duty of the clerks of the several Courts of Enquiry, to transmit to the Auditor of Public Accounts, on or before the first day of September in each year, a certified

copy of the sheriff's receipt for each list of Militia fines, put into his hands for collection, together with a copy of such list; and such certified copy of the sheriff's receipt, shall be evidence on a motion against him for such fines.

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lists of fines, and of such lists; and when.

71. THE clerk of each Regimental Court of Enquiry shall be, and he is hereby required to return to the Auditor of Public Accounts, a list of all claims upon the militia fine fund allowed by their respective courts, within thirty days after their adjournment. It shall not be lawful, hereafter, for the clerk of any Regimental Court of Enquiry, to grant any duplicate certificate of any allowance, made by the court, to any person having a claim to be paid out of the militia fine fund, unless such court, upon satisfactory proof made to them, by the oath of the party or otherwise, that the original certificate hath been lost or destroyed, not having been paid, shall order a duplicate thereof to be issued. Every duplicate, issued in pursuance of such order, shall shew, upon the face thereof, that it is a duplicate issued by order of court. If any clerk shall issue any duplicate, otherwise than is herein provided, he shall forfeit and pay, for every such offence, a fine of one hundred dollars, to be recovered, by motion, in the General Court, upon reasonable notice thereof.

Clerks of regimental courts to return lists of claims allowed on Militia fine fund; and when.

Duplicate certificates of such allowances, not to be granted, but by order of court.

Such duplicates, how to be expressed.

Penalty for breach of this regulation

72. EVERY clerk of the Courts of Enquiry, shall take an oath faithfully to execute his duty, to be administered by the president of the court, before such clerk shall proceed to act as such; and every such clerk failing to furnish the sheriff, serjeant, or other collector of his county or corporation, with a list of the fines due within his bailiwick, corporation or district, or to certify the list to the Auditor of Public Accounts, as directed by law, shall be subject to a fine of fifty dollars for every failure; and it shall be the duty of every Colonel, to certify to the Auditor, within ninety days after the meeting of his Regimental Court of Enquiry, annually, the name of the clerk of such Court of Enquiry. And every Colonel failing herein, shall forfeit and pay the sum of fifty dollars for every failure. And it shall be the duty of the Auditor of Public Accounts, to certify every such failure of a clerk, to the Colonel of the Regiment wherein the same happened, to be by him laid before the next Regimental Court of Enquiry, who shall proceed to adjudge such fine against the delinquent, as in other cases; and the fines so imposed, shall be collected and accounted for as other fines are by law directed.

Clerk's oath of office.

Penalty for not furnishing lists of fines to sheriff &c. or not certifying such lists to auditor.

Colonel to certify clerk's name;—and when.

Penalty for neglect.

Auditor to certify clerk's failure to the colonel, to be laid by him before the regimental court.

73. ALL fines, to be assessed by virtue of this act, shall be collected by the sheriff of the county; and to enable him to make such collection, the clerks of the Courts of Enquiry shall make out tickets of fines, in the same manner that county court clerks do for their fees; which shall be delivered to the sheriffs, on or before the first day of May in every year; but no fine imposed at any court of enquiry, shall be put into his hands before a subsequent court of enquiry shall have intervened; the sheriff shall give his receipt therefor, and, having deducted a commission of six per centum, shall account for, and pay the residue into the public treasury, on or before the fifteenth day of December next thereafter, under the same penalties, and subject to the same mode of recovery, as are

Fines collected by sheriff.

Clerks to make out tickets of fines.

When to be delivered to sheriff.

Commission for collection.

Payment into the treasury, when.

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Penalties, and mode of recovery, for non-payment. Distress and sale for fines, when. Power of commandant of regiment to suspend collection.

Proviso.

Insolvent tickets to be advertised at court-house door, and returned to regimental court.

Power of such court in relation thereto. Colonel's duty to transmit tickets, where delinquents have removed.

Proviso.

Clerk to certify to auditor list of fines so transmitted, and sheriff's receipt. Such receipt evidence to charge sheriff.

Penalty on colonel for neglect.

Duty of clerks to set up at court-house door, lists of tickets returned by sheriff as insolvent &c. and allowed by the Court of Enquiry.

Compensation for so doing.

Penalty for neglect.

prescribed by law with respect to the collection of the taxes. And should any person so charged with fines, fail to make payment, on or before the first day of May in any year, the sheriff is hereby authorised to make distress and sale therefor: *Provided, nevertheless*, That the commanders of regiments shall have power, for good cause shewn, and where it shall appear, that any non-commissioned officer or private, had it not in his power to attend the regimental court of enquiry, to offer his excuse, to suspend the collection of said fine, until the next regimental court of enquiry, by a written order to the clerk of such court, or to the sheriff, as the case may be: *Provided*, such application is made before the first day of March next, after the said fine shall have been imposed; which said regimental court of enquiry shall order and adjudge, as if such excuse had been offered in due time. And it shall be the duty of the sheriffs, having, at the next preceding county court, advertised the same at the door of the court-house, to return to the Regimental Courts of Enquiry, such of those tickets, as, by reason of insolvencies, or other causes, they could not collect, to be examined by the said court, who shall judge of such insolvencies and shall direct their clerk to certify a part or the whole of such list, as to them shall seem just: and where it shall appear to such Courts of Enquiry, that any of the tickets returned were not collected in consequence of the removal of such delinquent, it shall be the duty of the Colonel, to transmit the said tickets to the sheriff, in whose county such delinquent or delinquents may reside, for collection: *Provided*, the Regimental Court of Enquiry shall make an order, on the minute book of their proceedings, to that effect. A list of all such fines, so to be transmitted by the Colonel, shall by the clerk be certified to the auditor of public accounts, together with the receipt which shall be taken by the Colonel from the sheriff, to whom such tickets were given for collection; which receipt shall be good evidence, whereupon to charge the sheriff therewith; and such sheriff shall be liable for, and proceeded against, in like manner as for other Militia fines now directed by law. When any Colonel shall fail or neglect delivering such tickets, taking a receipt and transmitting the same to the auditor of public accounts, being instructed so to do, as before directed, by the Regimental Court of Enquiry, he shall for every offence forfeit and pay a sum not exceeding fifty dollars, to be adjudged by the Regimental Court of Enquiry.

74. THE clerks of the respective Courts of Enquiry in the Commonwealth, shall, at the two successive courts for their county next following each Regimental Court of Enquiry, set up, at the front door of the court-house, in alphabetical order, a fair and distinct list of all the tickets which may be returned by any sheriff, as insolvent, removed or otherwise, and which may be allowed by said court, and shall note, in such list, against every man's name, the sheriff's return on such ticket.

75. EACH clerk of the respective Courts of Enquiry, shall be entitled to and receive, for every list so made out and set up as before directed, a sum not exceeding four dollars; and shall, for every failure thereof, forfeit and pay a sum not exceeding

thirty dollars, to be adjudged and collected as other Militia fines.

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76. If any officer, non-commissioned officer, or private in the Militia, shall heretofore have been fined, or shall hereafter be fined by the sentence of any Court of Enquiry, for any alleged failure of duty, and for want of notice of such fine, or by any other sufficient cause, he shall have been prevented from applying to the next succeeding Regimental Court of Enquiry for a remission thereof, it shall be lawful for the commanding officer of the Regiment, upon the application of the person fined, and upon good cause shewn by affidavit, at any time before the fine shall have been paid, to suspend the collection thereof, by a written order to the clerk of such court, or to the sheriff, as the case may be; and the next succeeding Regimental Court of Enquiry shall have full power to remit such fine, if it shall appear to them just and proper so to do. The order of the commanding officer, directed as aforesaid to the sheriff, shall be a sufficient voucher to entitle him to a credit, on his settlement with the Auditor: *Provided*, That the authenticity of such order be certified by the court of the county, in which the sheriff may reside. When the collection of any fine shall have been suspended by the commanding officer, as is provided for by this act, and the succeeding Regimental Court of Enquiry shall not have remitted the same, it shall be the duty of the clerk of such court, to insert such fine in the next list which he shall deliver to the sheriff, to be collected and accounted for in the same manner, as if the collection had never been suspended.

When collection of fine may be suspended by order of commandant of regiment.

Power of next regimental court to remit fine so suspended. Commandant's order, to entitle sheriff to credit with auditor. Authenticity of such order, how certified. Clerk to insert such fine, if not remitted, in next list to be delivered to sheriff.

77. If any person, on whom any fine shall be imposed, shall not have any visible property, it shall be lawful for the sheriff to attach the effects or money of such delinquent in the hands of any person; and it shall be lawful for such garnishee, to satisfy and pay the amount due on account of such fines; and it shall be a discharge for so much against such delinquent; but, if he shall refuse or fail to pay the said amount, it shall be the duty of such sheriff, to summon such garnishee before the nearest justice of the peace for such county, informing him the precise time he shall appear; and if he shall appear, and on oath confess, that he has effects in his hands, or stands indebted to such delinquent, sufficient to satisfy such fine and costs, or if he shall fail to appear, it shall be lawful for the said justice, to award execution against such garnishee, for the amount thereof, or so much as shall appear to be in his hands, including sixty-three cents as a fee to such sheriff: *Provided*, That, before such justice shall award any execution for default, he shall require an oath, that such garnishee was duly informed of the time of such application.

Where effects or money of delinquents in hands of others may be attached for fines.

How garnishee may be compelled to pay.

Sheriff's fee. *Proviso*.

78. The sheriff of each county shall, on or before the first day of October in every year, pay and satisfy all drafts of the Colonel or commanding officer of the Regiment, drawn as herein-after directed, for any purpose authorised by law; and, on failure so to do, the court of the county, whereof he is sheriff, shall be and hereby are, empowered and required, on motion of the Colonel or commanding officer of the Regiment, to render judgment against the said sheriff, his executors or administrators, for the amount of such draft, with the costs of the said

Drafts of commandants of regiments when payable by sheriffs.

Remedy against sheriff for non-payment.

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Proviso, where
sheriff is comman-
dant of regiment.

Accounts when to
be rendered by
commandants, of
drafts by them.

Collector of fines,
how exonerated
from amount
thereof.

Where tickets not
delivered to she-
riff in due time,
succeeding sheriff
to collect.

Militia fine fund,
how appropriated.

Separate book for
that fund.

Provision where
fund arising from
fines in any regi-
ment is insufficient
to pay drafts upon
its.

Set of colors for
each regiment and
battalion.

Drum and fife, or
bugle horn.

Credits for drafts
and insolvencies to
be allowed sheriff.

Governor with ad-
vice of Council to
call out Militia, on
invasion or insur-
rection, &c.
And appoint quar-
ter-masters, com-
missaries, and oth-
er staff, &c.

motion; upon which judgment, execution shall issue, be endorsed and proceeded on, in like manner as executions are directed by law, in other cases against delinquent sheriffs: *Provided*, where it shall so happen, that the sheriff of any county shall be commanding officer of a Regiment therein, the officer next in command shall proceed as herein particularly directed.

79. THE commanding officer of every Regiment shall, on or before the first day of December in every year, render to the county or corporation court, an account of all the drafts made by him on the sheriff or collector for such requisites as under this act he is authorised to purchase or procure; specifying therein, the particular articles for which such drafts were given; and the passing of such account, by the court, shall exonerate such officer from any claim by the Commonwealth.

80. If it shall have so happened, that tickets of fines have not in due time been delivered to the sheriff for collection, any succeeding sheriff shall, and is hereby directed to receive such tickets, and shall collect and account for the same in like manner with other fines placed in his hands for collection.

81. WHATEVER fines shall be thus paid into the public treasury by virtue of this act, shall be held as a fund for defraying the salaries of the officers herein-after mentioned, and equipping and furnishing the Militia with all necessary apparatus, for the defence and security of the State; and the treasurer shall keep a separate book for the same and the expenditure thereof.

82. IN all cases where the fund arising on Militia fines, in any Regiment of Militia in this State, shall not be sufficient for the payment of any draft or drafts herein-after to be made by the Commandant of such Regiment, in favor of any Adjutant, Clerk of Courts of Enquiry, Provost Martial, or Musician, in such Regiment, the same shall be paid out of any money in the treasury arising from Militia fines.

83. THE Colonel, or commanding officer of the Regiment, shall cause to be purchased, out of the money arising from the fines, a set of colors for each Regiment, and also a set of colors for each Battalion: he shall also procure in like manner, for each company, a drum and fife, or bugle horn; and on the colors and drums, shall be marked the number of the Regiment and the Battalion, together with the name of the county to which they belong.

84. AND whereas sundry charges and expenses are authorised herein: *Be it enacted*, That the sheriff having a draft or drafts from the Colonel, or commanding officer of the Regiment, shall be authorised to discharge the same; for which, as well as all insolvencies duly certified by the Clerk of the Court of Enquiry, he shall be allowed on a settlement between the auditor and sheriff.

85. THE Governor, with the advice of Council, shall be authorised and empowered, on an invasion or insurrection, or probable prospect thereof, to call forth such a number of the Militia, and from such counties, as they may deem proper; and for the accommodation, equipment and support of the Militia, so at any time to be called forth, the Governor, with the advice aforesaid, may appoint such Quarter-masters, Com-

missaries, and other staff, as to him shall seem proper, and fix their pay and allowances; and shall also take such measures, for procuring, transporting and issuing all orders which may be necessary, as to him shall seem best. Orders for the Militia to be called forth as aforesaid, shall be sent to the commanding officers of brigades, or to the commandants of regiments, or in such other manner as may be deemed expedient, with a notification of the place or places of rendezvous; who shall immediately take measures for detaching the same, with the necessary number and ranks of officers, by detail and rotation of duty.

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Orders, to whom to be sent.

86. AND if it shall appear to the Executive, upon calling forth the Militia as aforesaid, that the necessary number and ranks of officers will not attend the detachments, for officering them at the places of rendezvous, the Governor, with the advice of Council, is hereby authorised and required to appoint such officers as may be necessary, from the counties called upon, as they may think proper, to join the detachments so raised. If a sudden invasion shall be made into any county of this Commonwealth, or in case of an insurrection in any county, the commanding officer of the Militia in such county is hereby authorised and required to order out the whole, or such part of the Militia, as he may think best, for repelling such invasion, or suppressing such insurrection; and shall call on the commanding officers of Regiments in the adjacent counties, for such aid as he may think necessary; who shall forthwith in like manner furnish the same.

Where Executive may detach such officers, as they may think proper, from counties called upon.

Where county commandant may call out Militia in his county.

And call for aid from adjacent counties.

87. WHENEVER the commanding officer of the Militia in any county, shall call out such Militia or any part thereof, in pursuance of law, he shall forthwith communicate such call to the Executive of this Commonwealth, with a correct statement of the number and description of the force so called out, and the causes thereof; in order, either that the Executive may sanction the call, or that the commander in chief may disband the whole, or any part of the force so called out, or that such other measures may be taken as the public good may require. The Colonel or commanding officer of Regiments, from which detachments are drawn, shall cause to be procured by impressment, or otherwise, for each company or detachment, the necessary and proper camp equipage, to consist of one camp kettle for every six, and one axe and spade for every twenty men; with one waggon and team for every eighty men, or as nearly as may be in that proportion. The said camp equipage, having been first valued by two or more freeholders on oath, shall be delivered to the commanding officer of the company or detachment, who shall be accountable for the same, and shall either deliver it, taking a receipt therefor, to the Quarter-master, or other officer authorised to receive it, at the post or place where the company or detachment shall have served, or been discharged, or shall return it when his tour is over, and in the latter case, the articles aforesaid shall be returned to the owner or owners, who shall be allowed for the use of the same whatever sum shall be adjudged by the Regimental Court of Enquiry of the Regiment, within the bounds of which the articles were procured; and if any articles procured by virtue of this act, shall be turned over to the Quarter-

His duty to communicate such call to the Executive.

Their powers thereupon.

Camp equipage, how to be procured, for detachments of Militia. Of what articles to consist.

How to be valued.

Commanding officer accountable. To deliver to Quarter-master &c., or return to owner when tour is over.

Compensation for use, how adjudged.

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Value of articles not returned, with legal interest thereon, how allowed and certified.

Enquiry as to cause of loss, and fine imposed on officer chargeable.

Officer to return to Regimental court, receipt for camp equipage, or certificate shewing how lost.

Fine for neglect.

Militia, when to be governed by articles of war.

Courts martial for trial of Militia, to consist of Militia officers only.

For cashiering, or punishing with death, approbation of Executive necessary.

Pay and rations, in actual service.

Commutation for rations, when allowable, and how ascertainable.

Proceedings in suits, or on executions, against drafted persons and their sureties, suspended; and how long.

master, or other officer authorised to receive them, at the post or place where the company or detachment was discharged, or shall have been lost in the service, the owner or owners, on the receipt of the Quarter-master, or other officer, or the certificate of the officer commanding the company or detachment, that any article or articles were lost in the service, being laid before the said court, the value thereof shall be allowed with legal interest thereon, from the time of the valuation, till paid, without any allowance for the use of the said articles; and the said allowance shall in all cases be certified to the auditor of public accounts. The said court shall also make enquiry as to the cause of any such loss, and, unless it shall be satisfied, that such loss was not occasioned by the misconduct or inattention of any officer, under whose charge it may have come, it shall proceed to fine such officer, in an amount at least equal to the value of the article or articles so lost. Any officer commanding a company or detachment, who shall fail to return to the Regimental Court of Enquiry next succeeding the expiration of his tour of duty, a receipt or certificate, shewing in what manner any camp equipage to him delivered, had been disposed of or lost in the service, may be fined by such court in an amount equal to the value thereof; and the value of his, her or their article or articles, may thereupon be allowed by the court to the owner or owners of such camp equipage. Whenever a Regiment, or any part thereof is called out by the Colonel or commanding officer, in case of invasion or insurrection, camp equipage may be procured as aforesaid; but, in such cases, it shall, when the Regiment, or such part as may be called out, is discharged, be returned to the owner or owners.

88. WHENEVER any Militia shall be called forth into actual service as aforesaid, or shall be enlisted for a fixed period to guard any arsenal or other public property, they shall be governed by the articles of war, which govern the troops of the United States; and Courts Martial shall be held as therein are directed, to be composed of Militia officers only, for the trial of any person in the Militia; but to the cashiering of any officer, or capital punishment of any person, the approbation of the Executive shall be necessary; and, when any Militia shall be in actual service of the State, they shall be allowed the same pay and rations, as are allowed by law to the troops of the United States. And whenever any Militia in the service of this State, shall be disbanded, they shall be allowed to draw money in lieu of the rations to which they may be entitled, to be commuted at a fair price, which shall be ascertained, wherever practicable, by the contract price; and wherever not so practicable, it shall be regulated by the Quarter-master General.

89. No proceedings shall hereafter be had, in any suit, either at law or equity, or on any writ of *feri facias*, or other execution, against the person or property of any person or persons, who may be called by draft from the Militia into the military service of the United States, or of this State, or against his or their security or securities, from and after the time when such person or persons shall be ordered to the place of rendezvous, until his or their term of service shall have expired.

And, if any such writ of *feri facias*, execution, or other process, shall issue contrary to the true intent and meaning of this act, it shall be the duty of the sheriff, or other officer, charged with the execution thereof, to suspend, or of the court from which such *feri facias*, execution or other process issued, to order to be suspended, all further proceedings thereon: *Provided, nevertheless*, That nothing herein contained shall be so construed, as to apply to the security or securities of any sheriff, serjeant, coroner, constable, guardian, executor or administrator, or committee of an idiot or lunatic, or other person of unsound mind, or as receiver or trustee under an order or decree of any Court of Equity.

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Exceptions, as to sureties in sundry cases.

90. *And provided also*, That the benefit of this act shall not extend to any person or persons employed in the military service of the United States, or of this State, and who shall have received the money of any other person or persons, as attorney, sheriff, serjeant, coroner, constable, guardian, executor or administrator, or committee of an idiot, lunatic or other person or persons of unsound mind, or as receiver or trustee under an order or decree of any Court of Law or Equity, their security or securities.

Exceptions, applying to persons indebted for money received by them for others.

91. If any person or persons shall have any claim, demand, or matter of controversy existing and depending, between him or them and any person or persons who hereafter may be in the military service of the United States or of this State, he, she, or they are hereby authorised and empowered, after pursuing the course heretofore directed by law in such cases, to take the deposition or depositions *de bene esse* of any witness or witnesses which he, she or they may deem material to the final establishment or adjustment of such claim, demand, or matter of controversy, to be read as evidence in any suit or suits, which now do or hereafter may exist in consequence of such claim, demand or matter of controversy, between the parties aforesaid, in case such witness or witnesses should be unable to attend.

Depositions *de bene esse* may be taken, notwithstanding such suspension.

92. The provisions last aforesaid, shall not extend to any person or persons, who may be called into the military service of the United States, or of this State, in the manner aforesaid, and shall have employed a substitute to perform his or their tour of duty; nor shall the said provisions extend to any person or persons, who shall enter the military service of the United States, or of this State, as a substitute: *And provided, also*, That nothing contained in this act shall, in any manner, prevent the granting or re-instating of an injunction against any person whatever.

Proceedings not to be suspended against persons who have furnished substitutes; Nor against the substitutes.

Proviso, as to granting or re-instating injunctions.

93. Each Brigade Inspector shall be allowed eight dollars, for every day he shall attend the training and Regimental musters, and ten cents for every mile he shall necessarily travel in going and returning; which shall be certified by the commanding officer of each Regiment, and paid by the treasurer, on warrant from the auditor, out of any money in the treasury. But, he shall charge mileage only for one circuit through the Brigade; and it shall be the duty of the Brigadier General, so to arrange the training of the officers and Regimental musters, as to render only one circuit necessary: *Provided nevertheless*,

Pay and mileage of Brigade Inspector.

How certified.

Mileage for one circuit only, through the Brigade.

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Officer to be appointed where
Brigade Inspector
fails to attend.

Fine for not attending.

Penalties on Brigade Inspectors,
how imposed.

Arms, &c. of Militia, exempted from executions and distresses. Their persons, when exempt from arrest and process. Militia of Williamsburg, Richmond and Norfolk, now officered, &c.

Fines incurred by infants and apprentices, by whom payable.

Colonels to appoint regimental staff.

Adjutant's duty, and compensation.

Serjeant Major's duty, and compensation.

That such Inspector shall be entitled to receive not less than one hundred dollars for his services.

94. AND if he shall fail to attend at any time, it shall be lawful for such commandant, to appoint some officer to perform the duties required of such Brigade Inspector, who shall receive the same compensation *per* day, and which shall be certified in the same manner, as is herein before directed, in the case of the Brigade Inspectors, for their attendance; and the said Brigade Inspectors shall, moreover, be liable to a fine of twelve dollars for every day they shall fail to attend, without having a reasonable excuse.

95. AND for the purpose of ascertaining what tribunal shall have power to award judgment for penalties herein imposed on Brigade Inspectors, for a failure of duty, it shall be the duty of the commanders of Regiments, wherein any delinquency shall take place, or the Adjutant General, where any Brigade Inspector shall fail to make his return as herein directed, to inform the Brigadier General commanding such Brigade, thereof; who shall thereupon lay the same before the Regimental Court of Enquiry, within the bounds of which such Brigade Inspector shall reside; and it shall be the duty of such court, to direct that notice be given to him to appear at the next succeeding Regimental Court of Enquiry; at which, if such notice has been given, the matter shall be determined as in other cases of delinquencies; which fines shall be collected and accounted for, as other fines.

96. ALL arms, ammunition and equipments of the Militia, shall be exempted from executions and distresses at all times, and their persons from arrest and process in civil cases, while going to, continuing at, or returning from musters, and while in actual service.

97. THE Militia of the City of *Williamsburg*, City of *Richmond* and Borough of *Norfolk*, shall have their officers appointed, and be under the same rules and regulations as the different counties.

98. THE fines and penalties incurred by infants and apprentices, for the breach or neglect of their duty in any particular service by law required of them, shall be paid by the parent, guardian or master.

99. It shall be lawful for the Colonels, and they are hereby required, to appoint a Regimental staff, to consist of one Adjutant, one Quarter Master, one Pay Master, one Serjeant Major, and one Quarter Master Serjeant, one Surgeon and one Surgeon's Mate; and it shall be the duty of the Adjutant to attend the several Regimental and Battalion musters, as also the meeting of the officers within his Regiment, to assist in the necessary training of the Militia; and he shall receive for such service, such compensation as shall be adjudged and allowed by the Regimental Court of Enquiry, not exceeding six dollars for each day he shall attend the Regimental and Battalion musters and training of the officers of the said Regiment, to be paid by order of the commanding officer of the Regiment, out of the fines to be collected by virtue of this act. And it shall also be the duty of the Serjeant Major to attend the Regimental and Battalion musters, and the training of the officers; and

he may be allowed by the Regimental Court of Enquiry, a compensation for his services, not exceeding two dollars per day, for each day he may attend the Regimental and Battalion musters, and for each time failing to attend, shall forfeit and pay five dollars, to be assessed by the Regimental Court of Enquiry.

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Penalty against him for failing to attend muster.

100. AND whereas inconveniencies have arisen, from the want of a safe and speedy conveyance of orders, from the Major and Brigadier Generals, to the commanding officers of corps, respecting the Militia of this Commonwealth; for remedy whereof; *Be it enacted*, That the Major Generals and Brigadier Generals are hereby empowered and authorised to employ some person, within their respective districts, to convey all such orders, and* shall receive such compensation as the Court of Enquiry of the Regiment, in which district he shall reside, shall think proper, not exceeding three dollars per day, on his producing a certificate to the court, of his having discharged the said services. And it shall be the duty of the Auditor, by order of the Executive, to issue his warrant on the fund arising from Militia fines; and the Treasurer shall pay the amount thereof: but in case of extraordinary service, the Executive, upon the certificate of the officer employing such expresses, may allow such additional compensation, as they may judge reasonable.

Majors and Brigadier Generals authorised to employ persons to convey orders.

Compensation, how ascertained and paid.

Executive may make addition for extraordinary service.

101. IN all cases where the Adjutant of a Regiment, or other person, has been, or hereafter may be, sent on an express by the Commandant of a Regiment or Battalion, or other Militia officer authorised to employ an express, in consequence of any general order such Commandant or other officer may have received, or in discharge of any duty appertaining to their respective commands in the Militia, and there shall not have been, or hereafter may not be, sufficient funds arising from Militia fines in the Regiment to which the person so employed as an express belongs, to defray the expense of such express, then, and in that case, the allowance made such express, shall be paid out of any money in the treasury, arising from Militia fines.

Allowances made to expresses sent by commandants of Regiments, &c. when payable out of treasury.

102. ALL officers and soldiers failing to attend any call or meeting of any Regiment or Battalion, when required by the commanding officers thereof, upon any requisition from the Governor, Major General or Brigadier General, for any quota of troops, shall be subject to the same fines and penalties, as for failing to attend Regimental or Battalion musters.

Fines for failing to attend calls or meetings of Regiments, &c. on requisitions for quotas of troops.

103. AND whereas, by the present mode of distributing the public arms amongst the Militia, the Commonwealth has sustained great loss by destruction and injury done to a number of the arms; and it is found by experience, that they cannot be preserved fit for service, if they are distributed as aforesaid: *Be it therefore enacted*, That it shall be the duty of the Executive of this Commonwealth, if it hath not already been done, to select and purchase three proper situations for arsenals, one on the western side of the *Alleghany*, and two on the eastern side thereof, above the City of *Richmond*, and to have the

Executive to select and purchase three situations for arsenals; and where.

* "And," in the roll, instead of "who."

† So in the roll.

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To erect proper inclosures and buildings, and fortifications.
Dimensions of arsenals.
Discretion as to which arsenal may be first built.

When to be supplied with arms and guards.

Captain to be commissioned.
Privates, &c. enlisted for each arsenal.
Term of service.

Duty, pay and allowances.

Captains to act as pay-masters.

Compensation as such.

To give bond and security.

Such bonds how suable.

Arms, to be taken from Militia, and deposited in arsenals.

Not in good order, to be repaired.
Arsenals may be supplied from Richmond.
Proviso.

Duty of Captains at arsenals.

same inclosed in such manner, and such buildings erected for the preservation of the arms, and such fortifications made for the defence of the arsenals, as, in their opinion, shall appear expedient.

104. EACH of said arsenals shall be large enough to contain twenty thousand stand of arms complete; and the Executive may have either of them built first, as circumstances may, in their judgment, require; but that which is first erected, is to be supplied with the twenty thousand stand of arms, and the guards herein mentioned, before another is commenced; and each successive arsenal shall be supplied with arms and guards aforesaid, before the expense of commencing or building another shall be incurred.

105. THE Executive shall commission one Captain, and cause any number of privates, not exceeding twenty-eight, two musicians, and one sergeant, to be enlisted for each arsenal, for a term not exceeding five years, for the purpose of guarding and keeping said arms in good order, and erecting said fortifications; which said officers and men shall receive such pay and allowances, as the troops of the United States are now allowed by law, and be subject to the rules and articles of war provided by Congress, for the government of the troops of the United States.

106. THE said Captains shall perform such duties as pay-masters to their respective corps, as the Executive shall from time to time direct; and for their services as such, shall be severally allowed the additional compensation of ten dollars per month. They shall respectively enter into bond with sufficient security, to be approved of by the court of the county in which the arsenal shall be situated, and there recorded, in the penalty of ten thousand dollars, payable to the Governor or Chief Magistrate, for the time being, and his successors in office, and conditioned for the faithful discharge of their duties as pay-masters. And the Executive may direct the said bond to be prosecuted, from time to time, for the use of the Commonwealth, to recover all such damages as the Commonwealth may sustain by reason of any breach of the condition thereof.

107. WHEN an arsenal is finished, and the guards for it enlisted, the Executive shall cause as many of the public arms to be taken from the hands of the Militia, and to be deposited in said arsenal, as will supply the same, having all such, as shall not be in excellent and complete order, previously repaired; or such arsenal may be supplied from the City of *Richmond*: *Provided*, That there shall not be less than twelve thousand stand of arms, in good order for action, at any time in the said city.

108. It shall be the duty of the Captains hereby authorised to be appointed, to inspect and cause to be kept safe and clean, the arms at their respective arsenals, and to make monthly returns of the state and condition of the arms to the Executive, and to give receipts for all the public arms delivered them, and to permit the Colonel commanding the Regiment in which the arsenal is erected, once in three months, to examine the arms, arsenal and fortifications.

109. The said Captains shall hold their respective commissions during the pleasure of the Executive.

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110. It shall be the duty of the Colonel commanding the Regiment, in which either of the arsenals may be erected, once in every three months, to examine into the state and condition of the arms therein deposited, and make report thereof, and also, of the condition of the arsenals and fortifications, to the Executive, once in every three months. For every examination and return as aforesaid, the said Colonel shall be allowed five dollars, to be paid out of any money in the Treasury, not otherwise appropriated; and if he fail to make such examination and return, once in every three months, he shall forfeit and pay to the Commonwealth, the sum of one hundred dollars, with costs, for each failure, to be recovered by action of debt in the Superior or Inferior Court of Law of a county where the said Colonel may be found, to be applied for the benefit of the Literary Fund; and, in case the said Colonel shall fail to make either of the said returns required, it shall be the duty of the Executive, to cause suit to be brought for such penalty incurred, unless a sufficient excuse should be offered to them for such failure, within three months thereafter.

Their commissions to be during pleasure.

Duty of commandant of Regiment in which an arsenal is erected.

His compensation.

Penalty for breach of duty.

How recoverable, and appropriated.

Duty of Executive to order prosecution.

111. It shall not hereafter be lawful for the Executive to distribute the public arms amongst the Militia, except to such of them as may be called into actual service: *Provided, however,* That the Executive be authorised to arm any volunteer or other company of Militia, if the party applying for the arms for any company shall give bond and good security, to be approved by the Executive, that the arms shall be kept in complete order, subject to the orders of the Executive, and disposed of as they may at any time direct. And the Executive shall so regulate the penalty and condition of each of the bonds aforesaid, as to secure the rights of the Commonwealth; and in case of a violation of the condition of said bond, suit shall immediately be brought thereon for the benefit of the Commonwealth.

Arms not to be distributed, except to persons called into actual service; and where bond and good security shall be given to keep in good order, &c.

112. On application of the captain commanding at any arsenal, the Colonel of the Regiment within the bounds of which the arsenal may be situate, shall have power to summon five commissioned officers of his Regiment, who shall form a court martial, for the trial of any non-commissioned officer or private, of the guard stationed within the said Regiment: *Provided,* That such court martial shall not have power to pronounce sentence of death in any case.

Courts martial for trial of non-commissioned officers &c. at arsenals, how convened.

Not to pronounce sentence of death.

113. The operation of this act, in regard to taking the public arms from the hands of the Militia, and depositing them in arsenals, shall not extend to the counties situated below, or intersected by, the great post-road leading through the territory of this Commonwealth, from north to south, and crossing the principal rivers thereof at or above tide water, nor to the chief towns upon the banks of those rivers, or the counties in which those towns are situated.

In what counties and towns, arms not to be taken from the militia.

114. It shall be the duty of every person in the Militia, who hath received, or may hereafter receive, into their possession, any public arms or accoutrements, under the provisions of

Duty of persons receiving public arms, &c.

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Duty of officers
in relation thereto.

Persons about to
remove, or be dis-
charged from mil-
itia duty, to deli-
ver such arms to
their captain in
good order.

Duty of executors
&c. of persons dy-
ing possessed
thereof.

Penalty for breach
of such duty.

Penalty on non-
commissioned offi-
cer or private re-
moving without
delivering such
arms.

Prices at which
public arms, &c.
lost or destroyed,
shall be paid for.

Punishment for
selling, &c. or
carrying arms out
of bounds of regi-
ment, with intent
to defraud Com-
monwealth.

Duty of captain to
inspect arms from
time to time, and
report delinquen-
cies.

any act of Assembly, to keep the same in neat and good order, the musket barrel and bayonet free from rust and bright, the lock clean, well oiled, and with a good flint; and to appear with such arms, at every muster, where by law they are obliged to appear, and at all other times, when they may be called on duty; and, at all musters, the officers, at their respective stations, shall be diligent and careful in training and instructing their men, and inspecting their arms, in noting delinquencies, and making report thereof as herein-after directed.

115. If any person in the Militia, possessed of public arms or accoutrements as aforesaid, shall be about to remove out of the limits of the company to which he belongs, or, during such possession, arrive at the age of forty-five years, or in any other manner have a right to be discharged from Militia duty, every such person, before such removal, or before he shall be entitled to any such discharge, shall deliver to the officer commanding the company to which he belongs, in good order and unimpaired, such public arms or accoutrements, as may have been delivered to him; and if any person so possessed shall die, it shall be the duty of his executors or administrators, executrix or administratrix, to restore such arms or accoutrements, to the officer commanding the company to which his, or her testator, or intestate belonged; and for a failure therein, he or she shall be subject to the same fines and penalties, to which his or her testator, or intestate would have been subjected, and that whether he or she have assets in his or her hands or not.

116. AND where any non-commissioned officer or private shall remove out of the limits of his company district, without delivering to some commissioned officer of the company, in which he stood enrolled, all arms and accoutrements in his possession, belonging to the public, he shall forfeit and pay the sum of twenty dollars, to be recovered by warrant or attachment, before any justice of the peace, for the use of the Commonwealth.

117. EVERY person, in whose possession public arms or accoutrements have been lost or destroyed, contrary to law, shall make satisfaction to the Commonwealth for the same, to be awarded by the Courts of Enquiry, at the following prices:— for a musket, twenty dollars; for a ramrod, one dollar; for a bayonet, two dollars; for a cartouch box, two dollars; for a pistol, five dollars; for a sword, ten dollars; for a pair of holsters, five dollars; and for a rifle, thirty dollars.

118. If any Militia-man, or other person, shall sell, buy or give away, any part of the public arms or accoutrements, or carry the same out of the bounds of his Regiment, with intent to defraud the Commonwealth, he shall be considered as guilty of a misdemeanor, and being convicted thereof, at any time within five years, on information or indictment, in any county or superior court of law, shall be amerced in a sum not exceeding fifty dollars, and imprisoned for a term not exceeding twenty days, at the discretion of a jury.

119. It shall be the duty of the commanding officers of companies, from time to time, to inspect the public arms, and accoutrements in possession of the non-commissioned officers and privates of their companies; and, where it shall appear to him

that any such arms or accoutrements are not in the condition required by this act, it shall be the duty of such officer to report the same as other delinquencies; and, if it shall at any time come to his knowledge, that any one of his company has embezzled or disposed of his arms or accoutrements, or has removed out of the limits of his company, without delivering them up, as herein-before directed, in all such cases, it shall be his duty immediately to proceed by and under the authority of a warrant, according to law, issuing from any justice of the peace of the county or counties, where such arms or accoutrements, or any part thereof, are supposed to be, to regain possession of such arms or accoutrements, wherever the same may be found; and it shall moreover be the duty of such captain to proceed as is herein directed, to bring to punishment, according to this act, every person offending in the disposing, buying or concealing, such arms or accoutrements.

A. D. 1819.

A. R. C. 43.

To proceed to recover arms embezzled, or carried away.

And to bring offenders to punishment.

120. It shall be the duty of the officers commanding Battalions, to attend the musters of each company within his Battalion,* at least once in every year, for the purpose of reviewing such company, inspecting its arms and accoutrements, and instructing it in the drill of the company. And it shall be the duty of the commandants of Regiments, in like manner, to attend each muster in their respective Regiments, for the purpose of reviewing the same and inspecting their arms and accoutrements.

Duty of Majors & Colonels to attend company musters, inspect arms, &c.

121. If any officer commanding a company, shall fail to comply with the duties prescribed by this act, in relation to the preservation of the public arms, he shall forfeit and pay twenty dollars. And if any Major or commandant of a Battalion, shall fail to comply with the said duties, he shall forfeit and pay thirty dollars; and commandants of Regiments, failing to comply with the said duties, shall, for every failure, forfeit and pay forty dollars, each.

Penalties on officers for breach of duty, in relation to preservation of public arms.

122. It shall be the duty of the commanding officers of companies to report the delinquencies, in relation to the public arms and accoutrements, of all non-commissioned officers and privates in their respective companies; and it shall be the duty of Majors or Commandants of Battalions, to report the delinquencies of the commanding officers of companies within their Battalions; and it shall be the duty of the commandants of Regiments, to report the delinquencies of commandants of Battalions within their Regiments, to the proper Courts of Enquiry.

Delinquencies to be reported by captains,

Majors,

And Colonels.

123. THE Executive shall, and they are hereby authorised, to declare by proclamation, what shall be the uniform of the Militia of this Commonwealth; and the several officers shall be governed accordingly.

Uniform of Militia declared by Executive proclamation.

124. THE Executive shall cause to be printed and distributed so many copies of this act, together with the articles of war, as revised by the congress of the United States, as will be sufficient to furnish to each commissioned officer one copy.

Copies of this act, and articles of war, to be printed and distributed.

125. ALL acts and parts of acts, coming within the purview of this act, shall be and the same are hereby repealed; *Provided*.

Repealing clause. *Provido.*

* So in the roll.

A. D. 1819.

A. R. C. 43.

ded, however, That all rights and remedies, fines, penalties, forfeitures and proceedings, heretofore accrued, incurred or commenced, shall be and remain in the same state and condition as if this act had never been passed.

Commencement.

126. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty.

C. 86.

A. D. 1819.

A. R. C. 43.

*An act to reduce into one, the several acts for the government and regulation of the Manufactory of Arms.**

[Passed February 27, 1819.]

Superintendent,
master and assistant
armorer, when
and how to be
elected.
Vacancies occurring
in recess of
Assembly, how
filled.

1. *BE it enacted by the General Assembly, That, from and after the commencement of this act, a superintendent of the Manufactory of Arms, and a master and an assistant armorer shall be, during every annual session of the Legislature, elected, by joint ballot of both houses of the General Assembly: Provided, nevertheless, That if a vacancy in either of the said offices shall happen during a recess of the General Assembly, or if any person so elected shall refuse to accept, or shall fail to give security as required by this act, the Executive shall make an appointment to supply the same, which appointment shall be in force until the next annual election to be made by the General Assembly.(a)*

Superintendent to
give bond and security.

2. THE superintendent, before he enters on the duties of his office, shall give bond with sufficient security to the Executive, payable to the Governor and his successors, for the use of the Commonwealth, in the penalty of fifty thousand dollars, conditioned for the due and faithful discharge of his duty, and shall moreover take an oath duly and faithfully to perform the same, and a like oath shall be taken by the other officers.(b)

Oaths of office.

Money to be received,
and accounts rendered,
by superintendent.

3. THE superintendent shall hereafter receive the money appropriated for carrying on the operations at the Manufactory of Arms, from time to time, in such portions as may be necessary to be paid to those entitled thereto when due, for which he shall account at the end of every three months, with the auditor of public accounts; and it shall be the duty of the auditor to keep a fair and distinct account thereof; on the debit side, the sums so drawn, and the periods respectively when drawn, and on the credit side, the disbursements made by the superintendent, including the time when made, to whom, and for what object; and he shall moreover carefully file away all vouchers exhibited by the superintendent in discount.(c)

Auditor's duty in
relation thereto.

* Established by act of 1797, c. 18, § 7; Laws relating to this subject, prior to the act of 1808, are, act of 1802, c. 28, § 2; edi. 1803, and 1814, c. 306, § 2; 1803, c. 108, § 1; edi. 1808, c. 42, § 1; 1805, c. 86; edi. 1808, c. 81; 1805,

c. 4, § 6; edi. 1808, c. 84, § 6, am. by act of 1811, c. 6, § 3.

(a) 1808, c. 18, § 1; edi. 1812, c. 12, § 1.

(b) *Ibid*, § 2.

(c) *Ibid*, § 3.

4. EVERY contract hereafter entered into, for work to be performed in making arms, or completing the buildings or machinery, or keeping them in repair, shall be in writing, and deposited in the auditor's office: and every voucher admitted in discount shall be attested by the clerk of the Manufactory of Arms, and certified by one master armorer, stating that the work therein stated was done, or that the material, or other article furnished, was received for the manufactory of arms.(d)

A. D. 1819.
A. R. C. 43.

Contracts for making arms, &c. to be in writing, and lodged in auditor's office.

Vouchers, how attested & certified. Accounts to be kept by clerk.

5. THE clerk of the Manufactory of Arms shall keep fair and distinct accounts of all transactions in any manner relating to the institution; not only that they may exhibit in detail all the disbursements of money, and labor performed, and articles furnished, but that the state of the concerns may, at stated periods, be seen in general results arising from all the details.(e)

6. IT shall not be lawful for any of the officers hereafter to be concerned, either directly or indirectly, in the profits of any labour to be performed, either in completing the buildings and machinery, and keeping them in repair, or in making arms, tools or utensils, or in furnishing any material or article necessary to carry on the operations; and every officer who shall violate the provisions of this section, shall be removed from office, and subject to a fine of one hundred dollars, for the use of the Commonwealth, and shall moreover be compelled to refund all sums received by him for performing such labour or furnishing such materials.(f)

Officers not to be concerned in profits of labour on buildings or machinery, &c.

Penalty for breach of this regulation.

7. IT shall be the duty of the superintendent to cause to be entered or preserved, in a book to be kept for that purpose, all orders or directions of the Executive, and which shall be delivered to him in writing respecting the manufacturing of arms, the buildings, and every thing that concerns the same; and all regulations adopted, for the government of the artificers and others employed or concerned, shall also be entered in like manner.(g)

Orders of Executive, to be kept in a book by superintendent.

Also regulations for government of artificers, &c.

8. IT shall be the duty of the Speaker of the Senate, at the commencement of every session, to appoint three members of the Senate, and of the Speaker of the House of Delegates to appoint thirteen members of the House of Delegates, who shall form a joint committee, whose duty it shall be, forthwith to enquire, in what manner the operations at the Manufactory of Arms have been conducted for the preceding year, investigate the conduct of the officers, ascertain the quality of the arms made, examine into the expenditure of the money appropriated and drawn from the treasury, the number of arms made, and the different descriptions thereof, the number and quantity of component parts, and materials on hand, and their value, and the costs of the arms.(h)

Joint committee of Senate & House of Delegates, for examining armory to be annually appointed. Their duty.

9. ALL acts and parts of acts, coming within the purview of this act, are hereby repealed; but this act shall not be so construed as to diminish the duties of the Executive, or impair their powers, any further than is provided by this act; And provided, That all rights and remedies, fines, penalties and forfei-

Repealing clause, Proviso, as to powers of Executive. Further proviso.

(d) *Ibid*, § 4; 1809, c. 21, § 1; ed. 1812, c. 51, § 1.

(e) 1808, c. 18, § 5; ed. 1812, c. 19, § 2.

(f) 1808, c. 18, § 5; ed. 1812, c. 19, § 6.

(g) *Ibid*, § 7.

(h) *Ibid*, § 8.

A. D. 1819.
A. R. C. 43.

Commencement.

tures, and proceedings, heretofore accrued, incurred or commenced, shall be and remain in the same state and condition as if this act had never been passed.

10. THIS act shall be in force from and after the first day of January eighteen hundred and twenty.

C. 87.

A. D. 1819.
A. R. C. 43.

An act to reduce into one act, the several acts now in force, regulating impresses; and the compensation to individuals, for property taken, or occupied for public uses.

[Passed February 11, 1819.]

Prohibition of impressments, without legal authority.

Offender may be arrested by warrant from any magistrate of the county or corporation.

Impressments for public use, (for other than military purposes,) how to be made.

Appraisers to be appointed.

Certificate of property lost or destroyed in public service.
Owner how to be paid.

Remedy where property is restored, but injured.

Second valuation.

1. *Be it enacted by the General Assembly, That, if any officer, soldier, commissary, quarter master, or other person, shall presume to take from any citizen or citizens of this Commonwealth, any part of their property by way of impress, unless it be by warrant from the Executive in case of actual invasion, or by the sheriffs or sergeants removing criminals, or in such other cases as are or shall be expressly allowed by law, it shall be lawful for any magistrate in the county or corporation, where the offence is committed, upon information on oath, to issue his warrant for the immediate taking and safe-keeping of such offender or offenders, till they are delivered by due course of law; and all officers of the militia are hereby enjoined to support the civil power in securing and bringing such offenders to justice.*(a)

2. *WHENEVER it shall be necessary to impress any property for the use of the Commonwealth, (for other than military purposes,*) it shall be the duty of the officer or person who impresses the same, to apply to a justice of the peace of the county wherein the property shall be impressed, who shall cause the same to be appraised by two disinterested respectable housekeepers, sworn for that purpose, and if it shall so happen, that the property so impressed is totally destroyed or lost in the service of this Commonwealth, so that the same cannot be returned to the owner, the officer, or person who impressed the property, shall so certify: upon the owner producing such appraisement and certificate, the auditor of public accounts is hereby authorised and required, to issue a warrant for the amount of the appraisement, on the treasurer, who is directed to pay the same out of any monies in the treasury. Should the property impressed as aforesaid, be restored to the owner, and he should conceive it had been injured in the service of the Commonwealth, he may, within five days thereafter, call on the same persons who first valued the said property, if to be found, who shall be sworn to determine the value of such pro-*

(a) Nov. 1781, c. 36—edi. 1794, 1803 and 1814, c. 121, § 1.

* The words within the parenthesis, inserted at the revival of 1818.

erty at the time the same was restored to the owner; otherwise, any justice in the county where the property was impressed, may cause two house-keepers to value the same upon oath, as aforesaid. The justice or justices, as the case may be, shall certify to the auditor of public accounts, such first and second valuation, with their true date, and the time such property has been restored; who shall, if the second valuation amount to a less sum than the first, issue a warrant for the difference, to be paid out of any money in the treasury: *Provided, nevertheless,* That in all second valuations, the hire of such property shall be taken into consideration by the appraisers. If it shall appear that such property has been injured by the officer or person who impressed it, or any other person, whereby the Commonwealth has sustained an injury, it shall and may be lawful for any attorney, prosecuting on behalf of this Commonwealth, where such person resides, to recover the said damages, upon motion, before any court of record within the Commonwealth, ten days notice thereof having been previously given; but such person may, if required, have such motion tried by a jury, provided he will not delay the trial. (b) Should the property impressed as aforesaid, be restored to the owner without having been injured in the service of the Commonwealth, the owner shall be entitled to demand and receive compensation for the use thereof, which compensation shall be in like manner ascertained, certified and paid, as is herein-above provided, in case of injury done to impressed property in the public service.

A. D. 1819.

A. R. C. 43.

Certificate thereof.

Difference of value payable to owner.

Proviso, as to hire of the property.

Damages recoverable by the Commonwealth, against him who did the injury; and how.

Trial by jury in such case.

Compensation allowed for use of property, when returned uninjured.

3. WHENEVER the fields, woods, or other real property of any person shall be injured, in consequence of the occupation thereof by the militia, or other troops, in actual service of this State, such person shall receive a reasonable compensation for the injury, to be ascertained as follows: one discreet person, being a freeholder, shall be appointed on the part of the Commonwealth, by the commanding officer of the corps, or on his failure to do so, by the quarter-master general, or some other officer authorised by him; and one other discreet person, being a freeholder, in no manner interested in the question, to be submitted to him, and in no wise connected with the person appointing him, shall be chosen by the person whose property is injured. The two persons so chosen shall appoint a third freeholder, in like manner disinterested and unconnected. The persons so chosen shall take an oath, faithfully and impartially to discharge their duty, which shall be certified to the following effect, that is to say:

County, to wit:

I, A. B., justice of the peace for hereby certify, that C. D., E. F. and G. H., the persons chosen to assess the damages sustained by J. K., in consequence of the occupation of his real property in the county of viz.; (here insert the description of the property,) by troops in the service of the State of Virginia, under the command of have this day made oath before me, that they will well and truly, and without partiality, according to the best of

county, do Oath to be taken.

A. D. 1819.
A. R. C. 43.

their skill and judgment, assess the damages sustained by the said J. K., in consequence of such occupation. Given under my hand, this day of

A. B.

Their duty.

The persons thus chosen and qualified, shall go upon the property so alleged to be injured, and upon their own view, and upon such other evidence as may be offered them, shall ascertain, as nearly as they can, the damage really sustained, and grant a certificate thereof, to the following effect:

Certificate by them.

We C. D., E. F. and G. H., chosen on behalf of the Commonwealth, and on behalf of J. K., to assess the damages sustained by the said J. K., in consequence of the occupation of his real property, in the county of viz.: (here insert a description of the property,) *by certain troops in the service of the State of Virginia, commanded by* , *do hereby certify, that after being duly sworn, as will appear by the annexed certificate, we went on the property aforesaid, and after viewing the same, have ascertained the damage really sustained by the said J. K., to be* according to the best of our skill and judgment. *Given under our hands, this day of*

C. D.

E. F.

G. H.

Provision, in case they do not agree. Sum assessed how payable.

If the persons so chosen should not be able to agree, others may be chosen in the same way. Any certificate granted, as aforesaid, accompanied by the certificate of the oath aforesaid, and certificates of the proper appointment of the persons in pursuance of this act, shall entitle the person, in whose favor it is granted, to receive the amount thereby ascertained, out of any money appropriated to military purposes, to be paid in the manner in which the Executive shall direct.(c)

Impresses authorized, for use of troops in actual service.

4. ANY officer, having the command of any corps or detachment of militia, or other troops, in the actual service of the State, when he shall be unable to procure for them supplies of transportation, fuel, forage, rations, camp equipage or artillery horses, by contract, or by other means provided by law, shall be authorised to impress, for the use of such corps or detachment, so much transportation, fuel, forage, rations, or camp equipage, and so many horses for temporary service in the artillery, as may be indispensable for the use of the said corps; and to grant a certificate thereof, and of the value to the person to whom it may belong, or his agent. And if such person shall be dissatisfied with the value so certified, and refuse to accept the certificate, he may cause the value thereof to be ascertained, in the manner provided in the preceding section for the assessment of damage to real property. And the certificate so obtained, either from the commanding officer, or from the persons so chosen, shall be paid in the manner above prescribed: *Provided*, That in ascertaining the value of any waggons and teams, and other things, impressed for transportation, and of artillery horses impressed for temporary service, not only their value, but their reasonable hire

Certificate by the officer impressing.

Provision in favour of owner not satisfied with such certificate.

Proviso, as to hire of, and injury done to articles so impressed.

per day, shall also be ascertained; and if they are returned to the owner, such reasonable hire only for the time that they are detained from him, together with a reasonable compensation for any injury done them, to be ascertained in like manner, shall be paid to him.(d)

A. D. 1819.

A. R. C. 43.

5. ANY person authorised to send expresses to the Executive, or militia, in time of war, invasion or insurrection, or when there shall be imminent danger of invasion or insurrection, shall be authorised, when horses cannot otherwise be procured therefor, to impress, and by written authority under his hand, to empower the express employed by him, to impress, so many as may be essentially necessary; the value and hire of which shall be ascertained, and paid for, in the manner above provided in cases of other impressed horses. Any law authorising the impressment of the means of transportation, or of camp equipage, in any other manner than is hereby provided for, shall be, and the same is hereby repealed.(e)

Horses for use of
expresses, in time
of war &c. by
whom and how to
be impressed.

6. ALL and every act and acts, clause and clauses of acts, containing any thing within the purview of this act, shall be, and the same are hereby repealed: *Provided always*, That nothing in this act contained shall be construed to repeal any act heretofore made, for so much thereof as may relate to a right or remedy accrued, or offence committed or done, before the commencement of this act.

Repealing clause.

Further repeal.

Proviso.

7. THIS act shall commence in force from and after the first day of January eighteen hundred and twenty.

Commencement.

C. 38.

*The sixth section of the Ordinance of Convention, to enable the present magistrates and officers to continue the administration of justice, and for settling the general mode of proceeding in criminal and other cases, till the same can be more amply provided for.**

A. D. 1776.

Interregno.

[Passed July 3, 1776.]

BE it ordained by the representatives of the people now met in General Convention, That the common law of England, all statutes or acts of Parliament made in aid of the common law prior to the fourth year of the reign of King James the first, and which are of a general nature, not local to that kingdom, together with the several acts of the General Assembly of this colony now in force, so far as the same may consist with the several ordinances, declarations, and resolutions of the General Convention, shall be the rule of decision, and shall be considered as in full force, until the same shall be altered by the legislative power of this colony.(a)

Common law of
England, and
general statutes
in aid thereof
prior to 4 Jac.
1. in force.

(d) 1814, c. 5. § 28.

(e) 1814, c. 5. § 29.

Ordinances of Convention of May 1776. p. 21; Chan. Rev. p. 37..

(a) *Vide post.* c. 40, as to British statutes.

C. 39.

A. D. 1787.
A. R. C. 12.

*An act to supply the defect of evidence of the royal assent to certain Acts of Assembly under the former government.**

[Passed December 14, 1787.]

Preamble.

1. WHEREAS divers acts of the General Assembly of Virginia, as well public as private, were passed during the former regal government, with clauses therein for their suspension, until the royal approbation thereof respectively should be obtained, a notification of which assent, when transmitted hither from Great Britain, was registered in the council books of that time; but as most of those books were lost or destroyed during the late war, persons who may be interested to prove the fact of such assent having been obtained, are deprived of that highest species of evidence, whereby many citizens may be involved in expensive and troublesome contentions, and in the private cases purchasers may lose not only their purchase money, but valuable improvements: For remedy whereon,

What evidence
may be received
of royal assent to
certain acts passed
under former go-
vernment.

2. *Be it enacted by the General Assembly*, That from and after the passing of this act, when in any court of law or equity a question shall arise, whether an act of Assembly passed with a clause suspending such act until the royal approbation thereof was obtained, hath received such approbation, every such question shall be discussed upon such evidence and circumstances as may be produced by the parties, without requiring either party to shew the official assent to such act, or a certificate from the council books that such assent was registered therein; any law, usage, or custom, to the contrary notwithstanding.

C. 40.

A. D. 1792.
A. R. C. 17.

An act repealing, under certain restrictions, all Statutes or Acts of the Parliament of Great Britain, heretofore in force within this Commonwealth.†

[Passed December 27, 1792.]

Preamble.

1. WHEREAS, by an Ordinance of Convention, passed in the month of May, in the year of our Lord, one thousand seven hundred and seventy-six, intituled, *An ordinance to enable the present magistrates and officers to continue the administration of justice, and for settling the general mode of proceedings in*

* 1787, c. 20; 1792, ed. 1794, 1803, and '14, c. 32.

† 1789, c. 17; suspended until January 1, 1791; 1792, ed. 1794, 1803, and '14, c. 147; suspended until October 1, 1793; *Vid. ed. 1794, 1803, and '14, c. 150.*

criminal and other cases, 'till the same can be more amply provided for, it is among other things ordained, "That the common law of *England*, all statutes or acts of parliament made in aid of the common law prior to the fourth year of the reign of King *James* the first, and which are of a general nature, not local to that kingdom, together with the several acts of the General Assembly of this colony now in force, so far as the same may consist with the several ordinances, declarations and resolutions of the General Convention, shall be the rule of decision, and shall be considered in full force, until the same shall be altered by the legislative power of this colony:"(a)

A. D. 1792.
A. R. C. 17.

2. AND whereas the good people of this Commonwealth may be ensnared by an ignorance of acts of parliament, which have never been published in any collection of the laws, and it hath been thought advisable by the General Assembly, during their present session, specially to enact such of the said statutes as to them appear worthy of adoption, and do not already make a part of the public code of the laws of *Virginia*:

3. *Be it therefore enacted by the General Assembly*, That so much of the above recited ordinance as relates to any statute or act of parliament, shall be, and is hereby repealed; and that no such statute or act of parliament shall have any force or authority within this Commonwealth.

4. *PROVIDED always*, That all rights arising under any such statute or act, and all crimes and offences committed against the same, at any time before the commencement of this act, shall remain in the same condition in all respects, as if this act had never been made.

5. *SAVING* moreover to this Commonwealth, and to all and every person and persons, bodies politic and corporate, and each and every of them, the right and benefit of all and every writ and writs, remedial and judicial, which might have been legally obtained from or sued out of any court or jurisdiction of this Commonwealth, or the office of the clerk of any such court or jurisdiction, before the commencement of this act, in like manner, with the like proceedings thereupon to be had, as fully and amply, to all intents, constructions and purposes, as if this act had never been made; any thing herein contained to the contrary, or seeming to the contrary, notwithstanding.

6. This act shall commence and be in force, from the passing thereof.

(a) May 1776, c. 5, § 6; Chan. Rev. p. 37. *vid. ante.* c. 38.

C. 41.

A. D. 1819.
A. R. C. 43.

*An act concerning the laws of this Commonwealth.**

[Passed March 10, 1819.]

General rule as to
commencement of
laws.

1. *Be it enacted by the General Assembly*, That every act of Assembly hereafter to be made shall commence and be in force, upon and after the first day of April, next succeeding the passage thereof, unless, in the act itself, another day for the commencement thereof be particularly mentioned; and in every case, the day of passing thereof shall be noted in the publication, next after the title of the act.

Effect of repeal of
a repealing law on
former law.

2. WHENSOEVER one law which shall have repealed another shall itself be repealed, the former law shall not be revived without express words to that effect.

Exception.

3. As often as a question shall arise, whether a law passed during any session changes or repeals a former law passed during the same session, the same construction shall be made, as would have been made if this act had never been passed.

Special repealing
clause.

4. THE thirty-eighth and thirty-ninth sections of the act passed on the twenty-seventh day of January, in the year eighteen hundred and eighteen, entitled, "an act for reducing into one, the several acts concerning the election of members of the General Assembly, and for other purposes," shall be, and the same are hereby repealed, and shall be omitted in future publications of that act.

Commencement.

5. THIS act shall commence and be in force from and after the passing thereof.

C. 42.

A. D. 1789.
A. R. C. 14.

An act to provide against the appropriation of money by resolution of the two Houses of Assembly.†

[Passed December 3, 1789.]

Preamble.

1. WHEREAS, in the passing of those legislative acts, which are known under the name of laws, as distinguished from other acts, which are commonly called resolutions, certain forms and solemnities have been established for the purpose of obtaining that deliberation which the matter of laws generally requires;

* The act of 1785, c. 51, Edi. 1794, 1803 and 1814, c. 17, § 22, provided that laws should commence and be in force from the passing, unless otherwise provided in the laws themselves; changing the old rule, whereby all acts had relation to the first day of the session, and were considered as passed on that day. The act of 1789, c. 9, contains the same provisions as enacted in this act; only that that act fixes the first of March instead of April. The act of 1789 remained in force till this act was passed; the two sections repealed in § 4. of this act, having been repealed before they took effect. See note post. c. 51, § 37.
† 1789, c. 24; 1792, edi. 1794, 1803 and '14, c. 49.

and it hath been the practice of the General Assembly, to grant large sums of money by resolutions, which are confirmed on a single reading :

A. D. 1789.
A. R. C. 14.

2. *Be it enacted by the General Assembly*, That no sum of money shall be voted for any use whatsoever, by a resolution only, except where, by some previous law, a sum of money shall have been appropriated, and by such resolution, the whole or a part thereof may be particularly applied, in pursuance of the said law.

No money to be voted by resolution, unless there hath been an appropriation by law.

C. 43.

The fifth section of an act, entitled, an act for completing the revision of the laws.†

A. D. 1786.
A. R. C. 11.

[Passed October session, 1786.]

Be it enacted by the General Assembly, That the operation of each and all of the acts passed at the present General Assembly, of the following titles, to wit; “*An act forbidding and punishing affrays;*” “*An act for licensing counsel, attornies at law and proctors;*” “*An act against conspirators;*” “*An act concerning partitions and joint rights and obligations;*” “*An act for recovering demands of a small value in a summary way;*” “*An act providing that an infant may sue by his next friend;*” “*An act for speedy recovery of money due from certain persons to the public;*” “*An act providing that actions popular prosecuted by collusion shall be no bar to those which be pursued with good faith;*” “*An act for preventing vexatious and malicious prosecutions, and moderating amercements;*” “*An act concerning treasons, felonies, and other offences committed out of the jurisdiction of this Commonwealth;*” “*An act for punishing disturbers of religious worship and sabbath breakers;*” “*An act prescribing the punishment of those who sell unwholesome meat or drink;*” “*An act to encourage the apprehenders of horse-stealers;*” “*An act declaring when the death of persons absenting themselves shall be presumed;*” “*An act for reforming the method of proceeding in writs of right;*” “*An act directing the method of trying slaves charged with treason or felony;*” “*An act for the suppression and punishment of riots, routs, and unlawful assemblies;*” “*An act to punish bribery and extortion;*” “*An act against conveying or taking pretended titles;*” “*An act prescribing the method of protesting inland bills of exchange, and allowing assignees of obligations to bring actions thereupon in their own names;*” “*An act providing a mean to help and speed poor persons in their suits;*” “*An act against usury;*” “*An act directing the method of proceeding against and trying free persons charged with certain crimes;*” shall be suspended until the first day of July next.

Suspension of certain acts of the session.

† 1786, c. 115.

C. 44.

A. D. 1792.

A. R. C. 17.

*An act declaring what acts^d of the present session shall be immediately in force, and to suspend the operation of all other acts of the present session, which are of a public and permanent nature.**

[Passed December 28, 1792.]

Operation of all public and permanent acts of this session, suspended until 1st October.

Certain acts excepted.

1. *BE it enacted by the General Assembly, 'That the operation of all the acts passed during the present session of Assembly, which are of a public and permanent nature, shall be, and the same are hereby suspended until the first day of October, one thousand seven hundred and ninety-three.*

2. *PROVIDED, nevertheless, That nothing herein contained shall be construed so as to suspend the operation of the following acts, viz.: "An act for appointing electors to choose a President and Vice-President of the United States;" "An act giving further time to the owners of entries on the western waters to survey the same;" "An act for reducing into one act, the several acts concerning the Court of Appeals and Special Court of Appeals;" "An act for regulating the militia of this Commonwealth;" "An act for arranging the counties of this Commonwealth into districts, to choose representatives to Congress;" "An act for appropriating the public revenue;" "An act remitting certain militia fines;" "An act giving further time to the owners of surveys to return the same into the land office;" "An act for ascertaining the salaries to the officers of civil government;" "An act for establishing a bank in the town of Alexandria;" "An act empowering the Executive to advance to the public printer a sum of money for the purposes therein mentioned;" "An act to amend the act, intituled, an act authorising the Executive to direct the sheriffs to sell lands the property of this Commonwealth;" "An act for reducing into one, the several acts of Assembly for the inspection of tobacco;" "An act to reduce into one, the several acts concerning the recovery of debts due to the public, and the sale of lands for judgments on behalf of the Commonwealth against public officers;" "An act to reduce into one, the several acts concerning the county and other inferior courts of this Commonwealth;" "An act repealing the act, intituled, an act providing a sinking fund for the gradual redemption of the public debt;" "An act reducing into one, the several acts concerning the establishment, jurisdiction and powers of district courts;" "An act to authorise the Executive to remit damages in certain cases;" "An act reducing into one, the several acts concerning the High Court of Chancery;" "An act for imposing a public tax for the year one thousand seven hundred and ninety-two;" "An act reducing into one, the several acts concerning the General Court, and prescribing the manner of proceeding therein in certain cases;" "An act for reducing into one, the several acts concerning executions, and for the relief of insolvent debtors;"*

* 1792, ed. 1794, 1803 and '14, c. 150.

"An act authorising the General Court to appoint a clerk pro tempore;" "An act concerning coin;" "An act reducing into one, the several acts concerning the fees of certain officers, and declaring the mode of discharging the said fees and county levies;" "An act reducing into one, the several acts for regulating the inspection of flour and bread;" "An act for establishing a bank in the city of Richmond;" "An act to provide more effectually for the collection of the public taxes in certain cases;" and "An act declaring what remedy the Commonwealth shall have in certain cases."

A. D. 1792.

A. R. C. 17.

3. THIS act shall commence and be in force, from and after Commencement. the passing thereof.

C. 45.

An act to suspend for a time the operation of certain laws passed during the last and present session of the General Assembly.

A. D. 1818.

A. R. C. 43.

[Passed December 31, 1818.]

1. BE it enacted by the General Assembly, That the several acts following, viz.: *"An act reducing into one the several acts prescribing the oath of fidelity, and the oaths of public officers;" "An act concerning clerks of courts;" "An act for reducing into one act, the several acts concerning the Court of Appeals, and Special Court of Appeals;" "An act reducing into one act, the several acts concerning disputed elections of members of the General Assembly;" "An act for reforming the method of proceeding in writs of right;" "An act to reduce into one act, the several acts and parts of acts concerning witnesses, and prescribing the manner of obtaining and executing commissions for taking their depositions in certain cases;" "An act concerning the adjournment and places of session of certain courts in certain cases;" "An act to reduce into one the several acts, for the better securing the payment of rents, and preventing the fraudulent practices of tenants, and to regulate the practice of suing out and prosecuting writs of replevin;" "An act to empower securities to recover damages in a summary way, and for other purposes;" "An act to reduce into one the several acts and parts of acts, prescribing a method of protesting inland bills of exchange, and allowing assignees of obligations to bring actions thereupon in their own names;" "An act to reduce into one act, the acts concerning public notaries;" "An act to reduce into one act, the acts now in force, directing the mode of suing out and prosecuting writs of habeas corpus, and to annul the remedy by writ de homine replegiando;" "An act reducing into one all acts and parts of acts, providing a method to help and speed poor persons in their suits;" "An act to reduce into one act the several acts concerning constables;" "An act reducing into one act, all acts and parts of acts making provision for the restraint, support and maintenance of idiots and lunatics, and*

Enumeration of laws, the operation of which is suspended until the 1st of January, 1820.

A. D. 1818.
A. R. C. 43.

the preservation and management of their estates;" "An act reducing into one act the several acts directing the manner of proceeding in cases of impeachment;" and "An act reducing into one act the several acts concerning the election of members of the General Assembly, and for other purposes;" which several acts passed during the last session of the General Assembly; and the following acts, viz.: "*An act reducing into one act, all acts and parts of acts concerning the Superior Courts of Chancery;" and "An act reducing into one the several acts and parts of acts concerning the General Court, and prescribing the manner of proceeding therein in certain cases;"* which have been passed during the present session of the General Assembly, shall commence and take effect from and after the first day of January eighteen hundred and twenty, instead of the time specified in the said acts respectively.

Acts within the purview of these acts to continue in force until that day.

Commencement.

2. *And be it further enacted,* That all acts and parts of acts, coming within the purview of the several acts hereby suspended, shall stand and be in force until the first day of January eighteen hundred and twenty, in the same manner as if the said acts hereby suspended had never been passed.

3. *This act shall commence and be in force from and after the passing thereof.*

C. 46.

A. D. 1792.
A. R. C. 17.

*An act for reducing into one, the several acts and parts of acts respecting the powers and duties of the Executive.**

[Passed November 16, 1792.]

Powers vested in Executive for suppressing combinations for dismembering the State.

1. *BE it enacted,* That if any combination for dismembering this State, or establishing in any part of it a separate government, should become so powerful as to obstruct the due execution of the laws of this Commonwealth, in the ordinary course of proceeding, within any county or counties thereof, it shall be lawful for the Governor, with advice of Council, to call out the Militia of the State to suppress such combination, and to employ them in the same manner as he may do by law, in cases of invasion or insurrection.

For apprehending suspicious subjects of a foreign state, in case of war with such state.

2. *It shall and may be lawful for the Governor, with the advice of the Council of State, to apprehend and secure, or cause to be apprehended, and secured, or compelled to depart this Commonwealth, all suspicious persons, being the subjects of any foreign power or State, who shall have made a declaration of war, or actually commenced hostilities against the said States, or from whom the President of the United States shall apprehend hostile designs against the said States: provided information thereof shall have been previously received by the Executive from him. And in all such cases, the Governor, with the advice of the Council of State, shall, and he is hereby empowered, to send for the person and papers of any foreigner*

Their persons and papers may be sent for and secured.

* 1792, ed. 1794, 1803, and '14. c. 62.

within this State, in order to obtain such information as he may judge necessary.(a)

A. D. 1792.
A. R. C. 17.

3. ALL sheriffs and jailors shall receive such suspicious persons, whom by warrant from the Governor they shall be commanded to receive, and them in their prisons or custody to detain, or transport out of the Commonwealth, as by such warrant they may be commanded. And all others, the good citizens of this Commonwealth, shall be aiding and assisting in apprehending, securing, or transporting any such suspicious person, when commanded by warrant or proclamation of the Governor, or required by the sheriff or jailor to whose custody such suspicious persons may have been committed. Every person acting under the authority aforesaid, shall be indemnified from all suits to be commenced or prosecuted for any action or thing done by virtue thereof, and may plead the general issue and give this act in evidence. Saving always to the merchants of any foreign state, betwixt whom and the United States of America war shall have arisen, and to their families, agents, and servants, found in this Commonwealth at the beginning of the war, the privileges allowed by law.(b)

Sheriffs and jailors to obey warrants of Governor respecting them.

Saving to foreign merchants their legal privileges.

4. If the Governor and President of the Privy Council shall die, or otherwise become unable to perform his duty, in the recess of the General Assembly, the Privy Councillor, whose name stands next in the list of their appointments, shall officiate as Lieutenant Governor, until the vacancy be supplied, or the disability cease.(c)

Who shall officiate as Lieutenant Governor in case of the inability of the Governor and President of the Council.

5. AND in the absence of the Governor, such intended absence having been previously notified to them by him, and entered on their journals, or in the like absence of the President, and upon the like notification, if any business to be transacted at the Council Board necessarily require dispatch before he can attend it, the Council may proceed without him; and in either case the act shall be as valid as if he had been present.(d) The Governor and Council shall have power to appoint from time to time as they shall be wanting, a drawing clerk, a copying clerk, and a clerk of foreign correspondence, who shall each of them take an oath, to be administered by any member of the board, to keep secret all such matters as they shall direct them to keep secret; which clerks shall be removed at their will.(e)

When the Council may act without the Governor or President.

Clerks of the Council how appointed, qualified, and removed.

6. It shall and may be lawful for the Governor, with the advice of Council, to cause as many men (not exceeding twenty-five) with proper officers, to be enlisted as guards for public service, as he the said Governor, with advice of Council, may deem necessary, and may retain the same in service so long as the public exigencies may require.(f)

Guards for public service, how to be procured.

7. If it shall happen that there is not a sufficient number of justices for holding a court in any county, either by deaths,

When Executive may appoint justices of peace without recommendation.

(a) 1785, c. 15; 1792, ed. 1794, 1803, and '14. c. 62, § 2.

(b) *Ibid.* § 3.

(c) 1785, c. 56; 1792, ed. 1794, 1803, and '14, c. 62, § 4.

(d) 1785, c. 56; 1792, ed. 1794, 1803, and '14. c. 62, § 5.

(e) 1785, c. 58; 1792, ed. 1794, 1803, and '14, c. 62, § 5.

(f) May 1783, c. 30; Chan. Rev. p. 204; 1792, ed. 1794, 1803, and '14, c. 62, § 6.

A. D. 1792.
A. R. C. 17.

refusal to act, or removal out of the county, the Governor for the time being, with advice of Council, shall have full power to issue a commission or commissions of the peace for the appointment of any number of magistrates in such county, so circumstanced, as shall be judged necessary for carrying on the business of the same.^(g)

Executive to send laws to clerks of county courts.

8. It shall be the duty of the Executive to send copies of the laws of this Commonwealth by express, or otherwise, as they shall think best, to the clerk of every county and corporation court within the same, for the use of each magistrate, clerk, state's attorney, and sheriff, in the county or corporation, as soon as the said laws are printed; the expense whereof shall be defrayed out of the contingent fund.^(h)

Fines assessed by jury, not to be remitted by Executive.

9. It shall not hereafter be lawful for the Executive to remit any fine or amercement assessed by a jury.⁽ⁱ⁾

Repealing clause.

10. ALL and every act and acts, clause and clauses of acts, within the purview of this act, shall be, and are hereby repealed.

Commencement.

11. THIS act shall commence and be in force, from and after the passing thereof.

C. 47.

A. D. 1801.
A. R. C. 25.

*An act to prevent the Executive from remitting Fines or Amercements.**

[Passed January 23, 1801.]

Fines not to be remitted by Executive.

1. *BE it enacted and declared by the General Assembly, That* in future it shall not be lawful for the Executive of this Commonwealth to remit, mitigate, or moderate, any fine, or amercement, assessed or imposed, by any court of record, court martial or other power, or authority, authorised to assess or impose such fine, or amercement, unless by law the Executive be expressly authorised to remit, or act upon the same.

Commencement.

2. THIS act shall commence and be in force, from and after the passing hereof.

^(g) Oct. 1778. c. 5, § 3. Chan. Rev. p. 81; 1792, edi. 1794, 1803, and '14, c. 62. § 7.

^(h) 1792, edi. 1794, 1803, and '14, c. 62. § 8.

⁽ⁱ⁾ *Ibid.* § 9.

* 1800, c. 59; edi. 1803, and 1814, c. 280.

C. 48.

*An act, to reduce into one act, the acts now in force providing for the appointment of Electors to choose a President and Vice-President of the United States.**

A. D. 1819.
A. R. C. 43.

[Passed March 2, 1819.]

1. *Be it enacted by the General Assembly, That the persons* Qualification of voters for electors ; time and place of election ; number of electors ; and electoral districts.
qualified by law to vote for members of the General Assembly of this State, shall assemble at their respective court-houses, on the first Monday in November in every fourth year, from the year of the last election, and shall each vote hereafter, for twenty five Electors of a President and Vice-President of the United States, in manner herein-after directed. Every voter shall vote for one person residing in each electoral district as arranged by this act; for which purpose, the counties of *Norfolk, Princess Anne, Nansemond* and the *Borough of Norfolk*, shall compose one district; the counties of *Surry, Isle of Wight and Prince George*, and the town of *Petersburg*, one other district; the counties of *Sussex, Dinwiddie, and Southampton*, one other district; the counties of *Brunswick, Lunenburg, Mecklenburg and Greenville*, one other district; the counties of *Charlotte, Halifax and Prince Edward*, one other district; the counties of *Amelia, Chesterfield, Cumberland, Nottoway, and Powhatan*, one other district; the counties of *Albemarle, Amherst, Nelson and Fluvanna*, one other district; the counties of *Buckingham, Campbell and Bedford*, one other district; the counties of *Franklin, Pittsylvania, Henry and Patrick*, one other district; the counties of *Goochland, Henrico, Louisa* and the *City of Richmond*, one other district; the counties of *Hanover and Caroline*, one other district; the counties of *King and Queen, King William and Essex*, one other district; the counties of *Spottsylvania, Orange, Madison and Culpeper*, one other district; the counties of *Loudoun and Fauquier*, one other district; the counties of *Accomack, Northampton, Elizabeth City, Warwick and York*, one other district; the *City of Williamsburg*, and the counties of *James City, Charles City, New Kent, Middlesex, Gloucester and Mathews*, one other district; the counties of *Richmond, Lancaster, Northumberland, Westmoreland, and King George*, one other district; the counties of *Prince William, Fairfax and Stafford*, one other district; the counties of *Frederick and Hardy*, one other district; the counties of *Hampshire, Berkeley and Jefferson*, one other district; the counties of *Rockingham, Shenandoah and Pendleton*, one other district; the counties of *Rockbridge, Augusta and Botetourt*, one other district; the counties of *Washington, Wythe, Taxewell, Russell, Scott, Lee and Grayson*, one other district; the counties of *Greenbrier, Bath, Kanawha, Cabell, Giles, Mason, Montgomery, Nicholas and Monroe*, one other district; and the counties of *Monongalia, Brooke, Harrison,*

* Former laws, for appointing electors, to choose a President and Vice-President of the United States; 1788, c. 1; 1792, c. 30; 1799, c. 1; 1803, c. 112; 1811, c. 17.

A. D. 1819.
A. R. C. 43.

One elector only
eligible from each
district.

Commissioners of
election how ap-
pointed.

Their oath of of-
fice ;

Their duties ;

Manner of voting,
and polling.

Duty of the coun-
ty court clerks.

When poll may
be kept open.

Polls, to be sub-
scribed, and re-
turned to clerk's
office.

Lewis, Tyler, Ohio, Randolph, Preston and Wood, one other district.

2. IN case any ticket shall contain two or more names of persons residing in the same district, the first of such names only shall be considered as duly voted for ; and in the like manner, if two or more persons shall be of the twenty-five first upon the poll, who shall reside in the same district, he who shall have the greatest number of votes, shall only be duly elected. The Governor, with the advice of the Council, shall, on or before the first day of August in every year, wherein such election is to take place, appoint and commission three persons in each county of the State, and in the Cities of Richmond, Williamsburg, and Boroughs of Norfolk and Petersburg, for the purpose of executing this law, any two or more of whom shall be competent to act. Each person, before he enters upon the duties herein enjoined, shall take and subscribe the following oath, or affirmation : "*I, A. B. do solemnly swear (or affirm) faithfully and truly to execute the office of a commissioner under the act, entitled, 'an act to reduce into one, the acts now in force, providing for the appointment of Electors to choose a President and Vice-President of the United States ;' that I will, to the best of my skill and judgment, admit all persons to vote entitled to do so, and reject all not so entitled ; and that I will make a fair return of the persons voted for as electors, within my county, (city or borough,) and of the number of votes given for each, according to this act. So help me God.*" Which affidavit the magistrate administering the oath or affirmation shall return attested to the clerk of the county court, to be by him filed : and the said magistrate shall also give to such commissioner a certificate, that he had taken the oath prescribed by this act. It shall be the duty of such commissioners to attend at their respective court-houses, on the day appointed for said elections, and then and there to hold the same in manner following : they shall receive of each person whom they shall adjudge to be entitled to vote in his county or corporation, a paper containing the names of twenty-five persons, for whom such individual shall vote as Electors, on the back of which paper shall be written the name of the person voting ; and, as the votes are rendered, it shall be the duty of the said commissioners to take an exact poll of the names of all voters. It shall be the duty of the clerk of each county to attend at the said election, for the Electors of a President and Vice-President of the United States, with the list of lands as taxed therein, to be used by the said commissioners, as evidence towards ascertaining the right of any person to vote. If it shall appear to the said commissioners, that the persons entitled to vote, were prevented from attending by bad weather, or from any other cause, they are hereby empowered and required to keep the poll open, for a term not exceeding three days. So soon as the poll is closed, the said commissioners shall subscribe each sheet, upon which the same containing the names of the voters shall be taken, and also obtain a subscription of two or more creditable persons thereto, which poll thus subscribed it shall be their duty to file in the clerk's office of the said county or corporation, within ten

days of the time of holding the election, there to be recorded according to law. The said commissioners shall, within two days after the polls shall be closed, ascertain the number of votes given for every person, who shall be voted for as an Elector: *Provided*, That until the return shall be signed by the commissioner holding the election, the tickets, so delivered in, shall be kept by one of the said commissioners, under the seal and subscription of more than one, and shall never be opened nor examined by less than two of the said commissioners. The said commissioners shall, within three days after closing the poll as aforesaid, make out three copies of a return in the following form: *We, A. B. and C. commissioners for holding the election of Electors for a President and Vice-President of the United States, for the county, city or borough, (as the case may be,) of* , *do hereby certify, that an election was held on the first Monday in November, for the said county, city or borough, (as the case may be,) pursuant to law, and that the number of votes herein specified, opposite to the names of the several persons following, was given for such persons as Electors, for the State of Virginia, of a President and Vice-President of the United States, namely: (here such list of persons and votes is to follow.) Given under our hands and seals this* day of *one thousand, eight hundred and* . Which returns, written in words and not in figures, shall be sealed and subscribed by the commissioners holding the election. One of the said returns shall be delivered to some person among the twenty-five, who shall have therein the greatest number of votes; another shall be filed in the clerk's office of the county or corporation electing; and the third shall be transmitted to the Governor and Council; all of which shall be done within fifteen days after the same shall be made out; and the Governor and Council shall proceed to ascertain from the said returns the twenty-five persons having the greatest number of votes throughout this State, and to advertise their names in such Gazettes as they may think proper.

A. D. 1819.
A. R. C. 43.

Form of returns.

Returns to whom
to be delivered,
and when.

3. If, on account of death, sickness, or other cause, only one of the said commissioners shall attend at the time and place for holding the said elections, he is hereby empowered to associate with himself as a commissioner, the high sheriff, or any magistrate of the county or corporation electing, who, being qualified as before directed, shall be as competent to act, as if he had been appointed by the Governor with the advice of the Council. It shall be the duty of the sheriff of every county, and of the serjeant of every corporation entitled to elect, to attend the said commissioners during the said election, and to remove force, should it be offered. And, if any sheriff shall fail in his duty as aforesaid, or if any commissioner shall refuse to take the poll, being required so to do by a candidate or person qualified to vote, or shall take it contrary to this act, or shall make or sign a false return, or shall falsify the polls or tickets, by erasure or alteration, he or they so offending, shall, for every such offence, forfeit and pay the sum of three hundred dollars, to be recovered with costs in an action of debt before any court of record within this Commonwealth, by any person who will sue for the same. After the said return shall

Vacancies of com-
missioners how
supplied.

Duty of sheriffs
and sergeants.

Penalty on she-
riffs or commi-
sioners failing of
their duty;
On commissioners
for false returns,
&c.

A. D. 1819.
A. R. C. 43.

Disposition to be
made of tickets.

Penalty for refus-
ing to deliver them
when duly demand-
ed.

Expenses how de-
frayed.

College of Elec-
tors when and
where to meet ;
vacancies how sup-
plied.

No compensation
to commissioners.

Compensation of
Electors.

Special repealing
clause.

be made, it shall be the duty of the said commissioners to seal up all the tickets, or votes, by them received in manner herein directed, and endorse their names upon the cover as aforesaid, which shall be preserved by one of the commissioners, and shall, if demanded under an order from the Governor, with the advice of the Council, within six months of the said election, be forthwith delivered, under the penalty before prescribed in other cases of misconduct; but, if the said tickets, or votes, shall not be so demanded within six months, the commissioners holding the same shall no longer be considered as answerable for them. The Governor with the advice of Council, is hereby empowered to defray, by order on the treasury, all reasonable expenses which may attend the execution of this act; and also, the expense which may be incurred by transmitting the said returns to the Executive, whenever it shall appear that it was necessary to employ a special messenger for that purpose.

4. THE twenty-five persons, having the greatest number of votes under this act, shall be the electors of a President and Vice-President of the United States, for and on behalf of this State: *Provided*, They attend for that purpose, at the Capitol in the city of Richmond, and at the time appointed by law; but if it shall so happen that any one or more of the said electors chosen by the people under the authority of this act, shall, from any cause whatever, fail to attend at the place appointed by the said act for the meeting of the Electors, at three o'clock in the afternoon, on the day preceding the day appointed for their meeting by the act of Congress, it shall be lawful for the Senate and the House of Delegates, and they are hereby required, by joint ballot, to proceed to supply such vacancy or vacancies, until the number of twenty-five Electors for the purpose aforesaid is completed: But if the Legislature shall not be in session on such day, it shall be lawful for the Governor with the advice of Council, to supply such vacancy or vacancies, which Elector or Electors so appointed, shall be entitled to vote for a President and Vice-President of the United States, in the same manner as if he or they had been chosen in the manner before prescribed: *Provided, nevertheless*, That if any Elector or Electors, chosen by the people, under the authority of this act, shall attend at the hour of ten in the morning of the day appointed for their meeting as aforesaid, then the appointments made, for the purpose of supplying such supposed vacancy, shall be void and of no effect.

5. *PROVIDED*, That nothing herein contained shall be so construed as to authorise any compensation to be made to the commissioners, to be appointed by this act.

6. EACH elector shall be allowed for his travelling expenses, and ferriages, and for his daily attendance, the same compensation as is allowed by law to members of the General Assembly: *Provided*, That no compensation for travelling expenses, nor his daily attendance, shall be received by any elector who may be a member of the General Assembly.

7. ALL acts and parts of acts, that come within the purview of this act, and especially, so much of any act, as authorises a separate election for electors in any county, at any other place

than the court-house of such county, shall be and the same are hereby repealed.

A. D. 1819.

A. R. C. 43.

8. THIS act shall commence and be in force from and after the first day of January, eighteen hundred and twenty.

Commencement.

C. 49.

An act concerning the credentials of the Senators of this Commonwealth, in Congress.†

A. D. 1788.

A. R. C. 13.

[Passed December 22, 1788.]

1. *Be it enacted by the General Assembly, That, so soon as* Governor to cause any election shall be made of senators for this Commonwealth, credentials to be in pursuance of the constitution of the United States of America, the clerk of the House of Delegates shall notify the same to the Governor, who shall cause a credential to be made out, and the seal of the Commonwealth affixed thereto, shall sign the same, and cause it to be delivered to each senator; which credential shall be in the words following:

Virginia, to wit :

The Legislature of this Commonwealth, on the day of Form of creden-
, one thousand seven hundred and , having, in tials ;
pursuance of the constitution for the United States of America,
chosen , Esquire, a Senator, I,
being Governor or Chief Magistrate of the Commonwealth, do
hereby certify the same to the Senate of the said United States.
Given under my hand, and the seal of the Commonwealth, this
day of , one thousand seven hundred and .

A LIKE notification shall be made, and a like credential shall be delivered to *Richard Henry Lee* and *William Grayson*, Esquires, respectively, who have been chosen senators for this Commonwealth.

2. WHENEVER the Executive shall, by virtue of the said constitution, make a temporary appointment of a senator, a credential shall be prepared, with the forms and solemnities aforesaid, and shall be delivered to such temporary senator, in the words following :

Virginia, to wit :

A. B., Esquire, who was duly chosen a Senator for this In case of tempo-
Commonwealth, in pursuance of the constitution of the United rary appointments.
States of America, having died, (resigned or otherwise, as the
case may be,) during the recess of the Legislature of the Com-
monwealth, I, , *being Governor or Chief*
Magistrate of the Commonwealth, have therefore thought fit,
by and with the advice and consent of the Privy Council, or

† 1788, c. 55, 1792, ed. 1794, 1803 and '14, c. 37.

A. D. 1783.
A. R. C. 13.

Council of State, and by virtue of the said constitution, to appoint _____, Esquire, to be and act as a Senator for the Commonwealth, until the next meeting of the Legislature thereof. Given under my hand, and the seal of the Commonwealth, this _____ day of _____, one thousand seven hundred and _____.

C. 50.

A. B. 1813.
A. R. C. 37.

An act for arranging the counties of this Commonwealth into districts to choose representatives to Congress.†

[Passed February 6, 1813.]

The State divided
into 23 districts.

1. *Be it enacted by the General Assembly*, That the counties of this Commonwealth, and the cities and boroughs entitled to representation, shall be divided into twenty-three districts, in the manner following, to wit :

THE counties of *Monongalia, Brooke, Ohio and Harrison*, shall compose one district; the counties of *Berkeley, Jefferson, Hampshire and Hardy*, shall compose another district; the counties of *Frederick and Shenandoah*, shall compose another district; the counties of *Rockingham, Augusta, Bath and Pendleton*, shall compose another district; the counties of *Botetourt, Rockbridge, Montgomery and Giles*, shall compose another district; the counties of *Washington, Wythe, Grayson, Russell, Tazewell and Lee*, shall compose another district; the counties of *Kanawha, Mason, Cabell, Greenbrier, Randolph, Wood and Monroe*, shall compose another district; the counties of *Loudoun, Fairfax and Prince William*, shall compose another district; the counties of *Westmoreland, Richmond, Lancaster, Northumberland, King George and Stafford*, shall compose another district; the counties of *Fauquier and Culpeper* shall compose another district; the counties of *Orange, Madison, Louisa and Spottsylvania*, shall compose another district; the counties of *King & Queen, King William, Essex and Caroline*, shall compose another district; the counties of *York, Middlesex, Mathews, James City, Gloucester, Warwick, Elizabeth City, Accomack and Northampton*, and the city of *Williamsburg*, shall compose another district; the counties of *Franklin, Bedford, Patrick and Henry*, shall compose another district; the counties of *Halifax, Pittsylvania and Campbell*, shall compose another district; the counties of *Prince Edward, Charlotte, Buckingham and Cumberland*, shall compose another district; the counties of *Powhatan, Goochland, Amelia and Chesterfield*, shall compose another district; the counties of *Brunswick, Lunenburg and Mecklenburg*, shall compose another district; the counties of *Dinwiddie, Prince George, Greensville and Nottoway*, shall compose another district; the counties of *Sussex, Southampton, Surry and Isle of Wight*,

† 1812, c. 23.

shall compose another district; the counties of *Norfolk, Princess Anne, Nansemond* and the *Borough of Norfolk*, shall compose another district; the counties of *Albemarle, Amherst, Fluvanna* and *Nelson*, shall compose another district; the counties of *Henrico, Charles City, New Kent, Hanover*, and the city of *Richmond*, shall compose another district.*

A. D. 1813.
A. R. C. 37.

2. *AND be it further enacted*, That the persons qualified by law to vote for members to the House of Delegates, in each county, city and borough, composing a district, shall assemble at their respective court-houses, or other places appointed by law for holding elections, on the first day of their April court, in the year one thousand eight hundred and thirteen, also on the first day of their April court, in every second year thereafter; and then and there vote for some discreet and proper person, qualified according to the constitution of the United States, as a member of the House of Representatives of the United States.

Qualification of voters.
Places and times of holding elections.
Qualification of persons to be elected.

3. THE person authorised by law to hold elections for members of the General Assembly, in each county, city and borough, shall conduct the said election, at which no determination shall be had by view, but each person qualified to vote shall fairly and publicly poll, and the name of the voter shall be duly entered, under the name of the person voted for, in proper poll books to be provided by the officer conducting the election; for which purpose, he shall appoint so many writers as he shall think fit, who shall, respectively, take an oath, to be administered by him, or make solemn affirmation, that they will take the poll fairly and impartially: he shall deliver a poll book to each writer, who shall enter, in distinct columns, under the name of the person voted for, the name of each elector voting for such person; like proclamation and proceedings shall be had for conducting, continuing, and closing the poll in each county of a district, as is prescribed by law in the election of members to the General Assembly; and proclamation shall also be made at the court-house door, or place of holding such election, of the person having the greatest number of votes on the poll on the closing thereof. Each elector shall be entitled to the same privilege from arrest, and be subject to the like penalty and forfeiture for failing to attend and vote at such election, as is prescribed by law in the case of elections of members to the General Assembly. In order to discover and punish such failure to attend and vote, the sheriff, or other officer conducting the poll, the clerk of the county or corporation court, and the presiding magistrate, shall severally perform the same duty in relation to elections under this act, and be subject to the same penalty for neglect thereof, as is prescribed for them respectively, in relation to the election of members of the General Assembly, by the sixth section of the act passed the twentieth of December, 1785, entitled, "An act concerning the election of members of the General Assembly." The county and corporation courts shall have the same power to remit fines hereby imposed on freeholders for failing to attend

By whom the elections are to be conducted.
Manner of conducting such elections.
Writers to be appointed, who shall take oath or affirmation.
Their duty.
Privilege of electors, and penalty for failing to attend and vote.

* The new counties of *Lewis, Tyler* and *Preston* are in the first district with *Monongalia*, &c. *Scott* is in the sixth district, with *Washington*, &c. *Nicholas* in the seventh district, with *Kanawha*, &c.

A. D. 1813.
A. R. C. 37.

Provision in case the mayor of a city or borough be unable to conduct election.

Time and place of meeting of sheriffs to compare the polls.

Form of certificate of election.

Duplicates to be made of such certificate and return. One to be delivered to person elected, and the other transmitted to governor and council.

Provision in case person conducting poll shall be unable to attend for purpose of comparing it..

and vote, as they have, by law, to remit fines imposed on free-holders for failing to attend and vote at elections for members of the General Assembly.

4. If the mayor of any city or borough entitled to representation in the General Assembly, shall, by death, or any other cause whatever, be unable to attend and conduct the election for a representative in Congress according to the provisions of this act, then the recorder, or, if there be no recorder, or he be unable to attend, the senior alderman, capable of attending, shall attend and conduct such election according to law.

5. IMMEDIATELY after each election in a county, city and borough, held as aforesaid, the clerk of the poll having first signed the same, shall deliver it to the sheriff or other officer who conducted the election: Every such sheriff, or other officer in each district, shall meet at the court-house of the county first named in such district, on the tenth day after that on which the election last held in the district was commenced, and then and there compare the polls respectively taken at the elections in their several counties, cities and boroughs; and having ascertained the greatest number of votes upon the whole, shall proceed to certify such election, under their hands and seals, to the effect following, to wit:

We A. B., sheriff of _____ county, (or deputy sheriff, as the case may be,) _____ sheriff of _____ county, (and so reciting the name of the person attending to compare the polls from each county, city and borough,) composing one entire district, entitled by law to elect a member to the House of Representatives of the United States, do hereby certify and make known, that, at an election held on the _____, in the county of _____, on the _____, in the county of _____, (and so on, stating the time of holding the election in each county, city and borough within the district,) at the place of holding elections in our respective counties, cities and boroughs, pursuant to law, the electors qualified to vote for members of the House of Delegates, caused to be chosen one person, to wit, _____, to represent the said district as a member of the House of Representatives of the United States. Given under our hands and seals, this _____ day of _____ one thousand eight hundred and _____.

Two fair duplicates of such certificate and return shall be made by the said sheriffs and other officers, under their hands and seals, in the manner before recited; one of which shall be delivered to the person elected to represent the district, and the other shall be transmitted to the Governor and Council, within twenty days.

6. If from death, sickness or other cause, the person conducting the poll in any county, city or borough, shall be unable to attend for the purpose of comparing the same, at the time and place prescribed by law, then the duty of attending and comparing such polls, and all other duties consequent thereupon, shall be performed in the following manner, that is to say: If a sheriff conducting the poll be dead, then the duties aforesaid shall be performed by his successor, if any there be; if there be no successor, then by the coroner of the county; if such sheriff be sick, or otherwise unable to attend, the du

ties shall be performed by such of his deputies as he shall appoint for that purpose; or, if he have no deputy, by the coroner. If a deputy sheriff conducting the poll, be dead, or unable to attend, the duties shall be performed by the high sheriff, either in person, or by deputy. If a mayor be dead, or unable to attend, the duties shall be performed by his successor, if any there be; if none, by the recorder; if no recorder, then by the senior alderman capable of attending. If a recorder be dead or unable to attend, the duties shall be performed by the mayor, if any; if none, by the senior alderman capable of attending. If a magistrate, or alderman conducting the poll, be dead, or unable to attend, the duties shall be performed by the magistrate or alderman next in seniority and capable of attending. And, if there shall be no person hereby authorised, who shall be able to attend and perform these duties, the court of the county or corporation, as the case may be, or any three magistrates or aldermen out of court, by warrant under their hands and seals, shall, without delay, supply the defect, by the appointment of some fit and discreet person, who shall be bound in all things promptly to perform the duties aforesaid.

A. D. 1813.
A. R. C. 57.

7. If, by any cause, the persons authorised to compare the polls, shall be prevented from meeting and performing their duties on the day, and at the place herein before prescribed, those present shall adjourn from time to time, as may be necessary and proper, until all of them shall attend, and the business of the meeting shall be completed.

Also, in case persons authorised to compare polls, fail to attend at day and place appointed.

8. If, on comparing the polls, it shall be found that two or more candidates, standing highest thereon, have an equal number of votes, the election shall be forthwith decided, between the candidates so having an equality of votes, by lot fairly and publicly drawn, under the direction of the persons so making the comparison.

Election to be decided by lot, between candidates having an equality of votes.

9. The said sheriffs and other persons comparing the polls shall also deliver to the clerks of their respective counties, within ten days after such return, the original poll books, to be by such clerk entered of record, under the like penalty for failure as for failing to record the poll books taken at the election of members to the General Assembly.

Original poll books to be delivered to clerks of respective counties, and recorded.

10. It shall be the duty of the Executive to inclose to the Congress of the United States, the certificates and returns of elections aforesaid, transmitted to them from the respective districts, without delay.

Certificates and returns to be transmitted by executive to Congress of U. States.

11. If any sheriff, or other person authorised to compare the polls, shall wilfully, or negligently fail, either to attend and compare the same, or to decide the election by lot, when two or more candidates highest on the poll shall have an equality of votes, or to make out certificates of the election, and return one of them to the Executive, and deliver the other to the person elected, within twenty days after the comparing of the polls, or to return the original poll books to the clerk, in the manner prescribed by law, then the sheriff, or other person so failing, shall, for every such offence, forfeit and pay to the Commonwealth, for the benefit of the literary fund, three

Penalty for neglect of duty relating to comparing the polls, deciding the election by lot, making certificates and returns of election, &c.

A. D. 1813.

A. R. C. 37.

hundred dollars; to be recovered, by action of debt, information or indictment, in any court of record having jurisdiction thereof.

Penalty for refusing to take poll, or taking it illegally, or making or signing false certificate or return, &c.

12. ANY sheriff or other officer refusing to take the poll when he shall be required by a candidate or elector, or taking it in any other manner than is herein before prescribed, or making or signing a false certificate or return of election, as herein before directed, or making any erasure or alteration in the poll book, or refusing to suffer any candidate or elector at his own expense to take a copy of the poll book, shall forfeit and pay, to the Commonwealth for the use of the literary fund, six hundred dollars for each offence, recoverable, by action of debt, information, or indictment, in any court of record having jurisdiction thereof.

Penalty for giving any elector, or pretended elector, money, meat, drink, &c. to influence his vote.

13. If any candidate, or other person, shall directly, or indirectly give, or agree to give to any elector, or pretended elector, money, meat, drink, or other thing, as an inducement to such elector, or pretended elector, to vote for such candidate, or for any other person, to be a member of the House of Representatives in the Congress of the United States, or as a reward to such elector, or pretended elector, for having voted for any such candidate, or other person, to be a member of said House of Representatives, such offender shall forfeit and pay, for every offence, the sum of fifteen hundred dollars, to be recovered, by action of debt, information or indictment, in any court of record having jurisdiction thereof, in the name of the Commonwealth, for the benefit of the literary fund.

Compensation for comparing the polls.

14. EVERY person, authorised by law to compare the polls as aforesaid, shall receive, for his services therein, one dollar and sixty-seven cents, for every day on which he shall necessarily attend at the place appointed by law to compare said polls, together with all charges of ferriage, and four cents a mile, for travelling to and from the county in which he shall meet for that purpose. Every claim, for the compensation hereby allowed, shall be presented to the court of the county or corporation in which the claimant may live, shall be verified by the affidavit of the claimant, and by such other evidence as shall be satisfactory to the court, and, being certified by them to be correct, shall be allowed by the auditor and paid out of the public treasury.

No person to vote more than once during the same election. Penalty for such offence.

15. No person entitled to suffrage in pursuance of this act, shall, during the same election, vote more than once, either in the same county, or in different counties. And, if any person shall offend herein, he shall forfeit and pay, for every offence, the sum of one hundred dollars, to be recovered, in the name of the Commonwealth, for the use of the literary fund, by action of debt, information, or indictment, in any court of record having jurisdiction thereof; nor shall any such person be admitted to vote in such election, at the court-house or other place of holding the election, in any county, city or borough in a district, unless the freehold or other estate, in right of which he offers to vote, shall be in that county, city or borough in which he gives his vote.

No person to vote in any county, city or borough, in which he has no estate entitling him to vote.

Repealing clause.

16. ALL acts and parts of acts, coming within the purview of this act, shall be, and the same are hereby repealed.

17. THIS act shall commence and be in force from and after the fifth day of March, one thousand eight hundred and thirteen.

A. D. 1813.
A. R. C. 37.

C. 51.†

*An act reducing into one act the several acts concerning the election of Members of the General Assembly, and for other purposes.**

A. D. 1818.
A. R. C. 42.

[Passed January 27, 1818.]

1. *BE it enacted by the General Assembly, That the election of delegates for the several counties and corporations entitled to representation, and the six senators for one of the four classes of districts in the room of those who will annually be displaced, shall be held in the several counties and corporations, on their respective court days in the month of April. The meeting of the returning officers, conducting the elections of senators, shall be within five days after the last day of said elections, at the court house of the county, the name of which is first mentioned in the law describing the district; and the said returning officers shall in all respects be governed by the rules and regulations established by this act: Provided nevertheless, That if, from high waters or other unavoidable accident, any sheriff or sheriffs may be prevented from attending at the times and places aforesaid, the other sheriffs shall adjourn from day to day, until the business be completed.*(a)

Election when to take place.

When returning officers conducting elections of senators shall meet to compare polls.

Proviso.

2. No freeholder shall vote more than once for a senator, in the same district at any one election.(b)

No freeholder to vote more than once in election of senator.
Right of suffrage.

3. EVERY male citizen of this Commonwealth, aged twenty-one years, (other than free negroes or mulattoes, or such as have refused to give assurance of fidelity to the Commonwealth,) being possessed, or whose tenant for years, at will, or at sufferance, is possessed, of twenty-five acres of land, with a house, the superficial content of the foundation whereof is twelve feet square, or equal to that quantity, and a plantation thereon, or fifty acres of unimproved land, or a lot or part of a lot of land in a city or town established by act of General Assembly, with a house thereon of the like superficial content or quantity, having, in such land, an estate of freehold at the least, and 'unless the title shall have come to him by descent, 'devise, marriage, or marriage settlement,' having been so possessed six months, and no other person, shall be qualified to vote for delegates to serve in General Assembly, for the

† The amendments made at the late Revision are distinguished by being printed within single inverted commas.

* The sections of this act, are referred to as printed in the Revised Code of 1794, which vary from the division of sections in the sessions acts of 1785.

(a) Acts of 1785, c. 55, § 1. of ed. 1794, 1803, and 1814, c. 17. Acts 1802, c. 12, § 1. 1798, c. 14, § 4, 5. ed. 1803, and 1814, c. 250.

(b) 1802, c. 12, § 2.

A. D. 1818.

A. R. C. 42.

county, city, or borough respectively, in which the land lieth. If the fifty acres of land, being one entire parcel, lie in several counties, the holder shall vote in that county, wherein the greater part of the land lieth, only; and, if the twenty-five acres of land, being one entire parcel, be in several counties, the holder shall vote in that county wherein the house standeth, only. In right of land holden by parceners, joint tenants or tenants in common, but one vote shall be given by all the holders capable of voting, who may be present, and agree to vote for the same candidate, or candidates, unless the quantity of land, in case partition had been made thereof, be sufficient to entitle every holder present to vote separately, or unless some one or more of the holders may lawfully vote in right of another estate or estates in the same county; in which case, the others may vote, if holding solely they might have voted: *Provided nevertheless*, That no person inhabiting within the District of Columbia, or elsewhere, not within the jurisdiction of this Commonwealth, shall be entitled to exercise the right of suffrage therein, except citizens thereof employed abroad in the service of the United States, or of this Commonwealth, and whose foreign residence is occasioned by such service.(c)

Proviso, as to persons residing out of Commonwealth.

Freeholders in certain cities, &c. declared incapable of voting in county elections, in right of freeholds in such cities, &c.

4. AND whereas it is contrary to the true principles of representation, that a freehold estate in any particular place should enable the possessor to vote in the elections of different and distinct places; *Be it enacted*, that, in any city, town or borough, which, at any time after the eighth day of January, one thousand seven hundred and eighty-eight, have or at any time hereafter shall obtain and enjoy the privilege of sending, in its own right, a representative to the House of Delegates of this Commonwealth, the freeholders thereof shall be, and they are hereby declared incapable of voting in the election of delegates for any county, in virtue or right of their respective freehold estates, within any such city, town or borough.(d)

Time and place of annual meeting of General Assembly

5. THE delegates for the several counties and corporations, and the six senators for one of the four classes of districts, in the room of those who will annually be displaced, shall, with the remaining senators, meet on the first Monday in December in every year, in General Assembly, at the place the preceding General Assembly shall have sat in, or adjourned to, unless such place be in possession of a public enemy, or infected with the plague, or small pox; in which case, they shall meet at such other place, as the Governor, with the advice of Council shall appoint and notify by proclamation.(e)

Who may vote at elections in Williamsburg and Norfolk.

6. EVERY person having such a freehold in the city of Williamsburg, or borough of Norfolk, as will qualify him to vote for delegates to represent the county, and also, every free man, except as before excepted, aged twenty-one years, being a citizen of the Commonwealth, and not having refused to give assurance of fidelity, who shall be a house-keeper, and shall have resided for six months in the said city or borough, and shall be possessed of a visible estate of the value of one hundred and sixty-six dollars, sixty-six cents at least, or shall

(c) 1785, c. 72, § 2. 1807, c. 28.
(d) 1787, c. 97.

(e) 1785, c. 55, § 1. 1796, c. 9. edi. 1803.
and 1814, c. 205.

actually have served as an apprentice to some trade, within the said city or borough, for the term of five years, and shall have obtained a certificate of such service, from the court of hustings, under the common seal of the city or borough, and no other, shall be qualified to vote for a delegate to represent the said city or borough, respectively, in General Assembly.(f)

A. D. 1818.
A. R. C. 42.

7. EVERY person qualified as aforesaid, to vote for delegates, shall be capable of being elected a delegate for the county, city or borough, or senator for the district, in which he resides.(g)

Who may be elected delegates or senators.

8. No person, who shall have served as a member of the legislature for seven years in the whole, shall be afterwards compellable to serve therein.(g)

No person compellable to serve more than seven years.

9. ANY elector qualified according to this act, failing to attend any annual election of delegates, or of a senator, and if a poll be taken, to give, or offer to give his vote, shall pay one fourth of his portion of all such levies and taxes as shall be assessed and levied in his county the ensuing year: and for discovering such defaulters, the sheriff, or other officer taking the poll, shall, within ten days after the said election, deliver to the clerk of the county, or corporation court, as the case may be, a copy of the poll by him taken, to be kept in his office, who shall suffer any candidate or elector to take a copy thereof; and the said clerk is hereby directed to cause a copy of the same to be delivered to the next grand jury, to be sworn for the county or corporation, who shall be charged by the presiding magistrate to make presentment of all such persons qualified to vote, residing in the said county or corporation, who shall have failed to have given their votes at the said election agreeably to law. And for the better information of the said jury, the sheriff of the county is hereby commanded, under the penalty of one hundred and sixty-six dollars, sixty-six cents, to be recovered and appropriated as the penalties for other neglects of his duty, to lay before them a list of all the landholders resident therein.(g)

Penalty on electors failing to attend and vote.

How such defaulters may be discovered.

Duty of clerk and sheriff on this subject.

Penalty on sheriff for neglecting this duty.

10. THE several county and corporation courts shall be empowered, for good cause to them shewn, to remit any penalty incurred by a freeholder, for not having given his vote at any election for a delegate or senator according to law.(h)

Courts empowered to remit penalty incurred by not voting.

11. If any person shall vote a second time at any election for members of General Assembly, he shall forfeit and pay thirty-three dollars thirty-three cents, to be recovered with costs of suit, in any court of record, by action of debt, bill, plaint or information, to the use of the person who will sue for the same.(h)

Penalty for voting twice at any election.

12. EVERY elector, going to, abiding at, and returning from, an election, shall be privileged from arrest, one day for every twenty miles he shall necessarily travel, exclusive of the day of election; and any process against such elector, executed during such privilege, shall be void.(i)

Privilege of elector.

13. UPON the election of a senator, and also of a delegate or delegates, when the election of such delegate or dele-

Method of taking poll.

(f) 1785, c. 55, § 3.
(g) *Ibid.* § 4, 5, 6.

(h) 1788, c. 52, § 6, 4.
(i) 1785, c. 55, § 7, 8.

A. D. 1818.
A. R. C. 42.

gates cannot be determined by view, the sheriff, or, in his absence, the under-sheriff of the county, or the mayor of the city or borough, shall, in presence of the candidates, or their agents, cause the poll to be taken in the court-house, or, if that be in a town infected with any contagious disease, or be in danger of an attack from a public enemy, at some other place, according to these directions. He shall appoint such and so many writers as he shall think fit, who shall respectively take an oath, to be administered by him, or make solemn affirmation, that they will take the poll faithfully and impartially. He shall deliver a poll book to each writer, who, by ruling lines thereon, having made as many columns as there shall be candidates, shall enter the name of each candidate in a distinct column at the head thereof, and, under his name in the same column, the name of every elector who shall vote for that candidate; and after the names of all the electors, who will give their votes, (proclamation having been made three times at the door of the court-house, or other place of holding such election, by the officer, requiring those who had not been polled, to come in and give their votes) shall have been thus entered, he shall conclude the poll, and declare the candidates, for whom the greatest number of votes shall appear to have been given, to be elected; or, if the greatest number of votes for several candidates shall be equal to one another, he may and shall declare which of the candidates he will elect, 'notwithstanding his vote as a freeholder may have been previously entered 'on the poll: *provided* that, in all cases where, by any act of 'Assembly, a separate election may have been, or shall hereafter be authorised, the election shall be held at the court-house 'as herein before provided, and at such other place, and in 'such other manner, as in and by such act has been or may 'be provided.'⁽ⁱ⁾

Officer may declare which of candidates he will elect, when votes are equal.
Proviso, as to cases of separate elections.

How election of senator shall be ascertained.

And how decided, if the votes be equal.

No elector to be permitted to vote second time in same election.
When and how the poll may be adjourned.

14. THE sheriffs and other returning officers of each county and corporation, within the senatorial districts of this Commonwealth, shall meet, at the times and places herein above directed, and from the polls, so taken in their respective counties and corporations, return as a senator the man who shall have the greatest number of votes in the whole district; and, if the number of votes for several persons to be a senator be equal, and the votes of the returning officers be equal also, it shall be decided by a lot taken by such returning officers at their meeting.^(k)

15. No elector shall be admitted to poll a second time, at one and the same election, although at the first time he shall have given but a single vote. If the electors, who appear, be so numerous, that they cannot all be polled before sun setting; or if, by rain or rise of water courses, many of the electors may have been hindered from attending, the sheriff, or under sheriff, may and shall, by request of any one or more of the candidates, or their agents, adjourn the proceeding on the poll until the next day, and so from day to day for four days, (Sundays excluded,) if the same cause continue; giving public notice

(i) 1785, c. 55, § 7, 8.

(k) 1785, c. 55, § 8; 1798, c. 14, § 5; 1802, c. 12, § 1.

thereof, by proclamation, at the door of the court-house or other place of holding such elections; and shall, on the last day of the election, conclude the poll, according to the directions aforesaid; but if the poll to be held at any such elections is not closed on the first day, the same shall be kept open two days thereafter at least.^(l)

A. D. 1818.
A. R. C. 42.

16. In all cases whatsoever, where by law the sheriff is directed to hold an election, in case of the death of the said sheriff, the senior magistrate, and in his absence, inability, or incapacity by being a candidate, the second, and so on in succession to the junior magistrate, is hereby authorised, empowered and required to perform the duties of the sheriff, prescribed by law, in similar cases. 'And if the mayor of any city or

By whom elections shall be held in event of sheriff's death.

'borough, entitled to representation in the General Assembly, shall, by death or any other cause whatever, be unable to attend and conduct the election according to the provisions of this act, then the recorder, or if there be no recorder, or he be unable to attend, the senior alderman capable of attending shall attend and conduct such election according to law.'^(m)

Or where mayor of a city or borough is unable to attend.

17. THE said magistrates, 'recorder or alderman,' in case of refusal, shall be subject to all the penalties to which sheriffs are liable, and shall be entitled to the same compensation.⁽ⁿ⁾

Penalties on magistrates refusing to act in such cases.

18. On complaint to either house of Assembly, of an undue election, or return of any member to their house, which complaint shall be lodged against such member within ten days after the meeting of the Assembly, where the contested election shall have been holden at the stated annual period, or within twenty days after the election, where such election shall have been holden in consequence of an intermediate vacancy, such house shall forthwith appoint some day for trying the same, as shortly as shall be consistent with fair enquiry, whereof notice shall be given by the speaker to the party against whom the complaint is, if he be absent; which day of trial may be lengthened from time to time, on good cause shewn to the house, and notice to the absent party. On the day appointed for the trial, the committee of privileges and elections shall proceed in the said disputed election, and report to the house, of which they are members, their opinion thereon, before they proceed to any other business; and the said house shall, on receipt of the said report, immediately proceed to determine thereon, and either confirm or disagree to such report, as to them shall seem just. If any person, sworn before the said committee, shall give or withhold any evidence, under such circumstances as would have constituted the same to be perjury, if done in presence of a court of record, the same shall be deemed perjury. If, upon such trial, it shall appear that equal numbers of qualified electors shall have voted for the petitioner and the sitting member, and the officer who conducted the election shall swear or solemnly affirm, that, if such equality had appeared at the election, he would have declared the petitioner elected, such petitioner shall be deemed duly elected, and his name, instead of the name

Mode of proceeding in contested elections.

(l) 1785, c. 55, § 8; 1798, c. 15, § 3.

(m) 1799, c. 17, § 1, 2.

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Persons offering to
vote shall swear or
affirm, if required
by a candidate or
his agent.

See the roll.

Names of electors
refusing to swear
or affirm, to be en-
tered in separate
lists.

Form of return of
delegates;

Of senators.

of the sitting member (which shall be erased) shall be inserted in the certificate or return.(n)

19. No elector shall be polled before he shall have declared, if required to do so by any candidate or his agent, in what right he offers to vote, and shall have taken an oath, which the officer conducting the election shall administer, or make solemn affirmation, in this form: *I do swear (or do solemnly affirm) that I do in my conscience believe myself to be duly qualified to vote for delegates to serve in General Assembly for the county of* ; according to the act of General Assembly, entitled, 'an act' ;" of which oath or affirmation a note shall be made in the poll-book, opposite, and referring to the name of the person swearing or affirming. The making such oath or affirmation falsely shall be perjury.(o)

20. THE names of electors offering to be polled, but refusing to make such oath or affirmation, shall be entered on the poll-books in separate lists, with the names of the candidates for whom they voted, and shall be added to the poll, if, upon scrutiny, the votes be justified.(o)

21. THE sheriff or under sheriff shall certify the election of delegates in this form, or to this effect: *Be it known to all to whom these presents shall come, that I* , sheriff (or deputy of , sheriff) of the county of in my full county, held at the court-house thereof, (or at) on the day of in the year of our Lord , by the electors of my said county, qualified according to law, caused to be chosen two delegates for my said county, namely, and , to represent the same in General Assembly. Given under my hand and seal the day and year aforesaid.(o)

22. THE mayor of a city or borough, entitled to particular representation, shall certify the election of a delegate in this form, or to this effect: *Be it known to all to whom these presents shall come, that I* mayor of the city (or borough) of at the court-house of (or at) in the said city (or borough,) on the day of in the year of our Lord , by the electors of the said city (or borough) qualified according to law, caused to be chosen a delegate for the said city (or borough,) namely, to represent the same in General Assembly. Given under my hand and seal the day and year aforesaid.(o)

23. THE sheriffs or under sheriffs of the several counties of a district shall certify the election of a senator in this form, or to this effect: *Be it known to all to whom these presents shall come, that we* sheriff (or deputy of sheriff) of the county of , sheriff, (or deputy of sheriff) of the county of , in our full counties, held at the court-houses thereof, or at , and mayor of the city (or borough of) on the day of in the year of our Lord , by the electors of our said respective counties,

(n) 1785, c. 55, § 9; 1788, c. 52, § 4; 1798, c. 15.

(o) 1785, c. 55, § 10, 11, 12, 13, 14, 15, 16.

city (or borough) qualified according to law, caused to be chosen a senator for the district composed of the said counties, namely, , to represent the same in General Assembly. Given under our hands and seals the day and year aforesaid.(o)

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24. THE officers directed to make such certificates of elections as aforesaid, shall cause them to be delivered, those of delegates to the clerk of the House of Delegates, and those of senators to the clerk of the Senate, one day at least before the succeeding session of General Assembly.(o)

Certificates of elections to whom to be delivered, & when.

25. For election of a delegate or senator, when a vacancy shall happen, a writ or writs shall be issued by the speaker of that house whereof he was a member; but, if the vacancy be occasioned by acceptance of an office, the writ or writs shall not be issued without the special order of the house; and the officer to whom such writ shall be directed, so soon after the receipt thereof as he may be able, shall give to the electors notice thereof, as well as of the time and place of election, by advertisement to be affixed at four of the most convenient places in the county or corporation, and shall cause the election to be made in the manner herein before prescribed, and shall have the same power of adjourning the proceeding upon the poll, as in case of a general election. The return of such writ for electing a delegate or delegates shall be in this form, or to this effect: upon the writ shall be endorsed these or the like words: *The execution of this writ appears in a schedule hereunto annexed*; and on another paper annexed to the writ, shall be written, if the writ be for the election of a delegate for a county, these or the like words: *By virtue of this writ, to me directed, in my full county, held at the court-house thereof, (or at) on the day of in the year of our Lord , by the electors of my said county, qualified according to law, I caused to be chosen a delegate, (or two delegates) for my said county, namely to represent the same in General Assembly. Given under my hand and seal the day and year aforesaid.* And if the writ be for the election of a delegate for a city or borough, these, or the like words: *By virtue of this writ, to me directed, at the court-house of the city of (or borough of or at in the borough of) on the day of in the year of our Lord , by the electors of the said city (or borough) qualified according to law, I caused to be chosen a delegate for the said city (or borough,) namely to represent the same in General Assembly. Given under my hand and seal the day and year aforesaid.* And the return of the writs for electing a senator shall be in this form, or to this effect: upon each writ shall be endorsed these, or the like words: *The execution of this writ appears in a schedule hereunto annexed*; and on another paper connecting the several writs together, shall be written these or the like words: *By virtue of these writs, to us directed, in our full counties held at the court-houses thereof respectively (or at) on the day of in the year of our Lord , by the electors of our said*

Method of issuing, executing and returning writs, for electing members to supply vacancies.

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respective counties, qualified according to law, we caused to be chosen a senator, for the district composed of our said counties, namely , to represent the same in General Assembly. Given under our hands and seals the day and year aforesaid. And the officers, conducting the elections, shall make their said returns to the General Assembly, if it be sitting, immediately, or if it be not sitting, one day, at least, before the time to which the writ shall be returnable.(o)

Provision where
vacancy may exist
in representation
of a county which
is divided after the
general annual e-
lection.

26. WHENEVER a vacancy doth or shall exist in the representation of any county of this Commonwealth which hath been, or may become divided after the general annual election, the speaker of the House of Delegates shall issue a writ of election to supply such vacancy, to the sheriff of each county formed by such division; and the sheriff of the county retaining the original name shall, upon the receipt of such writ, forthwith give notice to the sheriff of the other county, of the day on which the election shall be holden, which shall be within fifteen days, and not less than ten days thereafter; and both sheriffs shall thereupon give notice to the freeholders of their respective counties of the time and place appointed for holding such election, by advertisement, to be affixed at four of the most convenient places in each county, not less than five nor more than ten days before the election; and the election shall be made in the court-house of each county by the sheriff, or, in his absence, by the under-sheriff thereof, in the manner prescribed for a general election; it shall be held on the same day in each county, and no votes shall be received, except by virtue of a freehold in the county where the vote shall be given. The sheriffs, or under-sheriffs of both counties, conducting the election, shall, on the fourth day after that appointed for holding the said election, meet at the court-house of that county retaining the name of the county before the division, and shall then and there compare the polls respectively, taken at the elections in their several counties, and having ascertained the person having the greatest number of votes (giving their own votes in any case of the two foremost on such polls having an equal number of votes, and in case their votes also shall be divided, deciding the same by lot,) shall make their return in the following manner, or to the following effect: Upon each writ shall be endorsed these or the like words: *The execution of this writ appears in a schedule hereunto annexed*; and on another paper connecting the several writs together, shall be written these or the like words: *By virtue of these writs to us directed, in our full counties, held at the court-houses thereof respectively, on the day of , in the year of our Lord , by the electors of our said counties, qualified according to law, we caused to be chosen a delegate (or delegates) namely, , to fill the vacancy (or vacancies) in these writs mentioned. Given under our hands and seals the day and year aforesaid.* And the officers conducting the elections shall make their returns immediately to the speaker of the House of Delegates.(p)

(o) 1785, c. 55, § 11, 12, 13, 14, 15, 16. (p) 1808, c. 2, § 1, 2.

27. WHENEVER a vacancy shall occur in the representation of any senatorial district, embracing a county which shall have become divided as aforesaid, the election for supplying such vacancy, shall be conducted in all respects, as if the new county had existed and formed a part of the said district before the general election.(p)

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Or, in a senatorial district embracing a county so divided.

28. A SHERIFF, under-sheriff, or mayor, refusing to take the poll when he shall be required by a candidate or elector, or taking it in other manner than is herein before prescribed, or making a false certificate or return of the election of a member or members to serve in the General Assembly, or neglecting to cause the certificate or return of such election to be made to such clerk, and at or before such time as is herein before directed, shall forfeit and pay three hundred and thirty-three dollars thirty-three cents; and neglecting to deliver the poll-books to the clerk of the court, to whom, and before the expiration of the time within which they are herein before directed to be delivered, or refusing to suffer any candidate or elector, at his own expense, to take a copy of the poll-books, shall forfeit and pay one hundred and sixty-six dollars sixty-six cents; which penalties may be recovered with costs, in actions of debt, by any person who will sue for the same, one half to his own use and the other half to the use of the Commonwealth 'for the benefit of the literary fund.'(q.)

Penalties on the sheriff, under-sheriff or mayor, for refusing to take the poll, or other neglect of duty.

29. ANY person who shall be a candidate for any county, city, borough, or senatorial district, to serve, if elected, in the General Assembly, who shall, directly or indirectly, give, or agree to give, any elector or pretended elector, money, meat, drink, or other reward, in order to be elected, or for having been elected, or who shall treat, directly or indirectly, being a candidate for such or any other county, city, borough or district, upon due proof thereof to either house, shall be expelled, and disabled to be re-elected during the term of three years: *Provided nevertheless*, That nothing herein contained shall be so construed as to prevent any candidate from his usual intercourse of friendship with his neighbors at his own house.(r)

Members bribing electors, to be expelled and rendered incapable of being re-elected for three years.

30. If any sheriff, or other officer, conducting an election, shall, directly, or indirectly, so interfere in the election of senators or delegates as to show partiality for any of the candidates, he shall forfeit and pay the sum of six hundred and sixty-six dollars sixty-six cents, to be recovered on bill, plaint or information, in any court of record, one moiety to the use of the informer, and the other to the use of the Commonwealth, 'for the benefit of the literary fund;' and, moreover, be deprived of his right of voting for two years, at any such election thereafter.(s)

Proviso.

Penalty on officer conducting any election, guilty of a partiality.

31. ALL and every member and members of the General Assembly are, and ought to be, and forever shall be in their persons, servants and estates, both real and personal, free, exempt and privileged from all arrests, attachments, executions and all other process whatsoever, save only for treason, felony or breach of the peace, during his or their attendance upon the

Privileges of members of General Assembly.

(p) 1808, c. 2, § 1, 2.
(q) 1785, c. 55, § 17.

(r) Ibid, § 18, edi. 1794, 1803, & 1814, c. 59.
(s) 1784, c. 2, § 1.

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General Assembly, and one day before and after for every twenty miles they must necessarily travel to and from home; and, in the mean time, process, in which they are parties, shall be suspended without abatement or discontinuance; and, if any person, taken in execution, be delivered by privilege of either house of the General Assembly, so soon as such privilege ceaseth, he shall return himself a prisoner in execution, or be liable to an escape.(t)

Punishment for arresting or prosecuting a senator or delegate, on account of any thing said or done in his representative character.

32. WHEREAS the freedom of speech and proceedings appertaineth of right to the General Assembly, and the preservation thereof is necessary to secure the liberty of the people;

Be it enacted, That if any person shall arrest or prosecute, or be aiding or abetting in arresting and prosecuting a member or members of the senate or house of delegates, for or on account of any words spoken or written, any proposition made, or proceedings had in the said Senate or House of Delegates, every such person so offending, shall be deemed guilty of a misdemeanor, and shall be apprehended, committed and tried therefor, as in other cases of misdemeanors, before the general court, or a superior court of law of this Commonwealth; and, being thereof convicted by the verdict of a jury, shall be adjudged to suffer imprisonment for a term not exceeding one year, and shall pay a fine not exceeding two thousand dollars; which imprisonment and fine shall be assessed by a jury.(u)

Person so arrested may be relieved by *habeas corpus*.

33. AND, if any member or members of the said Senate or House of Delegates, shall be arrested or imprisoned, for, or on account of any words, spoken or written, or for any proposition made, or proceedings had in the said Senate or House of Delegates, such member or members may apply to the general court, or a superior court of law, or any judge thereof in vacation, for a writ of *habeas corpus*, who are hereby empowered and required to issue the same, returnable before the said court, or said judge, or any other judge, and, upon the return thereof, to liberate and discharge such member or members.(u)

These provisions extended to protection of persons after their ceasing to be senators or delegates.

34. THE provisions of this act shall be extended to the arresting and prosecuting any person or persons, for words spoken or written, or for any propositions made, or proceedings had in the said Senate or House of Delegates, and to the discharging and liberating any person or persons, by *habeas corpus*, as aforesaid, although such person or persons shall, by disqualification, or from any other causes, have ceased to be a member of the said Senate or House of Delegates, at the time of such arrest or prosecution, or of the trial, judgment, or imprisonment, in consequence thereof: *Provided*, That nothing herein contained shall, in any respect, extend to the power which either house of the General Assembly now hath or may exercise over their respective members.(u)

Wages of members of the General Assembly.

35. THE wages of the members of the General Assembly shall be three dollars by the day for attendance on the said assemblies, and eight cents for every mile they must necessarily travel, going to, and from the same, together with their ferriages, to be paid them in money out of the public treasury.(v)

(t) 1785, c. 55, § 19, taken from ancient laws, vid. edi. 1769, p. 13.

(u) 1798, c. 11, edi. 1803 & '14, c. 148.

(v) 1799, c. 34.

36. If a sufficient number of the members of the General Assembly, or of either house thereof, to adjourn from day to day, shall not meet at any time, when they ought, the Governor, by proclamation, with the advice of Council, may prorogue the General Assembly, or adjourn the deficient house, from day to day, until a sufficient number shall convene; and their acts and proceedings afterwards shall be as valid as if there had been no such interruption. But a delegate or senator shall lose all the wages he would otherwise have been entitled to, if he shall depart from the General Assembly, before it be adjourned, without license from the speaker, and other members of the house, whereof he is a member, first entered on the journal; yet, any member of either house taken so sick during his attendance in General Assembly, or on his journey thither, as that he shall be unable to come or sit in the house, shall receive wages for every day of the session he shall be so disabled, in the same manner as if he had sat in the house. If, on the day appointed for the meeting of any General Assembly, or at any time during the session, a sufficient number of the members thereof, to proceed to business, do not attend for that purpose, every absent delegate or senator, shall, besides losing his wages during absence, forfeit and pay to the use of this Commonwealth, for the benefit of the literary fund, thirty-three dollars thirty-three cents; such forfeiture to be recovered by prosecution to be instituted in the general court, by order of such house; and on the trial of such prosecution, no excuse for non-attendance, other than those before mentioned, shall be admitted by the jury; and if it be alledged that the defendant did attend such house, on any of the days during which they could not do business for want of members, the proof of such attendance shall rest on him.(w)

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When the Assembly may be prorogued, or either house adjourned by the Governor, with advice of Council.

Penalties on members departing without leave.

Members attending, but unable, through sickness, to sit in the house, entitled to their wages.

Penalty on absent members when there is not a house for want of members.

37. THE General Assembly may, during a session, or at the end thereof, adjourn to any other place than that where they shall then be sitting.(w)*

General Assembly may adjourn to any other place.

40. THE sheriffs and other officers conducting an election for a senator to the General Assembly, shall be allowed one dollar sixty-seven cents per day, for each day on which they shall necessarily attend to compare the different polls; and four cents per mile for travelling to and from the place appointed for that purpose, besides ferriages, to be paid out of the treasury, on warrant from the auditor of public accounts.(x)

Compensation to officers conducting elections of senators.

41. ALL acts and parts of acts coming within the purview of Repealing clause. this act, shall be, and the same are hereby repealed: *Provided*, That nothing herein contained shall be construed to affect any rights or remedies, fines, penalties or amercements heretofore accrued, or incurred.

42. THIS act shall commence and be in force from and after Commencement. the first day of January, 1819.

(w) 1785, c. 55, § 20, 21.

(x) 1800, c. 51.

* Here were inserted two sections (38, 39,) which were repealed at the next session; vid. ante. c. 41, § 4. They were never in force, this whole act being further suspended till January 1, 1820: vid. ante. c. 45.

C. 52.

A. D. 1819.
A. R. C. 43.

An act, to increase the wages of the members of the General Assembly.

[Passed January 7, 1819.]

Preamble.

WHEREAS it is found by experience that the wages at present allowed by law to the members of the General Assembly are incompetent; and whereas it is unreasonable that those who labour for the public good should not receive a just and adequate compensation therefor;

Wages *per diem* of members.

1. *BE it therefore enacted*, That the members of the present General Assembly and of all future General Assemblies shall be entitled to four dollars by the day, for attendance on the said Assemblies, to be paid them in money out of the public treasury.

Mileage.

2. *AND be it further enacted*, That the members aforesaid, in lieu of the mileage heretofore allowed by law, shall be entitled to and receive at the rate of four dollars for every twenty miles they must necessarily travel going to and from the said Assemblies, to be paid them in like manner out of the public treasury.

Wages of two Speakers.

3. *AND be it further enacted*, That the Speaker of the Senate shall be paid six dollars per day, and the Speaker of the House of Delegates eight dollars per day; and there shall be allowed and paid to each member ferriage and tollage in coming to and returning from the Legislature, as heretofore.

Repealing clause.

4. *ALL acts and parts of acts* coming within the purview of this act shall be and the same are hereby repealed.

Commencement.

5. *THIS act shall be in force from and after the passage thereof.*

C. 53.

A. D. 1818.
A. R. C. 42.

*An act reducing into one act the several acts concerning disputed Elections of members of the General Assembly.**

[Passed January 9, 1818.]

Person intending to contest an election required to give notice in writing within a limited time.

1. *BE it enacted by the General Assembly*, That any person intending to contest the election of any person returned to serve as a senator or delegate from any district, county, city or borough, shall, within twenty days after the assembling of the sheriffs to make a return in the former case, or within ten days after the day of election in the latter, give to the person returned to serve, notice thereof in writing; and moreover shall deliver to him, at the same time, a list of those persons to

Also to deliver lists of votes objected to; or to specify any other objection.

* To take effect Jan. 1st, 1820, *vid. ante. c. 45.*

whose votes he hath objection, distinguishing his several objections against the names of the voters; and, where he hath any other objection to the legality of the election or the eligibility of the person returned, as aforesaid, he shall, in like manner, give notice thereof, distinguishing his particular objections; and the person returned as aforesaid shall, within twenty days after receiving such notice, deliver the like lists on his part.(a)

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Persons returned to deliver like lists on his part.

2. WHERE the contest is for the office of a senator, any one or more of the courts in the senatorial district, or where it is for the office of a delegate, the court of the county, city or borough, shall, upon the application of either party, appoint five commissioners to take the depositions of such witnesses as shall be produced to them; any three of which said commissioners shall be sufficient for the purpose. But no commissioner shall act without having first taken, before some justice, an oath to act impartially. Reasonable notice in writing, of the time and place of taking such deposition, shall be given by either party to the other.(a)

Commissioners to take depositions, how to be appointed.

To be sworn to act impartially.

Notice of time and place, to be given.

3. WHENSOEVER the election of any person, returned to serve as a senator or delegate, is intended to be contested, the petitioner and the returned member shall respectively begin to take their depositions, within two months after such election, and shall finish taking the same, at least thirty days preceding the commencement of the ensuing session of Assembly. And where such contest shall arise in consequence of any return made on any writ or writs issued by the speaker of either house of the General Assembly, to supply any vacancy which may have happened, the party contesting shall apply to the clerk of the county, city, town or borough in the one case, and to the clerks of the several counties, cities, towns or boroughs composing the district in the other case, who hereby are directed to appoint five commissioners, and to issue commissions, as their courts respectively might issue in other cases of contested elections. And the parties respectively shall give notice and begin to take their depositions within five days, and finish within fifteen days after the close of such election; unless further time be allowed them, or either of them, by a resolution of that house before which such contest shall exist, in which case they shall be governed by and proceed according to such resolution; or unless the Legislature shall adjourn before the time aforesaid shall have expired, or before they shall have made any resolution as to such contest, in which cases such depositions shall be taken in the manner first above mentioned. If either party shall fail to begin and finish taking his depositions, within the times above prescribed and limited, he shall be deprived of all benefit of such depositions when taken.(b)

Taking of depositions when to commence, and be completed.

Provision where such contest shall arise on a writ to supply a vacancy.

4. NOTICE in any of the cases before mentioned, as well as the lists, left with his wife or any other free person over the age of twenty-one years, belonging to his family, other than a negro or mulatto, or in case of their absence, then at the dwelling house, shall be deemed sufficient. The depositions shall be certified by the commissioners taking the same, sealed up

What notice shall be good.

Depositions to be certified and sent to clerk of house.

(a) 1788, c. 52.

(b) 1798, c. 10.

A. D. 1817.
A. R. C. 42.

and sent by them to the clerk of that house of which the person was returned a member, without delay; and the depositions taken as aforesaid shall be by the clerk of the house, respectively, delivered to the speaker thereof, to be committed with the petition of the party complaining, and shall be received and read as evidence upon the hearing thereof; subject however to the exceptions of the opposite party.(c)

Subpœnas for witnesses, how to be obtained.
Their privilege.

5. SUBPŒNAS for witnesses shall be issued by the clerks of the county or corporation courts upon the application of either party: and the witnesses shall be entitled to the same allowance, be privileged from arrests, and be subject to the like penalties, as witnesses attending the county courts.(c)

Repealing clause.

6. So much of every act and acts, as comes within the purview of this act, shall be, and the same is hereby repealed.

Commencement.

7. THIS act shall commence and be in force from and after the first day of January next.

C. 54.

A. D. 1817.
A. R. C. 41.

*An act for arranging the Counties into Districts for the election of Senators, and for equalizing the Land Tax.**

[Passed February 18, 1817.]

Arrangement of counties into districts.

1. BE it enacted by the General Assembly, That, for the election of Senators to the General Assembly, the Commonwealth shall be laid off into districts, as followeth, to wit: the counties of *Amelia, Nottoway, Cumberland, Powhatan* and *Chesterfield*, and the town of *Petersburg*, shall be one district; the counties of *Brunswick, Dinwiddie, Lunenburg* and *Mecklenburg*, shall compose another district; the city of *Williamsburg*, with the counties of *James City, Charles City, New Kent, Elizabeth City, York, Warwick* and *Henrico*, and the city of *Richmond*, one other district; the counties of *Shenandoah* and *Rockingham*, one other district; the counties of *Augusta, Rockbridge* and *Pendleton*, one other district; the counties of *Monroe, Greenbrier, Bath* and *Botetourt*, one other district; which said districts shall form the first class: *Provided, however*, That in the ensuing election to supply the vacancy occasioned by the expiration of the term for which the Senators of the first class have been elected to serve, the county of *Greensville* shall be considered and taken as part of the district composed of *Brunswick, Dinwiddie, Lunenburg* and *Mecklenburg*, and shall vote for a senator to be elected from that district. The counties of *Sussex, Surry, Southampton, Isle of Wight, Prince George* and *Greensville*, shall be one district; the counties of *Charlotte, Halifax* and *Prince*

(c) 1788, c. 52.

Former laws on this subject; Ord. Conv. 1776, c. 6, act 1792, edi. 1794, 1803 and 1814, c. 61—1782, c. 19, edi. 1783, p. 177, edi. 1803 and 1814, app. c. 1

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Edward, one other district; the counties of *Spottsylvania*, *Louisa*, *Orange* and *Madison*, one other district; the counties of *Loudoun* and *Fairfax*, one other district; the counties of *Frederick* and *Jefferson*, one other district; and the counties of *Hampshire*, *Berkeley* and *Hardy*, one other district; which said districts shall form the second class; *Provided, however*, That, in the ensuing election to supply the vacancy occasioned by the expiration of the term for which the senators of the second class shall have been elected to serve, the county of *Culpeper* shall be considered and taken as part of the district composed of *Spottsylvania*, *Louisa*, *Orange* and *Madison*, and shall vote for a senator, then to be chosen from that district; and, in like manner, the county of *Fauquier* shall be considered and taken as part of the district composed of *Loudoun* and *Fairfax*, and shall vote for a senator then to be chosen from that district. The counties of *Washington*, *Lee*, *Scott*, *Russel* and *Tazewell*, shall be one district; the counties of *King William*, *King & Queen*, *Essex*, *Caroline* and *Hanover*, one other district; the counties of *Wythe*, *Montgomery*, *Grayson* and *Giles*, one other district; the counties of *Kanawha*, *Mason*, *Cabell*, *Randolph*, *Harrison*, *Lewis* and *Wood*, one other district; the counties of *Ohio*, *Tyler*, *Brooke* and *Monongalia*, one other district; and the counties of *Fauquier* and *Culpeper*, one other district; which said districts shall form the third class. The borough of *Norfolk*, together with the counties of *Norfolk*, *Princess Anne* and *Nansemond*, shall be one district; the counties of *Campbell*, *Buckingham* and *Bedford*, one other district; the counties of *Franklin*, *Patrick*, *Henry* and *Pittsylvania*, one other district; the counties of *Albemarle*, *Amherst*, *Nelson*, *Fluvanna* and *Goochland*, one other district; the counties of *King George*, *Westmoreland*, *Northumberland*, *Richmond*, *Lancaster*, *Stafford* and *Prince William*, one other district; and the counties of *Mathews*, *Middlesex*, *Accomack*, *Northampton* and *Gloucester*, one other district; which said districts shall form the fourth class: *Provided, however*, That, in the ensuing election to supply the vacancy occasioned by the expiration of the term for which the senators of the fourth class have been elected to serve, the counties of *Elizabeth City*, *Warwick* and *York*, shall be considered and taken as part of the district composed of *Norfolk* borough, and the counties of *Norfolk*, *Princess Anne* and *Nansemond*, and shall vote for a senator then to be chosen from that district; and the county of *Louisa* shall, in like manner, be considered and taken as part of the district composed of the counties of *Albemarle*, *Amherst*, *Nelson*, *Fluvanna* and *Goochland*, and shall vote for a senator then to be elected from that district.*

2. *Be it further enacted*, That whensoever the term for which any class of senators, now elected, shall have expired, or the whole class become vacant by the death or disqualification of all the senators composing such class, elections shall be held in the corresponding class, according to the arrangement of dis-

At what times elections of senators shall take place.

* The new county of *Nicholas* is in the same district with *Greenbrier*, and the new county of *Preston* in the same district with *Monongalia*.

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tricts formed by this act ; but if any partial vacancy shall occur, by the death or disqualification of one or more senators, before the time shall have expired for which the whole class was elected to serve, such vacancy shall be filled by an election to be held in such district or districts, as such senator or senators respectively represented before such vacancy occurred.

For the purpose of reforming the taxes upon lands and lots within the Commonwealth ;

Board of principal assessors to be appointed by Executive.

3. *Be it further enacted*, That there shall be appointed by the Executive a board of principal assessors, consisting of four members, for each of the four following districts, that is to say : one board for the district composed of the counties of *Princess Anne, Norfolk, Nansemond, Isle of Wight, Surry, Sussex, Southampton, Greenville, Prince George, Brunswick, Dinwiddie, Chesterfield, Henrico, Hanover, New Kent, Charles City, James City, York, Warwick, Elizabeth City, Gloucester, Mathews, Middlesex, Essex, King & Queen, King William, Caroline, Spottsylvania, Stafford, King George, Westmoreland, Lancaster, Richmond, Northumberland, Accomack and Northampton* ; one for the district composed of all the other counties east of the Blue Ridge ; one for the district composed of the counties between the *Blue Ridge* and *Alleghany*, embracing the counties of *Pendleton and Bath*, which lie on each side of the *Alleghany* ; and one for the district composed of all the other counties of the Commonwealth, including *Montgomery and Monroe*, which also lie on both sides of the *Alleghany*. Each board shall be composed of one member from each of the districts aforesaid, and a majority of each shall be necessary to form a quorum for the transaction of business.

Assistant assessors to be appointed in each county.

4. It shall also be the duty of the Executive to appoint one or more assistant assessors in every county of the Commonwealth, not exceeding one for each commissioner's district within the county ; and the better to enable the Executive to make fit appointments to the office of assistant assessor, each county court, at the March or April term next, shall recommend to the Executive not less than two discreet and reputable men, in their opinions suitable for the office aforesaid ; the Executive, however, shall not be confined in their appointments to the persons so recommended by the court.

Duties of such assistant assessors.

5. EACH assistant assessor, so appointed, as soon as the commissioner's land book for the present year is corrected and completed according to law, shall copy therefrom, in one table, all that is contained in relation to the several tracts of land, in the columns under the following heads, viz. : *Name of owner ; Residence ; Number of acres of land ; Description of the land ; Distance and bearing from the court-house ; Rate of land per acre* ; and in another table, he shall copy all that is contained in relation to the several town lots, in the columns under the following heads, viz. : *Name of owner ; Residence ; Number of town lots ; Name of the town*.—To each of these tables, the said assistant shall add another column, headed as follows, viz. : in the table of tracts of land, the column shall be headed, *Present value of land per acre*, and in the table of town lots, it shall be headed, *Present value of lots*.

How value of land is to be assessed.

6. WITH the tables so made out, it shall be the duty of each

assistant assessor forthwith to proceed, within the limit assigned to him by his appointment, to ascertain the value *per acre* of each tract of land, and the entire value of each town lot within his precinct, and to set down such value, in the column provided as aforesaid, opposite to the tract of land or lot to which it pertains. Such value shall be assessed as follows: the market price of the land or lot, upon the terms of sale usual in that part of the country in which it may lie, shall be first ascertained, and the price so ascertained shall be reduced to its cash value, by making a just and proper discount therefrom.

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7. To aid the assistant assessors in performing their duties, the Executive shall cause to be procured, and furnished to them, copies of the assessment of the lands and lots in their counties respectively, which were lately made under the law of the United States. The said assistants shall have power, and it shall be their duty in all cases when it is practicable, to call upon the owner of any land or lot, for such information as he may be able to give in relation to it. If the assistant shall think proper, he may require such information on oath; and if the person, of whom it is so required, shall fail or refuse to give it, without lawful cause, he shall forfeit and pay to the Commonwealth, for the use of the literary fund, a fine of one hundred dollars. It shall moreover be the duty of each assistant assessor to obtain such other information of the value of the land or lot, as he conveniently can; and in all cases in which his information is not otherwise satisfactory, he shall himself view it, if it can be found by him. In assessing the value of any land or lot, all buildings and other improvements thereon shall be taken into the estimate; and it shall be the duty of the assistant assessor to note, in a separate column to be added to each table for that purpose, the sum which he has added to the value of the land or lot, on account of the buildings thereupon.

Copies of assessment heretofore made under law of United States, to be furnished assistant assessors.

Owners of land may be called upon for information.

8. WHEN the assistant assessor shall have finished his assessment within his precinct, he shall verify the same by an oath or affirmation, to be certified at the foot of each of the tables aforesaid, and to be in substance as followeth:

Oath or affirmation to be taken by assistant assessors.

I, A. B. assistant assessor of the lands and lots in the county of _____, do solemnly swear (or affirm) that I have impartially, and to the best of my judgment and ability, discharged my duty under the act of the General Assembly, entitled, "An Act for arranging the counties into districts for the election of senators, and for equalizing the land tax;" and that, according to the best information that I have been able to procure, the value assessed upon each tract of land (or lot) as above, I verily believe to be correct. So help me God.

A FAIR copy of each table, thus verified, shall, without delay, be fixed up at the door of the court-house of the county, and shall be kept there by the assistant assessor on the first day at least of two successive courts, with a note written thereon in some conspicuous place, to the following effect:

Notice to be given to persons interested.

All persons interested in the assessment are hereby informed, that appeals therefrom will be heard and decided by the board of principal assessors, who will sit in this county; that notice of any appeal intended, should be given to me; and that any

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evidence, which any one may desire to lay before that board, must be taken in the form of affidavits, and delivered to me to be exhibited to the board.

A. B. Assistant Assessor.

Boards of principal assessors when to be convened.

9. *Be it further enacted*, That, so soon as the said assistant assessors shall have finished their assessments respectively, they shall communicate the fact to the Executive of this Commonwealth; and the Executive shall thereupon issue a proclamation, requiring the several boards of principal assessors to assemble together, at some convenient time to be designated in the proclamation, at some proper place within their districts respectively, to be also in like manner designated, and to proceed in the execution of their duties. The said boards of principal assessors shall assemble accordingly at the times and places so designated, or as soon thereafter as may be practicable, and, having first taken an oath or affirmation as herein prescribed, shall enter upon the duties of their office. Such oath or affirmation shall be to the following effect: *I, A. B. do solemnly swear or affirm, that I will faithfully and impartially, to the best of my skill and judgment, discharge the duties of my office of principal assessor, under the act of the General Assembly, entitled "An act for arranging the counties into districts for the election of senators, and for equalizing the land tax;" so help me God.*

Oath or affirmation to be taken by each member.

It shall be taken before some justice of the peace, and duly certified by him; and the production thereof to the auditor of public accounts, so certified, shall be necessary to entitle such principal assessor to a warrant for the pay allowed him by this act.

Their duty.

10. THE board of principal assessors so assembled, and qualified, shall attend successively at the court-house of every county in the district, and revise, and correct, modify or affirm the assessments made by the assistant assessors, in such manner as shall seem to them right.

To be attended by the assistants.

Returns to be made, and information to be given by assistant to principal assessors.

11. THE board of principal assessors shall be attended in each county by the assistant or assistants in that county. The said assistants shall return to the board their original tables of assessment, verified as above required, together with the United States' assessments with which they shall have been furnished. They shall give the board all the information in their power which shall be required of them, whether on oath or otherwise. They shall report faithfully all appeals of which they have received notice, and lay before the board all affidavits and other evidences entrusted to their care in relation to such appeals; and if required to do so, they shall act as clerks to the board, whilst in session in their counties respectively. The board of principal assessors may call upon the commissioner or commissioners of the revenue in the respective counties, if they think fit, to give them such information as the said commissioner or commissioners may possess; and it shall be the duty of any commissioner, so called on, to attend, and give information accordingly.

Duty of commissioners of revenue.

Reports to be made to Executive.

12. *Be it further enacted*, That, as soon as the said board of principal assessors shall have finished their duties in their districts respectively, they shall communicate the fact to the

Executive ; and when the Executive shall be informed that all of them have so finished their duties in their districts, they shall issue a proclamation, requiring all the said principal assessors to assemble in the city of Richmond, on a convenient day, to be designated in the proclamation. The said principal assessors shall assemble accordingly, and form a general board, for the purpose of revising and correcting what each particular board shall have done. The general board shall be constituted by not less than a majority of the whole number of principal assessors, of whom two at least shall be from each district. The general board so organized shall compare the various assessments made by each particular board ; the members shall communicate freely and fully to each other the principles on which each particular board has acted, and the manner in which the value of the lands and lots has been ascertained, in each county ; and the said general board shall have full power, and it shall be their duty, to correct all errors, which they may detect in any of the assessments ; and so to reform them all as to make them correspond with each other in the principles on which they shall be made.

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Principal assessors to assemble in Richmond, and form a general board.

Duties of such board.

13. *Be it further enacted*, That, when the assessments aforesaid shall thus have been revised and reformed by the general board of assessors, a fair copy of those made for each county shall be delivered to the auditor, certified and signed as followeth, to wit :

Fair copies of assessments to be delivered to auditor.

We, the principal assessors of the lands and lots in Virginia, assembled in general meeting, in the city of Richmond, do hereby certify that we have revised the above table of lands (or lots) and the above assessment thereof ; that we have corrected all errors which we discovered therein, and that we believe, it is now made in conformity with the provisions of the act of the General Assembly, entitled, " An act for arranging the counties into districts, for the election of senators, and for equalizing the land tax."—Given under our hands this day of .

It shall be the duty of the auditor forthwith to cause a fair copy of the tables of assessment, so returned for each county, to be forwarded to the commissioners of the revenue in the counties respectively. For the purpose of making the copies to be returned to the auditor as aforesaid, and those to be forwarded by him to the commissioners, the Executive may authorise the employment of as many clerks as may be necessary ; to be paid such reasonable compensation as they may deem proper.

His duty.

Clerks to be employed by Executive.

14. *AND be it further enacted*, That the aforesaid principal assessors shall each receive, as a compensation for his services, the sum of five dollars a day for every day that he shall be actually engaged in the discharge of his duties, or in travelling to or from the places at which his duty requires him. His account, stating the number of days for which he is entitled to pay, made out on oath, and certified to be correct by the particular board of which he is a member, shall entitle him to a warrant on the treasury for the amount due thereupon, to be paid out of any money not otherwise appropriated. The assistant assessors shall receive, as a compensation for their services, each, the sum of two dollars a day, for every day he shall have

Compensation allowed to principal assessors ;

To assistants ;

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To commissioners
of revenue.

Duties of commis-
sioners after as-
sessment comple-
ted.

How errors com-
mitted by commis-
sioners may be
rectified.

Annual assess-
ments to be made
of new buildings.

Provision where
any building so as-
sessed shall be
destroyed.

been actually engaged in his duties, including the time of travelling as aforesaid. His account, stating also the number of days for which he is entitled to pay, shall be verified by his own oath, and, being certified to be correct, in the opinion of the board of assessors for the district in which he shall have acted, shall entitle him to a warrant for the amount due him, to be paid in like manner. The commissioners of the revenue shall receive, as a compensation for such services as they shall render to the board at their request, a compensation of one dollar per day, to be certified by the board, and paid in like manner.

15. *Be it further enacted*, That, after the assessment for the whole state shall have been completed as aforesaid, and copies of the tables of assessment for the several counties shall have been furnished to the respective commissioners, it shall be the duty of those commissioners to correct their land-books accordingly; and whenever thereafter any part of a tract of land or lot shall be transferred from one person to another, upon the commissioners' books, it shall be the duty of the commissioner to ascertain the relative value of the part so transferred, when compared with the whole tract; to charge the part so transferred at such relative value; to deduct the value, so charged to the transferee, from the amount of value of the whole tract, or lot, and charge the balance upon the residue of the tract or lot. If any person, interested in such apportionment, shall be dissatisfied therewith, he may apply to the court of the county or corporation in which the land or lot lies, and, upon reasonable notice given to the other party interested therein, or if the other party cannot be found in the county, then, upon reasonable notice given to the commissioner, the court shall have full power to correct any error that may have been committed, and shall thereupon order the commissioners' book to be reformed accordingly.

16. It shall moreover be the duty of the commissioners annually to assess the value of any new building which may have been erected on any tract of land or lot, and which shall not have been heretofore assessed, and to add the amount thereof, to the value at which such land or lot was before charged: *Provided, however*, That they shall not assess any such new building, which is under the value of one hundred dollars. In making the assessment of new buildings as aforesaid, they shall be valued, as nearly as may be, at the same rate at which other buildings in the same neighborhood shall have been valued by the assessors under this act. Neither the commissioners, however, nor the assessors, shall value any building until the same shall have been so far finished as to be fit for use; and they shall then assess it, whether entirely finished or not, at the same value as if it were finished on the plan on which it is designed. Whenever any building assessed as aforesaid shall be destroyed by any cause whatever, it shall be the duty of the commissioner, at the next periodical correction of his land-book, so to correct the same as to deduct from the value of buildings charged to the owner thereof, as nearly as may be, the value at which the buildings so destroyed shall have been assessed.

17. *Be it further enacted*, That the first and second sections of the act, entitled, *An act for equalizing the land tax*, which passed at a General Assembly, begun and held on the twenty-first day of October, in the year one thousand seven hundred and eighty-two, shall be and the same are hereby repealed from and after the thirty-first day of December next.

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1st and 2d sections of the equalizing act of 1782 repealed.

18. *Be it further enacted*, That, if any principal or assistant assessor shall refuse or fail to perform any of the duties of his office, he shall forfeit and pay to the Commonwealth, for the benefit of the literary fund, a fine not less than one hundred nor more than five hundred dollars; and if any person required by this law to verify any fact upon oath, shall falsely, wilfully and corruptly, depose to such fact, he shall be deemed guilty of perjury, and be punished in the same manner as if he had falsely, wilfully and corruptly deposed to any fact as a witness in a court of justice.

Penalties on assessors failing to perform their duty.

19. *Be it further enacted*, That the Executive shall, from time to time, as occasion may require, supply all vacancies which may happen in the office of any principal or assistant assessor.

Vacancies to be supplied by the Executive.

20. ALL ordinances of Convention, and acts of Assembly coming within the purview of this act, shall be and the same are hereby repealed.

General repealing clause.

21. THIS act shall commence and be in force from and after the passage thereof.

Commencement.

C. 55.

An act to amend and explain an act, entitled, 'an act for arranging the counties into districts for the election of Senators, and for equalizing the land tax,' passed the eighteenth day of February, one thousand eight hundred and seventeen.

A. D. 1818.

A. R. C. 42.

[Passed February 17, 1818.]

WHEREAS it has been represented to the present General Assembly, that many of the assistant assessors appointed by the Executive of this Commonwealth, in pursuance of the fourth section of the act, entitled, *An act for arranging the counties into districts for the election of senators, and for equalizing the land tax*, passed the eighteenth day of February one thousand eight hundred and seventeen, have as yet failed to perform the duties of their office: and whereas, by the above recited act, there is no time limited, within which the said assistant assessors shall complete their assessments, and communicate the fact to the Executive; and doubts are entertained, whether the assistant assessors in some counties will, in a reasonable time, if ever, fully discharge the duties of their office: For remedy whereof,

1. *Be it enacted by the General Assembly*, That if any of the said assistant assessors shall fail to complete their assessments,

Provision in case assistant assessor shall fail to com-

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A. R. C. 42.

plete his assessment, &c. until after the 1st of June, 1818.
Forfeiture of office and penalty incurred.
Vacancy to be filled by Executive appointment.
Penalty, on person so appointed, for neglect of duty.

or to communicate the fact, that they have completed the same, to the Executive, in the manner prescribed by the above recited act, until after the first day of June next, every such failure shall constitute an absolute forfeiture of the office of such assistant assessor, who shall thenceforth be liable to the penalty prescribed by the *eighteenth section* of the said act, for failure to perform the duties of his office; and the Executive shall forthwith appoint an assistant assessor to fill every such vacancy; and if any assistant assessor, who shall be appointed in pursuance of this act, shall not perform all the duties of his office within four months from the time of his appointment, and notification thereof, he shall forfeit and pay to the Commonwealth, for the benefit of the literary fund, a fine not less than one hundred dollars, and not more than five hundred dollars.

1st and 2d sections of the act of October 1782, revived, and continued in force until the 31st of December, 1818.

2. *And be it further enacted, That the first and second sections of the act, entitled, An act for equalizing the land tax, passed on the twenty-first day of October, in the year one thousand seven hundred and eighty-two, which were repealed by the seventeenth section of the act, entitled, An act for arranging the counties into districts for the election of senators, and for equalizing the land tax, passed on the eighteenth day of February, one thousand eight hundred and seventeen, shall be, and the same are hereby revived, and shall continue in full force until the thirty-first day of December next, and no longer.*

Commencement.

3. *THIS act shall commence and be in force from and after the passage thereof.*

C. 56.

A. D. 1819.
A. R. C. 43.

An act farther to amend and explain the act, entitled, "an act for arranging the counties into districts for the election of senators, and for equalizing the land tax."

[Passed March 1, 1819.]

Preamble.

WHEREAS much delay has already taken place in carrying into execution that part of the act passed the eighteenth day of February, one thousand eight hundred and seventeen, and entitled, *An act for arranging the counties into districts for the election of senators, and for equalizing the land tax*, which provides for a new assessment of the lands within the Commonwealth; and whereas it is just and expedient that that measure should no longer be delayed, it appearing to the present General Assembly that the duties of the assistant assessors have, except in a few counties, been performed:

Executive required to cause boards of principal assessors to be speedily assembled.

1. *Be it therefore enacted by the General Assembly, That the Executive, without waiting until all the assistant assessors shall have finished their assessments, shall forthwith take the proper steps for the speedy assembling of the several boards of*

principal assessors; and that the said boards, or so many members of each as shall constitute a majority, shall, as soon as practicable, enter upon the performance of their duties in the several counties where the assessment has been finished and completed, agreeably to the provisions of the above recited act.

A. D. 1819.

A. R. C. 43.

2. *And be it further enacted*, That if any assistant assessor or assessors, shall have failed from any cause to finish and complete their assessment or assessments, or to communicate the fact to the Executive, before the time designated in the act, entitled, *An act to amend and explain an act for arranging the counties into districts for the election of senators, and for equalizing the land tax*, passed the seventeenth day of February, one thousand eight hundred and eighteen, the board of principal assessors for any county may nevertheless receive such assessment or assessments, if it shall appear to them that the law has been substantially complied with, and that such assessment or assessments have been properly made out and completed: and such assistant assessor or assessors, who shall have failed as aforesaid, may by the Executive be exonerated from all the penalties incurred under the act or acts herein recited. And where it shall have happened, in any county or part of a county, that no assessment or assessments have as yet been made out, it shall be the duty of the Executive, with as little delay as possible, to appoint, either from the county in which the assessment or assessments are to be made, or from any other, an assistant assessor or assessors, who shall immediately enter upon the performance of the duties of the office, and make out, from the commissioner's books of the last year, an assessment or assessments of the lands in the county or district for which the appointment may be made; and, in consideration of a prompt and faithful performance of the duty in time to lay the assessment or assessments before the board of principal assessors when it shall attend, the Executive may make such assistant assessor or assessors an additional allowance not exceeding two dollars per day; and in the event that in any county or part of a county an assessment or assessments shall not be made out in time to be laid before the board of principal assessors, when it shall attend the said county, and in all other cases, where, from the circumstance of an assessment or assessments having been improperly made out, or from other causes, the assessment or assessments for any county or part of a county shall not have been acted on by the board of principal assessors for the same, such assessment or assessments may be laid before the general board of principal assessors when it meets in Richmond, to be in the same manner revised, corrected, modified, or affirmed, as might have been done by the board of principal assessors for the county. And, in the case, that, for any county or part of a county, no assessment is made out and laid before the board of principal assessors for such county, or the general board of principal assessors, it shall be the duty of the auditor, under such instructions, as, from a consideration and comparison of the assessments of the adjoining counties, may be given by the general board of principal assessors, and which instructions the said board is hereby

Provision where assistant assessors have failed to complete their assessments, &c. in time, but law has been substantially complied with.

Where no assessment has been made in any county, or part of a county, Executive to appoint assistant assessors. Their duties.

And compensation.

General board of principal assessors empowered to supply deficiencies in assessments.

Similar powers vested in auditor.

A. D. 1819.

A. R. C. 43.

Absence of assistant assessors not to prevent board of principal assessors, in any county, from acting.

Duty of commissioners of the revenue to attend such boards.

Their compensation.

Tables of assessment to be forwarded to the auditor.

Additional allowance to assistant assessors.

Commissioners of revenue to make alterations in their land book, for transfers made since new tables of assessment were made out.

First and second sections of the equalizing law of 1782, revived; and to be in force until the 31st of December, 1819.

Farther compensation to assistant assessors who have faithfully performed the duties of his office.

required to give, to make out from the commissioner's books in his office an assessment for such county or part of a county.

3. **AND** whereas doubts may arise as to the necessity of the attendance of the assistant assessor or assessors on the board of principal assessors in each county, where, from the circumstances of death, inability or other causes, such attendance may be prevented: *Be it therefore enacted*, That the absence of the assistant assessor or assessors, shall not prevent in any county the board of principal assessors from proceeding in the execution of its duty, where the table or tables of assessment shall be laid before it. And it shall be the duty of the commissioner or commissioners of the revenue, in the several counties, to attend the said board at its meetings, and to continue their attendance as long as he or they may be required, for the purpose of giving such information as the said commissioner or commissioners may possess; and in the absence of the assistant assessor or assessors, the said commissioner or commissioners shall, if required to do so, act as clerk to the board, whilst in session; and, as a compensation for his or their services, receive the same allowance, and in the same manner as the assistant assessor or assessors.

4. *AND be it further enacted*, That it shall be the duty of the board of principal assessors, after having revised, corrected, modified or affirmed the original table or tables of assessment, which shall be laid before the said board by the assistant assessors for each county, to cause such corrected table or tables to be fairly transcribed by their clerk, and forwarded to the auditor of public accounts, by mail, retaining the original in their possession. And the board of principal assessors may, in addition to their other compensation, make such an allowance to the assistant assessors, for the copy of the table or tables of assessment by them made out, as to it may seem just.

5. *AND be it further enacted*, That it shall be the duty of the commissioner or commissioners of the revenue, in correcting their land book, in conformity to the new tables of assessment forwarded to them by the auditor, to make, agreeably to the fifteenth section of the act herein first recited, alterations for all transfers which have been made since the table or tables of assessment have been made out by the assistant assessor or assessors.

6. *AND be it further enacted*, That the first and second sections of the act, entitled, "an act for equalizing the land tax," passed on the twenty-first day of October, in the year one thousand seven hundred and eighty-two, and which were repealed by the seventeenth section of the act, entitled "an act for arranging the counties into districts, for the election of senators, and for equalizing the land tax," passed on the eighteenth day of February, one thousand eight hundred and seventeen, shall be and the same are hereby revived, and shall continue in force until the thirty-first day of December next, and no longer.

7. *AND be it further enacted*, That the board of principal assessors for each county, shall be and they are hereby authorised to make to the assistant assessor or assessors, when in their opinion such assistant assessor or assessors shall have

faithfully performed the duties of the office, in addition to the compensation allowed by the fourteenth section of the act herein first recited, an allowance of six per cent. upon the amount of their claim or claims, from the time they communicated the fact to the Executive that they had performed the duties required of them by the said first recited act.

A. D. 1819.
A. R. C. 43.

8. THIS act shall commence and be in force from and after Commencement the passage thereof.

C. 57.

*An act establishing a separate election on the south side of the River Roanoke in the county of Mecklenburg.**

A. D. 1812.
A. R. C. 36.

[Passed January 22, 1812.]

WHEREAS many inconveniences and dangers, amounting Preamble.
to an almost total deprivation of the invaluable right of suffrage, to the people residing on the south side of Roanoke river in the county of Mecklenburg, have been long experienced by the freeholders and electors, in crossing the said river; therefore, for the purpose of remedying the said inconveniences and dangers, and of securing to them a free exercise of this right:

1. *BE it enacted by the General Assembly*, That, on the third Monday in April, in each year, an election shall be held at the house that Michael Tarwater purchased of Eusebius Stone, on the south side of the said river, to choose representatives to represent that county in the General Assembly, or in Congress, or electors to choose a president and vice-president of the United States, as heretofore done at the courthouse of the said county. Separate election when and where to be held.

2. *BE it further enacted*, That it shall be the duty of the said county court, in the month of February or March preceding each election, to appoint five intelligent freeholders, resident on the south side of the said river, in the county aforesaid, who, or any two of whom may serve; and whose duty it shall be carefully and diligently to attend to the regular conducting of the said elections for the purposes aforementioned, and shall have and be vested with every right the candidates themselves would have, were they present; except that it shall be their duty to poll no vote, nor to suffer it to be written on the back of the poll, unless the voter resides in the county, and on the south side of the said river. County court to appoint five freeholders to conduct such election; To have the rights which candidates, if present, would have. Who shall vote at such election.

3. *BE it further enacted*, That the high sheriff shall annually appoint one of his deputies to attend the said election, who shall perform all the duties heretofore required of sheriffs conducting elections, and shall, immediately, or as soon as possibly he can after the closing such election, report his poll to, Deputy sheriff to attend. His duties.

A. D. 1812.
A. R. C. 36.

Proclamation to
be made.

Power of superin-
tendants in case
such deputy shall
fail to attend.

Course to be taken
against persons
discovered to have
voted twice.

Inhabitants on
south side of river
may vote at court-
house.

Commencement.

and compare it with the sheriff managing the election at the court-house, who shall immediately notify the persons duly elected of their election, and, on the next court day, shall make proclamation at the door of the said court-house, and shall proceed to do all other duties heretofore required by law of sheriffs holding elections at the respective court-houses of their counties.

4. *Be it further enacted*, That, in case such deputy sheriff shall fail to attend, the said superintendants or any two of them, then present, shall have power to appoint poll-keepers, and a person to cry the votes and discharge all duties required to be done by such deputy.

5. *Be it further enacted*, That, in case any person or persons, on a comparison of the poll, shall be discovered to have voted twice, it shall be the duty of the persons comparing the poll to present him to the next grand jury, who shall enquire into his guilt or innocence, and report him to the court; and if convicted of the offence aforesaid, the court shall proceed to fine him in the sum heretofore imposed on persons voting twice in the same election.

6. *Be it further enacted*, That nothing in this act contained shall be construed to abridge the right of any inhabitant of the south side of the said river, being present, to vote in the election held at the court-house.

7. This act shall be in force from the passing thereof.

C. 58.

A. D. 1816.
A. R. C. 40.

*An act establishing a separate election on the East side of Cheat River in the county of Monongalia.**

[Passed January 25, 1816.]

Election to be held
at John Rhodeheiser's
on east side of
Cheat River.

1. *Be it enacted by the General Assembly*, That on the second Monday in April in each year, an election shall be held at the house of John Rhodeheiser on the east side of Cheat River in the county of Monongalia, to choose representatives to represent that county in the General Assembly, or in Congress, or electors to choose a President and Vice-President of the United States, as heretofore done at the court-house of the said county.

Persons to be ap-
pointed to conduct
such election.
Their duty and
powers.

2. *Be it further enacted*, That it shall be the duty of the said county court, in the month of February or March preceding each election, to appoint five intelligent freeholders, resident on the east side of the said river in the county aforesaid, who, or any two of whom, may serve, and whose duty it shall be carefully and diligently to attend to the regular conducting of the said elections for the purposes aforementioned;

and they shall have and be vested with every right the candidates themselves would have, were they present; except that it shall be their duty to poll no vote, nor to suffer it to be written on the back of the poll, unless the voter resides in the county, and on the east side of the said river.

A. D. 1816.
A. R. C. 40.

3. *Be it further enacted*, That the high sheriff shall annually appoint one of his deputies to attend the said election, who shall perform all the duties heretofore required of sheriff's conducting elections, and shall, immediately, or as soon as possibly he can after the closing such election, report his poll to, and compare it with, the sheriff managing the election at the court-house, who shall immediately notify the persons duly elected of their election, and on the next day, shall make proclamation at the door of the said court-house, and shall proceed to all other duties heretofore required by law of sheriff's holding elections at the respective court-houses of their counties.

High sheriff to appoint deputy to attend election.
His duty.

4. *Be it further enacted*, That, in case such deputy sheriff shall fail to attend, the said superintendants, or any two of them then present, shall have power to appoint poll-keepers, and a person to cry the votes, and discharge all duties required to be done by such deputy.

Provision in case of his non-attendance.

5. *Be it further enacted*, That, in case any person or persons, on a comparison of the poll, shall be discovered to have voted twice, it shall be the duty of the persons comparing the poll to present him to the next grand jury, who shall enquire into his guilt or innocence, and report him to the court; and, if convicted of the offence aforesaid, the court shall proceed to fine him in the sum heretofore imposed on persons voting twice in the same election.

Proceeding against persons voting twice.

6. *Be it further enacted*, That nothing in this act contained shall be construed to abridge the right of any inhabitant of the east side of the said river, being present, to vote in the election held at the court-house.

All freeholders may vote at court-house.

7. This act shall be in force from the passing thereof.

C. 59.

An act establishing a separate election in the county of Cabell.†

A. D. 1817.
A. R. C. 41.

[Passed January 31, 1817.]

1. *Be it enacted by the General Assembly*, That, on the fourth Tuesday in April in each year, an election shall be held at the house of William Dingess at the islands of Guyandotte river in the county of Cabell, to choose representatives to represent that county in General Assembly, or in Congress, or electors to choose a President or Vice-President of the United States, as heretofore done at the court-house of said county.

Separate election, when and where to be held.

And for what purposes.

† 1816, c. 88.

A. D. 1817.
A. R. C. 41.

Court to appoint
five freeholders to
attend such elec-
tion.

Their power, and
duty.

Duty of sheriff.

Provision in case
deputy fail to at-
tend.

Penalty and pro-
ceeding against
persons voting
twice in same elec-
tion.

All freeholders
present at court-
house may vote
there.

Commencement.

2. *BE it further enacted*, That it shall be the duty of the court of said county, in the month of February or March preceding each election, to appoint five intelligent freeholders residing on the Tug fork of Sandy river, on Guyandotte river above the mouth of Ugly creek, or on the right hand fork of Cole river in said county, who, or any two of whom may serve, and whose duty it shall be carefully and diligently to attend the regular conducting of the said election for the purposes aforementioned, and shall have and be vested with every right the candidates themselves would have, were they present; except that it shall be their duty to poll no vote, nor suffer it to be written on the back of the polls, unless the voter lives in the county, and above the mouth of the Tug fork of Sandy river, or on Guyandotte river above the mouth of Ugly creek, or on the right hand fork of Cole river above where the county line dividing Kanawha and Cabell strikes said river.

3. *BE it further enacted*, That the high sheriff shall annually appoint one of his deputies to attend the said election, who shall perform all the duties heretofore required of sheriffs conducting elections, and shall immediately notify the persons duly elected, of their election, and on the next court day shall make proclamation at the door of the said court-house, and shall proceed to do all other duties heretofore required by law of sheriffs holding elections at the respective court-houses of their counties.

4. *BE it further enacted*, In case such deputy sheriff shall fail to attend, the said superintendants, or any two of them then present, shall have and be vested with power to appoint poll keepers, and a person to cry the votes and discharge all the duties required to be done by such deputy.

5. *BE it further enacted*, That, in case any person or persons on a comparison of the poll, shall be found to have voted twice, it shall be the duty of the persons comparing the poll to present him to the next grand jury, who shall enquire into his guilt or innocence, and report him to the court; and if convicted of the offence aforesaid, the court shall proceed to fine him in the sum heretofore imposed on persons voting twice in the same election.

6. *BE it further enacted*, That nothing in this act contained shall be construed to abridge the right of any inhabitant residing on Cole river above where the county line strikes said river, on Guyandotte above the mouth of Ugly creek, or on the Tug fork of Sandy river, being present, to vote at the court-house of said county.

7. This act shall be in force from the passing thereof.

C. 60.

An act authorising a separate election in that part of Bath county lying west of the Alleghany, and for other purposes.†

A. D. 1817.
A. R. C. 41.

[Passed February 3, 1817.]

1. *BE it enacted by the General Assembly*, That, whenever ^{Separate election,} hereafter an election shall be held in the county of Bath, to ^{where and when} choose either a member or members of the House of Delegates, ^{to be held.} or a senator in the State Legislature, or a representative in Congress, or an elector or electors of President and Vice-President of the United States, or any other officer, in whose election all the lawful voters of the county are required to vote, there shall be at the same time a separate poll opened for such election, at the house now the residence of John Bradshaw, in that part of the said county lying west of the Alleghany mountain. It shall be the duty of the court for said county, at the ^{Superintendants of} February or March term annually, to ^{such election ap-} appoint five intelligent ^{pointed by county} freeholders resident in that part of said county lying west of the Alleghany mountain, who, or any two of whom may act, whose duty it shall be, faithfully and impartially, to superintend the said separate elections, and see that they are conducted in a regular, legal and orderly manner, and, to that effect, shall be vested with every right the candidates themselves would have, were they personally present: *Provided*, ^{Qualification of vo-} That no person shall be permitted to vote at the said polls, ^{ters at such elec-} unless he resides in that part of the county lying west of the Alleghany, and is a freeholder. If any of the persons appointed to superintend the polls as aforesaid, shall either die, remove, resign, or refuse to act, before the time of the election, it shall be lawful for the court at any time, and it shall be their duty, if practicable, before the said election, to supply the vacancies by another appointment. <sup>Vacancies of su-
perintendants,
how supplied.</sup>

2. *AND be it further enacted*, That the sheriff of the county ^{Duty of sheriff, as} shall annually appoint one of his deputies to attend said elec- ^{to such election.} tions, who shall carry with him the commissioner's land book, latest delivered to the sheriff, or a fair copy thereof, shall do and perform all the duties heretofore required of sheriffs conducting elections, and shall, within three days after closing said election, report his poll to and compare it with the sheriffs conducting the election at the court-house, who shall (in case of representatives for the General Assembly,) immediately notify the persons duly elected of such their election, and make proclamation thereof at the door of his court-house on his next court day, and proceed to do and discharge all the duties heretofore required of sheriffs holding elections at their respective court-houses: *Provided, however*, should the said ^{Proviso.} sheriff fail to appoint, or the said deputy neglect to attend, as herein required, the said superintendants, or any two of them, are hereby authorised and required to do and perform all the duties required to be done by such deputy; and the said sheriff

† 1816, c. 117.

A. D. 1817.
A. R. C. 41.

Penalty imposed
on sheriff, or his
deputy, for neglect
of duty.

Penalty and pro-
ceeding against
persons voting
twice.

Commencement.

for his default, and the said deputy for his neglect, shall forfeit and pay, to and for the benefit of the literary fund, the former the sum of one hundred dollars, and the latter the sum of eighty dollars, recoverable by motion in the superior court of law, or in the inferior court holden for said county, in the name and on behalf of the president and directors of the literary fund: *Provided*, ten days notice shall have been given of such motion.

3. *AND be it further enacted*, That the fines and penalties for voting twice at those elections shall be the same, and prosecuted and applied in the same manner, as are now in force for voting twice at elections held at the court-house.*

4. *THIS law shall commence and be in force from the passage thereof.*

C. 61.

A. D. 1818.
A. R. C. 42.

An act establishing a separate election on the south side of Dan River in the county of Halifax.†

[Passed February 2, 1818.]

Preamble.

WHEREAS many inconveniences and dangers, amounting to an almost total deprivation of the invaluable right of suffrage, to the people residing on the south side of Dan river in the county of Halifax, have been long experienced by the freeholders and electors in crossing the said river; therefore, for the purpose of remedying the said inconveniences and dangers, and of securing to them a free exercise of this right;

Separate election
to be held at house
of James Sneed on
south side of Dan
river.

1. *Be it enacted by the General Assembly*, That, on the fourth Monday in April in each year, an election shall be held at the house of James Sneed on the south side of Dan river in the county of Halifax, to choose representatives to represent that county in the General Assembly, or in Congress, or electors to choose a President and Vice-President of the United States, as heretofore done at the court-house of the said county.

Five freeholders
to be appointed to
conduct it; any
three of whom
may serve.

2. *Be it further enacted*, That it shall be the duty of the said county court in the month of February or March preceding such election, to appoint five discreet and competent freeholders, resident on the south side of the said river in the county aforesaid, who, or any three of whom may serve; and whose duty it shall be carefully and diligently to attend to the regular conducting of the said elections for the purpose aforementioned, and shall have and be vested with every right the candidates themselves would have, were they present.

Their duty and
power.

* Here was inserted a section establishing a separate militia battalion on the west of the Alleghany in this county; which being afterwards provided for by the general militia law, (*ante*, c. 35, § 2,) and not belonging to the same subject, is omitted here.

† 1817, c. 20.

3. *Be it further enacted*, That the high sheriff shall annually appoint one of his deputies to attend the said election, who shall perform all the duties heretofore required of sheriffs conducting elections, and shall, immediately, or as soon as possibly he can after the closing such election, report his poll to, and compare it with the sheriff managing the election at the court-house, who shall immediately notify the persons duly elected of their election, and on the next court day shall make proclamation at the door of the said court-house, and shall proceed to do all other duties required by law of sheriffs holding elections at the respective court-houses of their counties.

A. D. 1818.
A. R. C. 42.

High sheriff to appoint one of his deputies to attend such election.
His duty.

4. *Be it further enacted*, That, in case such deputy sheriff shall fail to attend and perform the said duties, the said superintendants, or any three of them then present, shall have power to appoint poll-keepers, and a person to cry the votes, and discharge all duties required to be done by such deputy.

Provision in case he shall fail to attend and do his duty.

5. *Be it further enacted*, That, in case any person or persons, on a comparison of the polls, shall be discovered to have voted twice, it shall be the duty of the persons comparing the polls to present him or them to the next grand jury, who shall enquire into his or their guilt or innocence, and report to court; and if convicted of the offence aforesaid, the court shall proceed to fine him or them in the sum imposed on persons voting twice in the same election.

Mode of proceeding against persons discovered to have voted twice.

6. *Be it further enacted*, That nothing in this act contained shall be construed to abridge the right of any person, (qualified to vote according to law,) being present, to vote at either place of election within the said county.

Persons qualified may vote at either place of election.

7. This act shall be in force from the passing thereof.

Commencement.

C. 62.

An act establishing a separate election in the county of Shenandoah.†

A. D. 1818.
A. R. C. 42.

[Passed February 23, 1818.]

1. *Be it enacted by the General Assembly*, That, whenever hereafter an election shall be holden in the county of Shenandoah, to choose either a member or members of the House of Delegates, or a senator in the State Legislature, or a representative in Congress, there shall be at the same time a separate poll opened for such election, at the house now the residence of Isaac Overall, in the town of Milford, in said county, or at such other house, in said town, as the court of the said county may, from time to time, designate.

Separate election to be held at Milford, in Shenandoah.

2. It shall be the duty of the said court, at the February or March term, annually, to appoint five intelligent freeholders,

Five freeholders to be appointed to conduct it, any two of whom may act.

† 1817, c. 21.

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A. D. 1818.
A. R. C. 42.
Their duty and
power.

Provision in case of
vacancy.

Who may vote at
such separate elec-
tion,

Sheriff to appoint
one of his deputies
to attend.

His duty.

Power of superin-
tendants, if he fail
to attend.

Penalty on sheriff
or deputy for neg-
lect.

Mode of proceed-
ing against persons
who vote twice.

Penalty on sheriff
for failing to report
such persons to
and jury.

resident within that part of the said county which lies between the Blue Ridge and the range of Massanutten and Fort Mountains, who, or any two or more of whom may act, whose duty it shall be faithfully and impartially to superintend the elections at such separate poll, and take care that they are conducted in a regular, legal and orderly manner; and for that purpose, they shall have, in addition to their other powers, all the rights, which the candidates would have, were they personally present. If any person so appointed to superintend the polls, shall either die, remove, resign or refuse to act, it shall be lawful for the court, at any time, and it shall be their duty, if practicable, before the election, to supply the vacancy, by another appointment.

3. No person shall be permitted to vote at the said separate poll, unless he reside in that part of the county, lying eastward of the said range of Massanutten and Fort Mountains, and be otherwise qualified according to law.

4. *BE it further enacted*, That the sheriff of the said county shall annually appoint one of his deputies to attend the elections in the said town of Milford, whose duty it shall be to carry with him the commissioner's land book, latest delivered to the sheriff, or a fair copy thereof, to do and perform all the duties at the polls, which are required of sheriffs conducting elections at the court-house, and within three days after closing the election to return his poll to the sheriff conducting the election at the court-house, compare it with the poll there taken, and strike from it the name of every person who may have voted in the same election at the court-house. The poll so returned, compared and corrected, (when correction may be necessary,) shall be considered as a part of the poll taken at the court-house, and shall be preserved, used and interpreted, in all respects in the same manner as if the votes had been given at the court-house, and entered on the poll actually taken there. In elections for members to the House of Delegates, when the sheriff shall ascertain, by the comparison aforesaid, who are elected, he shall, without delay, give notice to the persons elected of such their election.

5. If the sheriff shall fail to appoint one of his deputies to attend as aforesaid, or if the deputy so appointed shall fail to attend and discharge the duties hereby required of him, then the superintendants appointed as aforesaid shall perform all the duties required of such deputy. The sheriff so failing to appoint a deputy to attend, and the deputy so failing to attend, shall each, for his offence, forfeit and pay to the Commonwealth, for the benefit of the literary fund, a fine of one hundred dollars.

6. *BE it further enacted*, That, if, upon comparing the polls as aforesaid, it shall be discovered that any person hath voted twice, in the same election, either by voting twice at the court-house, or by voting twice at Milford, or by voting once at each place, it shall be the duty of the sheriffs so comparing the polls, to return such person to the next grand jury for the inferior or superior court of law for the county, in order that such person may be fined according to law. And if any sheriff or deputy shall fail in this duty, he shall forfeit and pay to the

Commonwealth, for the benefit of the literary fund, the sum of one hundred dollars.

7. This act shall be in force from the passage thereof.

A. D. 1818

A. R. C. 42.

Commencement.

C. 63.

*An act authorising separate elections, in the counties of Montgomery, Randolph and Washington.**

A. D. 1819.

A. R. C. 43.

[Passed, March 10, 1819.]

WHEREAS many inconveniences and dangers, amounting to Preamble.
an almost total deprivation of the invaluable right of suffrage to the people residing on the south side of the Pilot Mountain, and third battalion of militia in the county of *Montgomery*, have been long experienced by the freeholders and electors, in crossing the said mountain, and also Little river which is frequently so high at the time of holding elections, that it is with great difficulty and danger that those people are enabled to attend the elections; therefore, for the purpose of remedying the said inconveniences and dangers, and of securing to them a free exercise of the right of suffrage;

1. *Be it enacted by the General Assembly*, That, on the Thursday after the first Tuesday in April in each year, an election shall be held at the house of *Daniel Spangler*, on the south side of the Pilot Mountain, in the third battalion in the county of *Montgomery*, to choose representatives to represent that county in the General Assembly or in Congress, as heretofore at the court-house of the said county of *Montgomery*, or as may be prescribed by law. Separate election in Montgomery, when and where.

2. *Be it further enacted*, That it shall be the duty of the said county court, in the month of February or March preceding such election, to appoint five discreet and competent freeholders resident on the south side of the said Pilot Mountain in the county aforesaid, who, or any three of them may serve, and whose duty it shall be carefully and diligently to attend to the regular conducting of the said elections, for the purpose aforementioned, and shall have and be vested with every right the candidates themselves would have, were they present: County court to appoint superintendants.
Provided, however, That if the court aforesaid shall fail to appoint, at their February or March terms preceding such election, five discreet and competent freeholders as aforesaid, it shall then be the duty of the high sheriff to appoint them within the said bounds; and being so appointed, they, or any three of them, shall be as competent to perform the duties prescribed by this act, as if they had been appointed by the court. Such persons vested with rights of candidates. Provision in case of failure in that court to appoint.

3. *Be it further enacted*, That the high sheriff shall annually appoint one of his deputies to attend the said election, who shall perform all the duties heretofore required of sheriffs conducting elections, and shall immediately, or as soon as possibly he can after the closing such election, report his poll High sheriff annually to appoint deputy to attend. Poll to be compared with that taken by high-sheriff.

A. D. 1819.
A. R. C. 43.

Sheriff to give
notice of election.

to, and compare it with the sheriff's managing the election at the court-house, who shall immediately notify the persons duly elected, of their election, and on the next court-day shall make proclamation at the door of the said court-house, and shall proceed to do all other duties required by law of sheriffs holding elections at the respective court-houses of their counties.

Provision in case
the deputy fails to
attend.

4. *BE it further enacted*, That, in case such deputy sheriff shall fail to attend and perform the said duties, the said superintendants, or any three of them then present, shall have power to appoint poll-keepers and a person to cry the votes and discharge all duties required to be done by such deputy.

Penalty for voting
twice.

5. *BE it further enacted*, That, in case any person or persons on a comparison of the polls shall be discovered to have voted twice, it shall be the duty of the persons comparing the polls to present him or them to the next grand jury, who shall enquire into his or their guilt or innocence, and report to court; and if convicted of the offence aforesaid, the court shall proceed to fine him or them in the sum imposed on persons voting twice in the same election.

Votes may be
given at either
place of election.

6. *BE it further enacted*, That nothing in this act contained shall be construed to abridge the right of any person qualified to vote according to law, being present, to vote at either place of election within the said county.

Penalty on sheriff
failing to appoint,
and on deputy
failing to attend.

7. *BE it further enacted*, That, if the sheriff shall fail to appoint one of his deputies to attend as aforesaid, or if the deputy so appointed shall fail to attend and perform the duties required by this act, the sheriff so failing to appoint a deputy to attend, and the deputy so failing to attend, shall each for his offence forfeit and pay the sum of one hundred dollars to the Commonwealth for the benefit of the literary fund.

Separate election
in Randolph,
when and where;

8. *AND be it further enacted*, That, on the fourth Monday in April in each year, a separate election shall be held on the east side of Cheat river, at the house of *David Mennear*, in the county of *Randolph*, to choose representatives in the General Assembly and representatives to Congress, at such times as shall be appointed by law, as before done at the court-house of the said county; and the said elections shall be conducted in like manner and under the same rules and regulations that are prescribed by this act, so far as it relates to the county of *Montgomery*.

And how to be
conducted.

Separate election
in Washington,
when and where.

9. *AND be it further enacted*, That, on the third Monday in April in each year, a separate election shall be held at the house of *Joseph Meek*, in the county of *Washington* on the North side of the Middle fork of Holston river, to choose members of the General Assembly, and a representative to Congress, at such times as are or shall be appointed by law as before done at the court-house of said county; at which separate election so holden at the house aforesaid, the freeholders within the bounds of the seventieth regiment of the militia may vote agreeably to law; and the said elections shall be conducted in like manner and under the same rules and regulations as are prescribed by this act in relation to the county of *Montgomery*.

And how to be
conducted.

Commencement.

10. This act shall commence and be in force from and after the passing thereof.

C. 64.

*An act for reducing into one act, the several acts concerning the Court of Appeals, and Special Court of Appeals.**

A. D. 1818.

A. R. C. 42.

[Passed January 9, 1818.]

1. *Be it enacted by the General Assembly, That the Court of Appeals shall consist of five judges, to be chosen and commissioned in the manner directed by the constitution of this Commonwealth. Any three of the said judges shall constitute a court. The said court shall be holden at the Capitol in the city of Richmond, or at such other place as shall be appointed by the General Assembly, or, in their recess, by the Governor, with the advice of the Council of State, on any such emergency as will make the adjournment lawful. The sitting of the said court shall be permanent, if the business of the court require it: Provided, always, That the court may in their discretion adjourn for short periods; but it shall be their duty to sit at least two hundred and fifty days in the year, unless they sooner dispatch the business of the court. Every judge, before he exercises his office, shall, in open court, give assurance of fidelity to the Commonwealth, and take this oath: You shall swear that you will well and truly serve this Commonwealth, in the office of a judge of the Court of Appeals, and that you do equal right to all manner of people, great and small, high and low, rich and poor, without respect of persons. You shall not take by yourself, or by any other, any gift, fee or reward, of gold, silver or any other thing, directly or indirectly, of any person or persons, great or small, for any matter done or to be done, by virtue of your office, except such fees or salary as shall be by law appointed; you shall not maintain, by yourself or any other, privily or openly, any plea or quarrel, depending in the courts of this Commonwealth. You shall not delay any person of right, for the letters or request of any person, nor for any other cause; and if any letter or request come to you, contrary to the law, you shall nothing do for such*

Court of Appeals to consist of five judges.
Any three to constitute a court.
Where to be holden.
How long to continue in session.
Oath of office.

* This act was further suspended till January 1st, 1820: *vid. ante*, c. 45. For about a century before the revolution, the general court was the supreme criminal tribunal (as at present) in Virginia. Prior to the reign of James II., the Colonial Assembly exercised appellate jurisdiction in civil cases, and at one time, original criminal jurisdiction also; 1 *Hen. at. at lar.* p. 345, 398, 477. But in 1683, the king directed, that appeals should be allowed from the inferior colonial courts to the general court, and from the general court only to the king in council; 3 *Hen. at. at lar.* p. 546. After the revolution, by the first act constituting the court of appeals, October 1779, c. 22, the judges of the high court of chancery, general court, and court of admiralty, were constituted judges of the court of appeals also, any five of whom constituted a court. By the act of 1787, c. 39, the judges of the court of appeals (constituted still of the judges of the other courts) were made judges of the then newly established district courts. This act was decided to be unconstitutional, by the existing court of appeals. At the next session, the court of appeals, the general court, and high court of chancery, were separated, and moulded into the present form, by the appointment of distinct judges for each court; the court of admiralty being discontinued, in consequence of the adoption of the present constitution of the United States; acts 1788, c. 68, 69, 71, 72. By act of 1806, c. 22, the number of the judges of the court of appeals was reduced to three, but, by act of 1810, c. 4, restored to five.

A. D. 1818.
A. R. C. 42.

letter or request, but you shall proceed to do the law, any such letter or request notwithstanding. And, finally, in all things belonging to your said office, during your continuance therein, you shall faithfully, justly and truly, according to the best of your skill and judgment, do equal and impartial justice, without fraud, favor or affection. So help you God.(a)

Jurisdiction.

2. THE said court shall have jurisdiction, not only in the cases provided for by the constitution of this Commonwealth, and in suits originating there, or adjourned thither for trial by virtue of any statute, which trial shall be by juries according to the course of law, but also in such as are now pending therein, or shall be brought before them by appeals, writs of error, or *supersedeas*, to reverse such decrees of the superior courts of chancery from which appeals may lawfully be taken, or judgments of the general court, or superior courts of law of this Commonwealth, after those judgments shall be final there, if the matter in controversy be equal in value, exclusive of costs, to one hundred dollars, or three thousand pounds of tobacco, or be a freehold or franchise, or where such freehold or franchise, or the title or bounds of land are drawn in question, or in chancery cases, where lands, slaves, or other specific property, shall be the subject of the decree or order.(b)

Not to stand adjourned for want of *quorum*, longer than such want continues.

3. THE said Court of Appeals shall not stand adjourned for want of a sufficient number of judges to constitute a court, for a longer time than the want of such sufficient number continues; and when a sufficient number of judges to form a court shall attend, they shall proceed to business.(c)

To determine causes in which one or more of judges are interested, if without them there be a court.

4. ALTHOUGH one or more of the judges of the Court of Appeals be interested in the event of any suit, matter or thing depending therein, the same shall be finally decided by the other judges, if there be a number of judges not so interested, sufficient to constitute a court.(d)

Special Court of Appeals, when and how constituted.

5. If, on an appeal from any of the courts within this Commonwealth, a majority of, or all, the judges of the Court of Appeals be interested, then, in the former case, the remaining judges of the Court of Appeals not so interested, and as many of the judges of the general court and superior courts of chancery, who are not interested, and who did not render the judgment or decree appealed from, as will make the number at least five; and in the latter case, so many of the judges of the said general court and superior courts of chancery, who are not so interested, and who did not render the judgment or decree appealed from, as will make the number five at least, shall constitute a Special Court of Appeals. And where any Special Court shall be appointed for the trial of any cause depending in the Court of Appeals, because a majority of the judges of that court are interested, or otherwise disqualified to sit therein; in case of the sickness or disability of the remaining judge or judges of the said Court of Appeals not so disqualified, or either of them, the remaining judges appointed

(a) 1779, c. 22; 1788, c. 68; 1792, *edi.* 1794, 1803 and 1814. c. 63, § 1; 1810, c. 4, § 2.

(b) May 1779, c. 22; 1792, same editions, c. 63, § 2; 1791, *Ibid.* c. 167.

(c) 1810, c. 5, § 3.

(d) 1789, c. 18; 1792, same *edi.* c. 63, § 4.

by this law to hold such court, or any five of them attending, may proceed to a hearing and decision of the cause, in the same manner as if all the judges of the Court of Appeals not so disqualified had been present. And whensoever a majority, or all, the judges of the Court of Appeals shall be interested in any of the cases above mentioned, the same shall be entered of record in the said court, and the clerk thereof shall thereupon issue a summons to the judges of the general court and superior courts of chancery, requiring them, if not disqualified as aforesaid, to attend at the Capitol in the city of Richmond, or, in case of adjournment of the Court of Appeals to any other place, at such other place, on the twentieth day of June or November then next following; and stating the names of the parties, and the court whose decision is to be examined. A court, constituted in any of the cases above described, shall hear, determine and finally decide all suits, process, matters and things submitted to their cognizance and jurisdiction aforesaid.^(e)

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Process to form
such courts.

6. The clerk of the Court of Appeals for the time being shall attend all such special courts with the records in the cases to such special courts committed, and enter the proceedings of all such special courts in the order book of the Court of Appeals; and the same shall be signed by the presiding judge of such special court, and be certified to the inferior court; and the judgment or decree, sentence or order of such court, shall be carried into execution, in the same manner as if the same had been determined by the Court of Appeals. Such special court shall be attended by the like officers with the Court of Appeals, who shall receive the like compensation as they now do in the said court; and such special court may adjourn and do all and every act as a court, during their session, which the Court of Appeals may by law do: *Provided*, That where any cause shall be pending in any such special court, and the same shall not be determined before there shall be a sufficient number of the judges of the Court of Appeals qualified to make a court for deciding the same, such cause shall be resumed by the Court of Appeals, and be determined there, as if such cause had never been committed to a special court. Each judge attending in consequence of such summons, and not disqualified as aforesaid, shall be allowed, for his attendance, five dollars per day; and for travelling to and from the place of session, two dollars for every twenty miles; and the judges of the Court of Appeals attending such special court, and not disqualified to sit therein, shall be paid the same allowance; and each judge attending in consequence of such summons, shall, in open court, take an oath to do his duty as a judge of appeals, in the case or cases on which he is summoned, impartially and truly, without favor or partiality; which oath shall be administered by the oldest sitting judge, and shall then be administered to him, (if he shall not before have qualified as a judge of the Court of Appeals,) by one other of the judges.^(f)

Clerk of Court of
Appeals to attend
special courts.

Further regula-
tions in relation
thereto.

Proviso.

Compensation to
judges for attend-
ing.

Oath of office.

(e) 1789, c. 18; 1790, c. 9; 1792, same ed. c. 63, § 5, 6; 1813, c. 12, § 1.

(f) 1791, c. 11; 1792, same ed. c. 63, § 7; 1813, c. 12, § 2.

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Such special court summoned to a Sunday, shall be held next day.

Court of Appeals to appoint clerk, tipstaff and cryer. Sheriff of the county to attend them.

Clerk pro tempore

Vacancy in office of clerk, happening out of term, how to be filled.

Duty of clerk.

Rule in docketing causes.

In what cases, and how, appeals, writs of error, or supersedeas may be granted.

7. WHENEVER a summons hath been, or shall be issued, pursuant to this act, for assembling a Special Court of Appeals, if the day to which such summons is, or shall be made returnable, shall happen to fall on a Sunday, such court shall be holden on the next succeeding day, in like manner as if the same had been the day named in the summons, and shall then proceed to hear, determine, and finally decide all suits, process, matters and things, submitted to their cognizance and jurisdiction, as if the same had been the twentieth day of the month to which such summons is or shall be returnable.(g)

8. THE Court of Appeals shall appoint a clerk, tipstaff and cryer, the first removeable for misbehaviour in the manner directed by the constitution, the two others at pleasure; and shall be attended by the sheriff of the county, in which they sit, as their officer. During the vacancy of the office of clerk of the said court, or his unavoidable absence in term time, the said court may appoint a clerk *pro tempore*, who, after taking the necessary oaths of office, shall be authorised to perform the duties of a clerk, and, during his continuance in office shall be entitled to all the fees thereof.(h)*

9. IF a vacancy shall happen in the office of clerk, out of the terms of the said court, it shall be lawful for the majority of the judges, by commission under their hands and seals, to appoint a clerk to fill such vacancy.(i)

10. THE clerk of the said court shall carefully preserve the transcripts of records certified to his court, with the bonds for prosecution, and all papers relative to them, and other suits depending therein; docketing them in the order he shall receive them, that they may be heard (except as is hereinafter provided for and excepted,) in the same course, unless the court, for good cause to them shown, direct any to be heard out of its turn; and shall faithfully record their proceedings and decisions, and certify the same to the proper courts.(k)

11. THE said court or any judge thereof in vacation, may grant writs of *error* or *supersedeas*, to the judgments or decrees of the superior courts of law or chancery, and allow appeals from the decrees of the latter, in all such cases wherein writs of *error* or *supersedeas*, or appeals, may be by law allowed, in the same manner, and on the same principles, as appeals, writs of *error* and *supersedeas* are to be granted, heard and determined by the superior courts of chancery, and superior courts of law, to and from any final decree, or judgment of a county, city or borough court; and the party shall proceed in like manner, and the damages in case of affirmance shall be the same in the Court of Appeals, as in those courts respectively; and the clerk of the said court shall issue the like process for summoning the adverse party, removing the records, suspending the execution, and for every other requisite purpose; making those alterations in the form, which are necessary to adapt it to the case, as are prescribed in like cases in the superior

(g) 1796, c. 17.

(h) May 1779, c. 22; 1792, same ed. c. 63, § 11.

(i) 1788, c. 68; 1792, same ed. c. 63, § 12.

(k) May 1779, c. 22; 1792, same ed. c. 63, § 13.

* The last sentence of this section was added at the late revision.

courts of chancery, and the superior courts of law respectively.(l)

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Arbitrary appeals not to be granted from judgments on forthcoming bonds.

12. No appeal shall hereafter be granted to any principal obligor, or obligors, his, her, or their security, or securities, or their executors or administrators, on any judgment or decree rendered or affirmed by any superior court of common law, or chancery, awarding execution on any forthcoming bond; but such person or persons may obtain a writ of *error* or *supersedeas*, as heretofore.(m)

13. ALL appeals allowed from interlocutory decrees of the superior courts of chancery by the judge of such superior court, or any judge or judges of the Court of Appeals, shall be heard and determined by the said Court of Appeals, within sixty days after the record in such appeal shall be carried up to the Court of Appeals: and it shall be the duty of the clerks of the superior courts of chancery, when appeals shall be allowed from such interlocutory decrees, to make out a copy of the record without delay; and should the party or parties, at whose instance such appeal may be allowed, fail to file, with the clerk of the Court of Appeals, a copy of the record within two calendar months from the time of the allowance of such appeal, such appeal shall be dismissed, unless good cause be shewn to the contrary. After the lapse of two calendar months from the rendition and entry of any judgment or decree of the said courts, purporting to be a final one, the cause in which such judgment or decree shall be rendered and entered, shall not be re-heard.

Appeals from interlocutory decrees, when to be heard.

Farther regulations concerning such appeals.

Limitation as to rehearing causes.

In case a transcript of the record in any appeal, writ of *error* or *supersedeas*, shall not be filed with the clerk of the said court, within six calendar months after the same shall have been granted, such appeal, writ of *error* or *supersedeas* shall be dismissed, unless good cause be shewn to the contrary.(n)

Appeals when to be dismissed.

14. It shall be the duty of the clerk of the Court of Appeals, to certify all the decisions of that court, and transmit them to the clerks of the respective courts to which they should be sent, as soon as, by the rules of the Court of Appeals, and the laws of the land, it is allowable so to certify and transmit them.

Duty of clerk to certify and transmit decisions.

And if the clerk of the Court of Appeals shall fail so to certify and transmit any decision of the said court, for the space of

Penalty for neglect.

twenty days after it shall be lawful for him to certify and transmit it, he shall forfeit and pay, to any person aggrieved thereby, the sum of fifty dollars, for every offence, to be recovered by motion before the Court of Appeals, reasonable notice of such motion having been given to the clerk. It shall be lawful for such clerk to transmit the decisions aforesaid, by mail, paying the postage thereon, and charging the amount so paid to the Commonwealth. He may, from time to time, at intervals not exceeding eighteen months, produce to the Court of Appeals, his accounts for postage so paid, distinctly made out, and verified upon oath or affirmation; and if the court shall adjudge them right, they shall certify them to the auditor of public accounts, to be paid out of the treasury.(o)

Clerk to send by post and pay postage.

His accounts of such postage when to be settled; and paid out of treasury.

(l) 1788, c. 68; 1792, same ed. c. 63, § 14, 15; 1810, c. 5, § 3.

(m) 1806, c. 22, § 3.

(n) 1810, c. 5, § 3.

(o) 1815, c. 8, § 4.

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Appeals to be entered to court, generally, instead of any particular day. Judges of the court of appeals amenable to civil process in term.

Writs of error and supersedeas, and other process, when returnable.

Proviso.

New process to be issued by the clerk if the first be not executed.

Process of revivor, in vacation.

Testimony to be spread on record, in contests, concerning mills, roads, probat of wills, or letters of administration : Court of Appeals not to hear parol testimony.

How bond and security may be given on appeals, &c.

After dismissal of an appeal, &c. no appeal, &c. to be allowed.

Cases to be stated and printed for judges.

15. ALL appeals from judgments of the general court and the superior courts of law for the several counties, and from decrees of the superior courts of chancery, shall be entered generally to the Court of Appeals, instead of being entered, as heretofore, to a particular day of the next term of that court.(p)

16. AND whereas a doubt exists whether a judge of the Court of Appeals be amenable to legal process in civil cases, during the sitting of the court: *Be it therefore enacted*, That any judge of said court shall be liable to be sued, and shall be otherwise amenable to civil process, during the terms of the said court, in the same manner as he would be during the recess of the court.(p)

17. ALL writs of *error* and of *supersedeas*, and all reviving and other process issuing from the Court of Appeals, or under the order of one or more of the judges thereof, shall be made returnable to the first Monday in any month, after the award of such writ or process, that the party praying and suing out such writ or process may direct: *Provided always*, That there shall not be less than fifteen, nor more than ninety days between the *teste* and return day of such writ or process; and the return of such writ or process to such day *executed*, shall be effectual, whether the said Court of Appeals be, on the return thereof, in session or not: and whenever such writ or process shall not be executed, the clerk of the said court is hereby authorised and required to issue another like writ or process upon the application of the party suing out the former writ or process; and where any person, plaintiff or defendant, in any suit depending in the said court, shall be dead, it shall be lawful for the clerk of the said court, during the recess of the court, upon application, to issue proper process to enable the court to proceed to a final judgment or decree, in the names of the representatives of such deceased person.(p)

18. IN future, in all actions, suits or contests whatsoever, in any of the superior courts of law within this Commonwealth, where the contest shall be concerning mills, roads, the probat of wills, or certificates for obtaining administration, any person or persons, body politic or corporate, feeling aggrieved by the judgment or sentence of any of the said courts, and being desirous to appeal from the said judgment or sentence, or to obtain a writ of *error* or *supersedeas* thereto, shall spread the testimony on the record; and, in future, it shall not be lawful for the Court of Appeals, in any civil action, to hear or receive parol testimony.(q)

19. WHERE one person or several, obtain an appeal, writ of *error* or *supersedeas*, bond and security given by any party, or by any responsible person, shall be valid and sufficient.(r)

20. AFTER the dismissal of an appeal, writ of *error* or *supersedeas*, in the Court of Appeals, no appeal, writ of *error* or *supersedeas* shall be allowed.(s)

21. A CLEAR and concise state of the case of each party, in an appeal, writ of *error* or *supersedeas*, with the points intend-

(p) 1810, c. 5, § 2, 4, 1.

(q) 1810, c. 11, § 2.

(r) 1788, c. 67, § 92; 1792, same
edi. c. 63, § 16.

(s) 1789, c. 18, § 12; 1792, same
edi. c. 63, § 18.

ed to be insisted on, signed by his counsel, and printed, (the expense whereof shall be taxed in the bill of costs,) shall be delivered to every judge, time enough before the hearing, for his consideration; but the court, if this be neglected, may nevertheless hear and determine the matter, and may give such decree, or judgment, if it be not affirmed, or reversed in the whole, as the court, whose error is sought to be corrected, ought to have given; (affirming in those cases, where the voices on both sides shall have been equal;) with an allowance of the costs of appeal to the party prevailing, to be certified to the court from which the matter was removed; who shall enter it as their own, and award execution thereupon accordingly.(t)

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Judgments of court, how to be rendered.

22. It shall not be lawful for any superior court of chancery, or the general court, to remove before the Court of Appeals, by adjournment, any question, matter or thing whatsoever.(u)

No question to be removed, to the court, by adjournment.

23. THE judges of the Court of Appeals shall direct the form of writs, from time to time, in such manner as they shall deem advisable.(v)

The judges to direct forms of writs.

24. ALL acts, and parts of acts, within the purview of this act, shall be and are hereby repealed: *Provided*, That all rights and remedies given by any such acts or parts of acts, and all fines and penalties incurred previous to the passing of this act, remain in the same condition as if this act had never been made.

Repealing clause.

25. THIS act shall commence and be in force from and after the first day of January next.

Commencement.

C. 65.

An act to amend the act, entitled an act for reducing into one act, the several acts concerning the Court of Appeals and Special Court of Appeals.

A. D. 1819.
A. R. C. 43.

[Passed March 1, 1819.]

1. *BE it enacted by the General Assembly*, That, whenever a Judge of the Court of Appeals shall be disabled by sickness or infirmity from attending the said court, and, in the opinion of the court, such disability is likely to be of long continuance; and if, at the same time, one or more of the Judges of the said court be interested in any suit or suits pending therein, so that, from the combined causes of disability and interest, a court cannot be formed for the trial of such suit or suits, a Special Court shall be summoned for the trial thereof, in the same manner, and under the same regulations, as are prescribed by the fifth, sixth and seventh sections of the act entitled, *An act, for reducing into one act the several acts concerning*

Special courts to be summoned, when a Judge is disabled, by infirmity of long continuance, and other Judges interested.

How, and under what regulations.

(t) May, 1779, c. 22; 1792, same ed. c. 63, § 19.

(u) 1789, c. 18; 1792, same ed. c. 63, § 20.

(v) 1788, c. 67, § 22; 1792, same ed. c. 63, § 21.

A. D. 1819.
A. R. C. 43.

the Court of Appeals and Special Court of Appeals, passed on the ninth day of January one thousand eight hundred and eighteen.

To be attended by
what officers, &c.

2. THE said Special Court, when in session, shall be attended by the same officers, have the same powers, and allowances, take the same oaths, and be governed by the same regulations as are prescribed by the above recited act.

Commencement.

3. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty.

C. 66.

A. D. 1818.
A. R. C. 43.

*An act, reducing into one all acts and parts of acts, concerning the Superior Courts of Chancery.**

[Passed December 21, 1818.]

Number of dis-
tricts.
Superior Court of
Chancery in each.

1. BE it enacted by the General Assembly, That this Commonwealth shall be divided into nine districts, and a Superior Court of Chancery shall be holden in each district, in the manner and at the times hereinafter mentioned; that is to say;

Richmond district.

2. THE counties of *Amelia, Brunswick, Charlotte, Buckingham, Chesterfield, Cumberland, Dinwiddie, Fluvanna, Goochland, Greenville, Hanover, King and Queen, Henrico, King-William, Louisa, Lunenburg, Mecklenburg, Nottoway, Powhatan, Prince-Edward, Prince-George, Sussex*, the City of *Richmond*, and the corporation of *Petersburg*, shall compose one district; and a Superior Court of Chancery shall be holden therefor at the Capitol in the City of *Richmond*, on the first day of January and the first day of June in every year.(a)

Court, where and
when to be held.

3. THE counties of *Amherst, Bedford, Campbell, Franklin*,

(a) 1813, c. 16, § 1.

* This act was further suspended till January 1st, 1820: *vid. ante.* c. 45. The amendments introduced at the late Revisal, are distinguished, as far as practicable, by being printed within single inverted commas.—See notes post. c. 67, on the title, and on § 5.—The High Court of Chancery, as first established after the revolution, consisted of three judges; Act of Oct. 1777, c. 15, *edi.* 1785, p. 66. The number was reduced to one, by act of 1788, c. 69. The jurisdiction of this court extended over the whole Commonwealth; till, by act of 1801, c. 14, *edi.* 1803, and 1814, c. 297, the state was divided into three districts, a Superior Court of Chancery established for each district, and a Chancellor appointed for each court: The seats of these courts were Richmond, Staunton, and Williamsburg. The act of 1811, c. 15, divided the Staunton district into four districts, and established a Superior Court of Chancery for each district, to be respectively held at Staunton and Wythe court-house, Winchester and Clarksburg; the Staunton Chancellor being assigned to the two first, and another Chancellor appointed for the two last named districts. The act of 1813, c. 16, divided the Richmond and Williamsburg districts into four, and established a Superior Court of Chancery for each of them, to be held at Richmond and Lynchburg, Williamsburg and Fredericksburg; the Richmond Chancellor being assigned to the two first, and the Williamsburg Chancellor to the two last mentioned of these districts. And the act of 1814, c. 33, formed the Greenbrier district, out of the two districts of Staunton and Wythe court-house, and established another Superior Court of Chancery for this new district, to be held at Greenbrier court-house, by the Chancellor of the Staunton and Wythe court-house districts.

Halifax, Nelson, Henry, Patrick, and Pittsylvania, and the corporation of *Lynchburg*, shall compose another district; and a Superior Court of Chancery shall be holden therefor at *Lynchburg*, on the tenth day of May and the tenth day of October in every year.(b)

A. D. 1818.
A. R. C. 43.

Court, where and when.

4. THE counties of *Accomack, Charles City, Elizabeth City, Gloucester, Isle of Wight, James City, Mathews, Middlesex, Nansemond, New-Kent, Norfolk, Northampton, Princess Anne, Surry, Southampton, Warwick, and York*, the City of *Williamsburg*, and the Borough of *Norfolk*, shall compose another district; and a Superior Court of Chancery shall be holden therefor, at the former Capitol in the City of *Williamsburg*, on the first day of June, and fifteenth day of October in every year, and adjourn from day to day and from time to time, till the business of the said court shall be completed.(c)

Williamsburg district.

Court, where and when.

5. THE counties of *Caroline, Culpeper, Fauquier, Fairfax, Lancaster, Northumberland, Madison, King George, Orange, Prince-William, Richmond, Spottsylvania, Stafford, Essex, and Westmoreland*, and the corporation of *Fredericksburg*, shall compose another district; and a Superior Court of Chancery shall be holden therefor, at *Fredericksburg*, on the fifteenth day of April and fifteenth day of September in every year.(d)

Fredericksburg district.

Court, where and when.

6. THE counties of *Greenbrier, Monroe, Cabell, Kanawha, Mason, Nicholas, and Bath*, shall compose another district; and a Superior Court of Chancery shall be holden therefor, at the court-house of *Greenbrier* county, on the first day of June and first day of November in every year.(e)

Greenbrier district.

Court, where and when.

7. THE counties of *Augusta, Rockingham, Pendleton, Rockbridge, Albemarle, and Botetourt*, shall compose another district; and a Superior Court of Chancery shall be holden therefor at *Staunton* in the county of *Augusta*, on the fifteenth day of June and fifteenth day of November in every year.(f)

Staunton district.

Court, where and when.

8. THE counties of *Lee, Russel, Scott, Washington, Tazewell, Wythe, Grayson, Giles, and Montgomery*, shall compose another district; and a Superior Court of Chancery shall be holden therefor at *Wythe* court-house, on the Monday first succeeding each term of the Superior Court of Law for the said county in every year.(g)

Wythe district.

Court, where and when.

9. THE counties of *Frederick, Shenandoah, Hardy, Hampshire, Berkeley, Jefferson, and Loudoun*, shall compose another district; and a Superior Court of Chancery shall be holden therefor, at *Winchester* in the county of *Frederick*, on the first Monday in April, and twenty-first day of November in every year.(h)

Winchester district.

Court, where and when.

10. THE counties of *Brooke, Ohio, Tyler, Wood, Randolph, Harrison, Lewis, Preston, and Monongalia*, shall compose another district; and a Superior Court of Chancery shall be holden therefor, at *Clarksburg* in the county of *Harrison*, on the third Monday after the fourth Monday of April and September in every year.(i)

Clarksburg district.

Court, where and when.

(b) 1813, c. 16, § 1, & 1814, c. 34, 35.

(c) 1813, c. 16, § 1, 1816, c. 30.

(d) 1813, c. 16, § 1.

(e) 1814, c. 33.

(f) 1811, c. 15, § 3; 1813, c. 17, § 4.

(g) 1811, c. 15, § 4; 1816, c. 23, 27, § 2.

(h) 1811, c. 15, § 5; 1812, c. 88.

(i) 1811, c. 15, § 6.

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Provision, if day
appointed be Sun-
day.
Terms.

11. If any of the days fixed upon by this act for holding courts in the respective districts, should happen to be a Sunday, then such court or courts shall be holden on the succeeding day.

12. THE terms hereby established for the courts of the *Richmond, Lynchburg, Fredericksburg, Williamsburg, and Greenbrier* districts, shall continue until the business of the said courts be fully transacted and completed; and the terms hereby established for the courts of the *Staunton, Wythe* court-house, *Winchester* and *Clarksburg* districts, shall continue for fifteen juridical days at least, if the business therein shall require it.(k)

Judges.

13. THE courts for the said districts of *Richmond, and Lynchburg* shall be held by the present Judge thereof; those for the districts of *Williamsburg* and *Fredericksburg*, by the judge who now presides therein; those for the districts of *Staunton, Greenbrier* court-house, and *Wythe* court-house districts, by the present judge of the said courts; and those for the districts of *Winchester* and *Clarksburg*, by the present judge thereof, and by their several and respective successors, to be chosen and commissioned in the manner directed by the constitution of this Commonwealth.

Their places of
residence.

14. THE judge for the time being for the districts of *Staunton, Wythe* court-house, and *Greenbrier* court-house, shall reside at the said town of *Staunton*; the judge of the said districts of *Winchester* and *Clarksburg* shall reside either at the town of *Winchester*, or *Clarksburg* in the county of *Harrison*; the judge of the districts of *Richmond* and *Lynchburg* shall reside at the City of *Richmond*; and the judge of the districts of *Williamsburg* and *Fredericksburg* shall reside at the City of *Williamsburg*, or in the town of *Fredericksburg*.(l)

Salaries.

15. EACH of the said judges shall receive the salary now allowed by law.

Oaths of office.

16. EVERY judge so commissioned, before he enters upon the duties of his office, shall take and subscribe the oath of fidelity to this Commonwealth, and take the following oath, to wit: (m)

You shall swear, that, well and truly, you shall serve this Commonwealth, in the office of judge of the district Courts of Chancery of _____; and that you will do equal right to all manner of people, great and small, high and low, rich and poor, according to equity and good conscience, and the laws and usages of Virginia, without respect of persons. You shall not take, by yourself, or by any other, any gift, fee or reward, of gold, silver or any other thing, directly or indirectly, of any person or persons, great or small, for any matter done, or to be done, by virtue of your office, except such fees or salary as shall be by law appointed. You shall not maintain, by yourself, or by any other, privily or openly, any plea or quarrel, depending in the Courts of this Commonwealth. You shall not delay any person of right for the letters or request of any person, nor for any other cause; and, if any letter or request

(k) 1813, c. 16, § 8; 1814, c. 33, § 6;
1811, c. 15, § 17.

(m) Edi. 1794, 1803, & 1814, c. 64,
§ 6.

(l) 1811, c. 15, § 1; 1813, c. 16, § 1.

come to you, contrary to law, you shall nothing do for such letter or request, but you shall proceed to do the law, any such letter, or request notwithstanding. And finally, in all things belonging to your said office, during your continuance therein, you shall faithfully, justly and truly, according to the best of your skill and judgment, do equal and impartial justice, without fraud, favor, affection, or partiality.—So help you God.(n)

A. D. 1818.
A. R. C. 43.

WHICH oaths may be taken before the Executive, any court of record, or a justice of the peace, to be certified to, and recorded in the court first held by him: and if any person appointed as aforesaid, shall execute the office of judge of either of the said courts, without having taken the said oaths, he shall forfeit and pay the penalty of fifteen hundred dollars, to the use of the Commonwealth, for the benefit of the literary fund, to be recovered by action of debt in the general court.(o)

How to be taken, certified, and recorded. Penalty for acting as judge without taking oaths.

17. If the judge shall not attend on the first day of the term, such court shall stand adjourned from day to day, until a court be made, if that shall happen before four o'clock in the afternoon of the sixth day.(p)

Court adjournable, judge not attending on first day; and how long.

18. If a court shall not sit in any term, or shall not continue to sit the whole term, or, before the end of the term, shall not have heard and determined all matters ready for its decision, all suits, matters, and things, depending in court and undecided, shall stand continued to the next succeeding term. If, from any cause, the court shall not sit on any day of the term after it shall have been opened, there shall be no discontinuance; but, so soon as the cause is removed, the court shall proceed to business until the end of the term, if the business depending before it, be not sooner dispatched.(q)

Causes undecided, when to stand continued.

No discontinuance by courts failing to sit on any day.

19. If either of the judges of the said district courts, be interested in any suit, which, in the case of any other person, would have been proper for the jurisdiction of his court, it shall be lawful, to institute such suit in any adjacent Chancery District Court, of which he is not the judge; and the process may be served in the district in which such judge resides; and such proceedings may be had therein as in other chancery cases.(r)

Suits in which judge is interested, may be brought in adjoining district

Process where to be served, in such case.

20. THE clerks of the said superior courts now in office, shall remain in office; and it shall be the duty of the respective judges of the said courts to fill up vacancies which may occur therein. The said clerks 'to be appointed,' shall respectively take the oaths prescribed by law for clerks of the Superior Courts of Chancery, before some court of record, and thereupon shall be authorised to do and perform all the duties of their office. They shall, at the first courts held for their respective districts after their said appointment, severally enter into bond, with sufficient security or securities, in the penalty of ten thousand dollars, conditioned for the faithful performance of

Clerks to remain in office. Vacancies, how supplied. Clerks' oaths, where taken.

To give bond and security.

(n) October 1777, c. 15; edi. 1785, c. 15; Edi. 1794, 1803, & 1814, c. 64, § 6; 1813, c. 16, § 14; 1811, c. 15, § 21.

(o) Edi. 1794, 1803, and 1814, c. 64, § 7; edi. 1803, and 1814, c. 297, § 5; 1811, c. 15, § 2.

(p) Edi. 1794, 1803, and 1814, c. 64, § 4.

(q) *Ibid.* § 5.

(r) Edi. 1803, and 1814, c. 297, § 9; 1811, c. 15, § 12; 1813, c. 16, § 5.

[A. D. 1818.

A. R. C. 43.]

Their fees.

Tenure of office.

Records and papers where to be kept.

Deputies.

Judges to appoint commissioners.

Their fees.

How collectable, &c.

Orders of account may be made in vacation.

Commissioners may submit questions to judge in vacation.

No argument on such points, but by consent.

Commissioners may administer oaths to witnesses.

False swearing before commissioner, perjury.

Subpœnas for witnesses, may be issued by commissioners.

Proceeding against witness not attending.

their office.* They shall be entitled to the fees, for their services, which are provided by law for the clerks of the Superior Courts of Chancery, to be collected and accounted for in the same manner, subject to the same allowance for collection, and entitled to the remedies by the laws provided.(s)

21. THE clerks of the said several Superior Courts of Chancery, shall hold their offices during good behaviour, to be judged of, in the general court, and they shall keep their records and papers at the respective places of holding their courts, and may execute their office by deputies.(t)

22. THE said judges shall also respectively have power, as to cases requiring a report, to appoint commissioners in Chancery, and to cause a reasonable allowance to be taxed therefor in the bill of costs; and their fees shall be determined, collected and paid in the manner prescribed by law.(v)

23. THE judges of the Chancery District Courts may direct an account to be taken in any case depending in their respective courts, in vacation, whenever such account would be directed if the court was in session. And whenever a commissioner, engaged in taking an account in vacation, shall doubt as to the principles on which the account should be taken, or shall doubt of the propriety of admitting any item of debit or credit, contended for by a party, a commissioner may state in writing, the points on which he shall doubt, and submit the same to the judge in vacation, who may thereupon decide the question or questions, so submitted to him, and the commissioner shall govern himself accordingly: but, on such points submitted, no judge shall hear any arguments of counsel, except by consent of parties.(w)

24. THE said commissioners in Chancery shall be, and they are hereby empowered to administer an oath or affirmation, in all cases to them referred by their respective courts, wherein it shall be necessary to examine witnesses on oath or affirmation; and, if any person sworn or affirmed by any of the said commissioners, by virtue of this act, shall give any evidence under such circumstances, as would have constituted the same to be perjury if given in the presence of a court of record, the same shall be deemed perjury to all intents and purposes.(x)

25. AND the commissioners in chancery, shall and may issue *subpœnas* for witnesses to attend before them, to be executed and returned in like manner as *subpœnas* issued by the clerks of such courts; and if a *subpœna* be issued by a commissioner in chancery, and served upon the witness or witnesses named therein, and he, she, or they, shall fail to attend, according to the requisition of such *subpœna*, such commissioner shall report such default; and thereupon such proceedings shall be had before the court, to which such report shall be made, as would be had, if such witness or witnesses had been summoned to such court to give evidence on a trial therein depending, and had

(s) From 1811, c. 15, § 9, and 1813, c. 16, § 3.

(t) 1814, c. 31, § 8; 1813, c. 16, § 7; 1811, c. 15, § 16.

(v) 1788, c. 69, § 5; edi. 1794, 1803,

and 1814, c. 64, § 57; 1813, c. 16, § 11; 1811, c. 15, § 19.

(w) 1806, c. 23, § 1; edi. 1808, c. 103, § 1.

(x) 1805, c. 30, § 2; edi. 1808, c. 67, § 2.

made default. And moreover, such witness or witnesses, shall be liable to such action for damages, at the suit of the party aggrieved, as he, she or they would have been liable to, for a default in court as aforesaid.(y)

A. D. 1818.
A. R. C. 48.

Action allowed party aggrieved.
Commissioners' fees for copies.

26. THE commissioners in chancery shall be authorised to charge, for copies of reports, or such other papers as the parties in the suits referred to them may require, the same fees as the clerks of the respective courts, from whence they receive their appointment, are authorised by law to charge for similar services; and their tickets for the same, shall be collected by the sheriffs and sergeants, and accounted for by them, in the same manner, and under the like penalties, as the fees of the said clerks: *Provided*, such charges shall be confined to the services, for which no allowance is or shall be made by the rules of the respective courts establishing the fees of their commissioners. And such fees, being certified to the respective clerks, shall be charged in the bills of costs, if the same would have been so chargeable in case the same services had been performed by such clerks. And every commissioner, for asking, demanding or receiving any other or further fees for services performed, than those allowed by law, or for asking, demanding or receiving, any fees for services not performed, shall be liable to the same penalties and proceedings, as clerks of courts are liable to in like cases.(z)

How collectable, &c.

Proviso.

Such fees, when taxable in bill of costs.

Penalty for demanding more than legal fees.

27. THE said courts respectively shall have general jurisdiction over all persons, and in all causes in chancery within their respective districts, now pending therein, or which may hereafter be brought before them, whether by original process, appeal from any inferior court, *certiorari*, or other legal means, and also in such other cases, as by any statute are or shall be made cognizable therein: But no person shall commence an original suit in any matter of less value than thirty-three dollars and thirty-three cents, except it be against the justices of any county or other inferior court, on pain of having the same dismissed with costs.(a)

Jurisdiction, As to mode of proceeding,

And value in controversy.

28. ANY suit in equity on behalf of the Commonwealth, in the name of the attorney general or otherwise, may be instituted in the Superior Court of Chancery holden at *Richmond*, whether the defendant or defendants in said suit reside in the district, for which the said Superior Court of Chancery shall be holden or not, and whether the property, real or personal, to be affected by the decree in the said suit, shall be or lie within the said district, or in any other part of this Commonwealth, or elsewhere; and, in such suits, the process of the said Superior Court shall run into every part of the said Commonwealth; and it shall possess the same power to make any orders and decrees, and to enforce the same by execution, attachment or otherwise, as if the defendant or defendants resided within the limits of the said district; and it may also decree the sale of property, real and personal, belonging to the defendants in any part of the Commonwealth.(b)

Special jurisdiction of Richmond Chancery District Court, in suits for,

(y) 1805, c. 30, § 4, *edi.* 1808, c. 67,

§ 4.

(z) 1806, c. 23, § 7, *edi.* 1808, c. 103,

§ 7.

(a) October, 1777, c. 15, § 2; *edi.* 1794, 1803 and 1814, c. 64, § 8.

(b) 1808, c. 16, § 1; *edi.* 1812, c.

17, § 1.

A. D. 1818.
A. R. C. 43.

And against the
Commonwealth.

29. ALL suits which may be hereafter instituted, in which it shall be proper or necessary to make the governor, attorney general, treasurer or register of the land office, as representing the Commonwealth, a party defendant, or in which it shall be attempted to enjoin, or otherwise suspend or affect any judgment of the general court, on behalf of the Commonwealth, or any execution issued thereon, shall not be brought or prosecuted in any Court of Chancery, or Court having Chancery jurisdiction, except the Superior Court, directed by law to be holden in *Richmond*.(c)

Courts always open, to grant injunctions, *ne exeat*, *certiorari*, &c. May send points of law to general court.

30. THE said courts shall be considered as always open, so as to grant injunctions, writs of *ne exeat*, *certiorari*, and other process, heretofore usually granted in vacation.(d)

Process issuable to any county in the state.

31. It shall be lawful for the said Superior Courts of Chancery to send any matter of law to the general court, for their opinion, to be certified thereupon.(e)

32. ALL process, of every nature and kind, in cases where the said courts shall have jurisdiction, may be issued, directed to the proper officer, of any county in the State, and shall be by him executed and returned to the court from which it emanated.(f)

Suit where to be brought, if more than one defendant.

33. If there be more than one defendant in any suit, the said suit may be instituted in the district where either of them may reside; and the clerk shall and may issue process against the other defendant or defendants, directed to the counties in which they may be found; and, on the return thereof, the like proceedings shall be had as if all the defendants resided within such district.(f)

Process how to bear teste, and when returnable.

34. ALL process, issuing from either of the courts hereby established, shall bear *teste* by the clerks of the courts respectively, and be made returnable to the first Monday in any month after the award of such process; or to the first or tenth day in the next term: *Provided, always*, That, where process is made returnable to the first Monday in any month, there shall not be more than ninety days between the *teste* and return day of such process. And the return of such process, to such day *executed*, shall be effectual, whereon to ground any subsequent proceedings; and, whenever such process shall not be executed, the clerk of the said court is hereby authorised and required to issue another like process upon the application of the party suing out the former process.(g)

Proviso.

New process how issuable, former one not executed.

35. AND where any person, plaintiff or defendant, in any suit depending in either of the said courts, shall be dead, it shall be lawful for the clerk, during the recess of the court, upon application, to issue process, to bring into court the representative of such deceased person.(g)

Process of revivor issuable during recess of court.

Decrees nisi, or orders of publication &c. at rules in clerk's office.

36. AND decrees *nisi*, taking bills for confessed, orders of publication against absent defendants, and orders to proceed in the names of the representatives of deceased parties, may be entered at rules in the clerk's office of the respective courts,

(c) 1808, c. 16, § 2; *edi.* 1812, c. 17, § 2.

(d) October, 1777, c. 15, § 2; *edi.* 1794, 1803 and 1814, c. 64, § 9.

(e) 1788, c. 69, § 8; *same edi.* § 11.

(f) 1811, c. 15, § 13, 14; 1813, c. 16, § 6, 7; *edi.* 1803, 1814, c. 297, § 19, 11.

(g) 1811, c. 16, § 2, 3, 4; 1813, c. 16, § 8, 9, 10.

subject to the control of the court, in the same manner, that other proceedings at the rules are now subject to such control.(g)

A. D. 1818.
A. R. C. 43.

37. THE counties which shall hereafter be made shall remain in the district to which they formerly belonged ; and, if taken from different districts, shall be annexed to that district which is most convenient to the court-house of the new made county.(h)

Provision as to new counties.

38. THE Judges of the several Superior Courts of Chancery within this Commonwealth, shall have and exercise a general jurisdiction, in awarding injunctions and writs of *ne exeat*, whether the judgment or proceeding enjoined, be rendered by a superior or inferior court, within or without their respective districts, or the party against whose proceeding the injunction be asked, or against whom a writ of *ne exeat* be awarded, be a resident of the district or districts of the judge awarding the same ; but the order of the judge awarding an injunction to a judgment or proceeding, not within his district or districts, shall be directed to the clerk of the court of that district, in which such judgment be rendered, or proceeding apprehended ; on which, such proceedings, in all respects, shall be thereafter had, as if the order had been made by the judge in whose district or districts such judgment may have been rendered, or proceeding had or apprehended. ' And when a judge of any of the said Superior Courts shall order a writ of *ne exeat* against any person whatever, he shall direct the said order to the clerk of one of the courts in which he presides ; and the said clerk, on the execution of the bond required by law, shall issue such writ of *ne exeat*, which shall be directed to any marshal or sheriff into whose hands the same may come.'(i)

General jurisdiction of judges in awarding injunctions and *ne exeat* etc.

Order for injunction, to whom directed, and how proceeded on.

Order for *ne exeat* at.

39. THE judges of the Chancery District Courts may authorise and empower two or more persons in each county and corporation, within their respective districts, to take the depositions of witnesses in any cause or causes depending in their courts ; the clerks whereof shall issue the proper commissions to the persons so appointed ; who shall, for such service or services, be allowed such compensation as shall be fixed upon by the said judges respectively ; and the said commissioners may issue their tickets for the sums allowed by said courts for such service or services, and deliver them to the sheriffs and sergeants of the counties and corporations wherein they are rendered, at the same time the clerks of the courts thereof are directed by law to deliver their tickets ; and the several sheriffs and sergeants shall collect and account for them, in the same manner, and under the like penalties, and shall have the same allowance for collecting and insolvencies, as are prescribed in the case of the clerks of the said county and corporation courts.(k)

Judges may appoint commissioners to take depositions.

Their fees.

How collectable.

40. THE said commissioners are hereby empowered to administer an oath or affirmation in all such cases wherein it shall be necessary to examine and take the depositions of witnesses, on oath or affirmation ; and if any person sworn or affirmed by any of the said commissioners, by virtue of this

Such commissioners may administer oaths, &c.

(g) 1811, c. 16, § 2, 3, 4 ; 1813, c. 16, § 8, 9, 10.

(i) Altered from 1813, c. 16, § 18.

(k) 1813, c. 17, § 1.

(h) Ed. 1803, 1814, c. 297, § 2.

A. D. 1818.
A. R. C. 43.

False swearing be-
fore them, perjury.
May issue *subpæ-
nas* for witnesses.
Proceeding against
witness not attend-
ing.

Action allowed
party aggrieved.

Witness not com-
pellable to go out
of his county.

Discretionary
power in decre-
ing sales, for cash,
or on credit.
When court may
appoint commis-
sioners to execute
deeds.
Effect thereof.
7 Ann. c. 19, § 1, 2.

Saving rights of
infants, &c. to con-
test decrees.

No discontinuance
by death, &c. of
clerk.

Process when re-
turnable in such
case.

Writs of *certiorari*
to remove suits,
for delay of coun-
ty courts.

act, shall give any evidence, under such circumstances, as would have constituted the same to be perjury if given in the presence of a court of record, the same shall be deemed perjury, to all intents and purposes; and the said commissioners shall and may issue *subpænas*, for witnesses to attend before them, to be executed and returned in like manner as *subpænas* issued by the clerks of such courts; and, if a *subpæna* be issued by commissioners under the authority of this act, and served upon the witness or witnesses named therein, and he, she or they shall fail to attend according to the requisition of such *subpæna*, such commissioner shall report such default; and, thereupon, such proceedings shall be had before the court to which such report shall be made, as would be had if such witness or witnesses had been summoned to such court to give evidence on a trial therein depending, and had made default; and, moreover, such witness or witnesses shall be liable to such action for damages, at the suit of the party aggrieved, as he or they would have been liable to, for a default in court as aforesaid: *Provided*, That no witness shall be compelled by any *subpæna* from such commissioner to go out of the county in which he resides. (l)

41. THE judges of the said Chancery Courts may, in all cases, at their discretion, where a sale is decreed of property, direct the same to be made for cash, or on such credit, and on such terms as may be deemed best; and, whenever in any suit in equity, it shall be proper to decree the execution of any deed or other writing, it shall be lawful for the court to appoint a commissioner to execute the same; and the execution thereof by such commissioner, shall be as valid in law to pass, release or extinguish the right, title and interest of the party, on whose behalf it is executed, as if it had been executed by such party in proper person, and as if such party had been, at the time, capable in law of executing the same: *Provided, however*, That nothing herein contained shall be construed to alter, abridge, or in any manner affect the right of infants, or absent defendants, or of any other persons, to shew cause against any such decree, or to contest or reverse the same, within the same time, and in the same manner as if this act had never passed. (m)

42. If the clerk of any of the said courts shall die, resign, or be ousted of his office, and a rule day passed by, before a successor is appointed and qualified, no discontinuance shall take place; but all the causes on the rule-docket shall stand continued, until the rule-day after the new clerk shall be appointed and qualified; and all process issued before, but not returnable till after such vacancy, shall be returnable to the said rule-day. (n)

43. WHENEVER any county court of this Commonwealth shall unreasonably neglect or delay to decide any suit in equity, which now is, or hereafter shall be, depending in such court; upon application of either of the parties so precluded from justice by the neglect or delay of the county court, the judges of the Chancery Courts of this Commonwealth, are hereby directed and authorised to issue writs of *certiorari*, to remove

(l) 1813, c. 17, § 2.

(m) *Ibid*, § 2, 3.

(n) 1814, c. 31, § 11.

such cause or causes before them, in the same manner as in cases of partiality or injustice: *Provided, nevertheless, That* no writ of *certiorari* shall issue, in cases where the court from whence the writ issues, has not jurisdiction.(o)

A. D. 1818.
A. R. C. 43.

Proviso.

44. WHENEVER the judge of any Superior Court of Chancery shall over-rule any application for an injunction, it shall be his duty to certify the same at the foot of the bill. And whenever any motion or application for an injunction shall be over-ruled, or whenever any order shall be entered dissolving such injunction, it shall be lawful for any person or persons, conceiving himself, herself or themselves aggrieved thereby, to present the original bill with the order refusing such injunction, or a copy of the proceedings on which the said dissolution shall be ordered, to the judges of the court of appeals, or any one of them, who shall have authority thereupon, to direct the injunction to be awarded, or allow an appeal from such order of dissolution, in case he or they shall be of opinion that the Chancellor had erred in such order; and where the judges or judge of the court of appeals shall award an injunction in the manner aforesaid, the same proceedings shall be thereupon had as if the injunction had been in the first instance awarded by the Chancellor; and where an appeal shall be allowed in the manner aforesaid, from an order dissolving an injunction, such appeals shall be heard and determined, at the next term of the court of appeals, if allowed in the recess of that court, or by the then sitting court, when allowed during the session of that court.(p)

Denial of injunction to be certified at foot of bill. Party aggrieved by such denial, or by dissolution of injunction, relievable by judge of court of appeals; and how.

Proceedings in such cases.

45. THE Executive shall procure a seal for each of the Superior Courts of Chancery.(q)

Seals for courts, procured by Executive. Decrees against absent defendants.

46. ALTHOUGH any of the defendants, whether debtors or others, in any suit instituted in any Superior Court of Chancery, should be absent from the Commonwealth, the court may nevertheless proceed to a hearing, and decree therein, as in the case of absent debtors having effects within this Commonwealth. And, in suits against such absent defendants, it shall be lawful for the court in which the same may be depending, to direct publication to be made in any newspaper, printed within this Commonwealth, which, in their opinion, is best calculated to apprise the absent defendant or defendants of the pendency of such suit.(r)

Publication.

47. THE said courts, in their discretion, may direct an issue to be tried, whenever it shall be judged necessary, either in those courts or in any other courts whatsoever, as justice or convenience to the parties may require: and, in all other cases, the mode of trial shall be the same as hath been heretofore used and practised in the Courts of Chancery in Virginia.(s)

Discretion to direct issues.

Mode of trial in other cases.

48. If a majority of the judges of the general court be interested in any suit, which, in the case of any other person, would have been proper for the jurisdiction of such court, it

Suits in which majority of judges of general court are interested, may be instituted in Richmond Chancery Court.

(o) 1809, c. 11, § 1; edi. 1812, c. 41,

§ 1.

(p) *Ibid.* § 2.

(q) 1807, c. 14, § 4.

(r) 1787, c. 9, § 3; edi. 1794, 1803, and 1814, c. 64, § 12; 1806, c. 26, § 5.

(s) Edi. 1794, 1803 and 1814, c. 64, § 13, 14, 15.

A. D. 1818.
A. R. C. 43.

Proceedings, process and appeal.

Arrangement of business.

Appellate jurisdiction.
Appeals from inferior courts, where allowable.

Bond and security on appeal.

Appeals from Courts of Chancery to Court of Appeals.

Petition of appeal, from decree of county or corporation court, where appeal not taken at time of decree.

Bond and security.

Summons against appellee.

Supersedeas to stay proceedings.

may be lawful to institute such suit in the Superior Court of Chancery for the district of Richmond, where proceedings shall be had conformably to the rules of the general court, and process shall be returnable as the said Court of Chancery shall direct ; and thereafter an appeal may be entered to the court of appeals.(s)

49. It shall be lawful for the said courts to arrange the business thereof, in the most convenient and equitable manner.(s)

50. WHENSOEVER any person or persons, body politic or corporate, shall think himself or themselves aggrieved by the decree or final order of any county or corporation court sitting in chancery, in any suit or controversy whatsoever, where the debt or any thing claimed or recovered, exclusive of costs, shall be of the value of thirty-three dollars, or three thousand pounds of tobacco, or where land, slaves, or other specific property, shall be the subject of the decree or final order, such person or persons, body politic or corporate, being a party defendant, may enter an appeal to the Superior Court of Chancery for the district, from such decree or final order ; and, before granting any such appeal, the party praying the same, being a defendant, or some other responsible person, shall enter into bond with sufficient security, in a reasonable penalty, with condition to satisfy and pay the amount recovered in the county or other court aforesaid, and all costs, and to perform in all things, the said decree or final order, in case the same be affirmed.(t)

51. AND in like manner, and under the like regulations, an appeal may be prayed and granted unto a defendant, from any decree or final order of the Superior Court of Chancery for the district, unto the Court of Appeals, where the debt or other thing claimed or recovered, exclusive of costs, shall be of the value of one hundred dollars, or three thousand pounds of tobacco, or where lands, slaves, or other specific property, shall be the subject of the decree or final order.(t)

52. ANY party thinking himself aggrieved by a decree of the court of a county, city or borough in chancery, and not having entered an appeal from the decree, at the time it was pronounced, may appeal from such decree at any time within one month after the decree pronounced ; lodging for that purpose, with the clerk of the Superior Court of Chancery, a copy of the proceedings in the suit, and a petition suggesting error in the decree, signed by some counsel attending the Superior Court of Chancery ; and also lodging with the petition, a bond executed by the appellant or his agent, and a surety or sureties, with the like condition, as is annexed to other appeal bonds, and affidavits or solemn affirmations, verifying the sufficiency of the sureties ; and the clerk shall thereupon issue a summons against the appellee, requiring him to appear and answer the said petition and appeal, and shall also issue a *supersedeas* if necessary, to enjoin from proceeding in execution of the decree ; and the court shall and may hear and determine

(s) Edi. 1794, 1803 and 1814, c. 64,
13, 14, 15.

(t) Edi. 1794, 1803, & 1814, c. 167,
§ 1, 2.

the appeal, in the same manner, as if the appeal had been entered at the time the decree was pronounced: *Provided, always*, That whenever an appeal is prayed for, from any inferior court to the said Superior Courts of Chancery, or bond is given for the removal of any suit in chancery in any manner whatsoever, it shall be sufficient, in either case, if the said bond or bonds shall be executed by good and sufficient securities, although the appellant or party shall not execute the said bond or bonds.(v)

A. D. 1818.
A. R. C. 43.

Bonds on appeals, or for removal of suits, where good, though not executed by appellants, &c.

53. THE said courts, or judges thereof in vacation, shall have power, for good cause shewn, to allow a petition of appeal, and, if necessary, order a *supersedeas*, to stop the execution of any decree pronounced by an inferior court, at any time within three years after pronouncing the same; the party praying such appeal and *supersedeas*, complying with the terms which the said courts and judges shall annex to such order.(v)

Limitation on petitions of appeal.

54. AND whereas many persons, against whom decrees have been rendered in the Superior Courts of Chancery, may desire to appeal from such decrees, but have been hindered from doing so, at the term in which the said decrees were pronounced: *Be it enacted*, That if, upon a petition to any judge of the court of appeals, or the judge of the Superior Court of Chancery, in vacation next after the term when such decree shall have been rendered, for relief in such a case, it shall appear to his satisfaction, that the failure to appeal from his decree, at the time, or during the term when it was pronounced, did not arise from any culpable neglect in the petitioner, or that, upon the whole circumstances of the case, the petitioner ought to have the benefit of an appeal, it shall be lawful for the said judge to grant the said appeal; which grant of appeal shall be as effectual, both for staying proceedings on the said decree, and for bringing the same before the court of appeals for their decision, as if the same had been duly made, during the term when the said decree was pronounced.(w)

Appeals from decrees of Courts of Chancery, when and how obtainable after terms have elapsed.

55. IN every suit in chancery, in any county or corporation court within this Commonwealth, wherein any interlocutory order or decree hath been or shall be made, it shall be lawful for the Superior Court of Chancery of that district, within which such county or corporation court may be, or for the judge thereof in vacation, at any time before a final decree shall have been made in such suit, upon petition to grant an appeal to the said Superior Court of Chancery, from such interlocutory order or decree, for any error therein, in the same manner, and upon the same conditions, as if a final decree had been made; and thereupon the said Superior Court of Chancery, or the judge thereof in vacation, shall award the proper process, to cause the record in the suit aforesaid to be duly certified and transmitted to the superior court, and to cause the proceedings thereon in the county or corporation court to be superseded.(x)

Appeals from interlocutory decrees of inferior courts, grantable by Superior Court or judge in vacation, and how.

Process to bring up the record.

Supersedeas to stay proceedings.

56. WHEN any interlocutory order or decree, from which an appeal shall have been granted as aforesaid, shall be reversed

Where causes shall be retained on decisions of appeals.

(v) May 1778, c. 7, § 3; edi. 1794, 1803, and 1814, c. 64, § 16, 17, 18; 1787, c. 9, § 2.

(w) Revisal of 1792, edi. 1794, 1803 and 1814, c. 64, § 59.

(x) 1815, c. 8, § 1, 2.

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or affirmed, and when any final decree of a county or corporation court shall be reversed in a Superior Court of Chancery, the cause shall not be remanded to the county or corporation court for further proceedings, but shall be retained in the superior court, and there proceeded on to a final decree, unless, by consent of the parties, or for good cause shewn, the court shall otherwise direct.(x)

Appeals from interlocutory decrees of Courts of Chancery, when to be granted by the court, or judge in vacation ;

57. In any cause depending in any Superior Court of Chancery within this Commonwealth, wherein any interlocutory order or decree hath been made, or shall be made, it shall be lawful for such court, or the judge thereof in vacation, at any time before a final decree in the cause, to grant an appeal to the court of appeals, from such interlocutory order or decree, in the same manner, and upon the same conditions, as if a final decree had been made: *Provided*, That, by such interlocutory order or decree, money is required to be paid, or the possession or title of property to be changed, or that the court shall think such appeal proper, in order to settle the principles of the cause, or to avoid expense and delay; and if the Superior Court of Chancery shall refuse an appeal from any such interlocutory order or decree, it shall be lawful for the court of appeals, or any judge thereof in vacation, upon petition, to grant an appeal from such interlocutory order or decree, for any error therein, and to award the proper process thereupon, in the manner, and upon the conditions now prescribed by law for granting appeals from final decrees.(y)

Or by the court of appeals, or any judge thereof.

Interest on decrees may be awarded, until payment.

58. The several courts within this Commonwealth, having original chancery jurisdiction, shall have power and authority, in all cases where, by any final decree, any sum or sums of money, or quantity of tobacco, are directed to be paid to either party, to award interest until the same shall be paid; any law or custom to the contrary, notwithstanding.(z)

Damages on affirmation of decrees.

59. The court of appeals, and the several district Courts of Chancery, in all cases where any decree rendered for any sum of money, or quantity of tobacco, shall, on appeal therefrom, be affirmed, shall award to the appellee, *damages*, at the rate of ten *per centum per annum*, on the whole amount, (including the costs,) for which such decree was rendered, from the time the appeal was obtained, until the affirmance in the appellate court, in satisfaction of all damages or interest; and legal interest from that time until the same shall be paid.(a)

Bill when to stand dismissed, where injunction is wholly dissolved, in district Courts of Chancery;— in inferior courts.

60. In all cases, where hereafter any injunction shall be wholly dissolved, the bill of the complainant shall stand dismissed of course with costs, unless sufficient cause is shewn against its dismissal at the next term, where the same shall be in the district Courts of Chancery; and where the same shall be in any of the inferior courts, at or before the second court, let the same be monthly or quarterly thereafter. And it shall be the duty of the several clerks of the said courts to enter such dismissal on the last day of the terms aforesaid.(a)

Clerk's duty, as to such dismissions.

(x) 1815, c. 8, § 1, 2.
(y) *Ibid.* § 3; edi. 1803 and 1814, c. 223; 1806, c. 23, § 2.

(z) 1803, c. 116, § 1; edi. 1808, c. 20, § 1.
(a) 1803, c. 116, § 2, 3, 4; edi. 1808, c. 29, § 2, 3, 4.

61. WHERE any injunction shall be hereafter obtained, to stay the proceedings on any judgment rendered in any of the courts of this Commonwealth, for money or tobacco, and such injunction shall be dissolved wholly or in part, damages, at the rate of ten *per centum per annum* from the time the injunction was awarded, until the dissolution, shall be paid to the party on whose behalf such judgment was obtained, on such sum as appears to be due, including the costs; and where any such injunction shall be depending in the district Courts of Chancery, the clerk of such court shall, on dissolution thereof, certify to the clerk of the court wherein the judgment was obtained the order of dissolution, as also the time of granting and dissolving such injunction, and the clerk shall issue the execution according to the provisions of this act; and in all cases, where a forthcoming bond has been executed by the complainant in such injunction, and no judgment rendered thereupon, the court in which execution is awarded, shall direct the said damages to be included in the judgment, which shall be in satisfaction of all interest and damages during the time aforesaid: *Provided, nevertheless, That*, where the injunction is granted in order to obtain a discovery, or any part of the judgment shall remain enjoined, the court, wherein the injunction shall be depending, may, if it appear to them just, direct that no such damages shall be paid by the complainant, or such proportion as according to equity they deem expedient; and the clerk of the court where the judgment was rendered, or the court by whom execution shall be awarded, shall govern themselves according.(a)

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Damages on dissolution of injunctions.

Certificate of dissolution, how expressed.

Such damages, how included in judgments on forthcoming bonds

Proviso, as to bills for discovery, or injunctions dissolved in part only.

62. It shall be the duty of the Chancellors of this Commonwealth, respectively, to appoint a marshal for each Superior Court of Chancery within their districts. Such appointment shall be either by order of court in term time, or by commission under the hand and seal of the Chancellor, in vacation. The marshal shall hold his office during the pleasure of the court; and, before he shall be authorised to enter upon the duties thereof, he shall execute a bond with sufficient security, to be judged of by the Chancellor, in the penalty of twenty thousand dollars, payable to the Governor of the Commonwealth, for the time being, and his successors in office, and conditioned for the payment of all monies which he may receive by virtue of his office, and for the faithful discharge of all the other duties thereof, and shall moreover take the usual oaths of office, either in open court, or before the clerk in vacation.(b)

Marshals for Courts of Chancery, how appointed.

Their tenure of office.

To give bond and security.

Oaths of office, where to be taken.

63. The bond so given, shall be entered of record in the Court of Chancery, and preserved by the clerk. The court shall cause it to be renewed from time to time, as occasion may require, at intervals not exceeding in any case three years. Every new bond shall be, in like manner, recorded and preserved; and shall so far supersede the former, and so far only, as that the securities in the former bond shall be in no manner liable, under it, for any act done, or for any omis-

Their bonds to be recorded.

Renewable from time to time; and how often. Effect of such renewal.

(a) 1803, c. 116, § 2, 3, 4; *edi.* 1808, c. 29, § 2, 3, 4. (b) 1815, c. 8, § 7.

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Bonds how suable.
Deputy-marshals,
how appointed;

And qualified.

How removable
from office.

Marshal's liability
for conduct of de-
puties, and remedy
against them,
their sureties, &c.

Duties and powers
of marshals.

Marshals to be
conservators of the
peace.

When to attend at
clerk's office, to
receive process,
&c.

Penalty for not at-
tending.

For failing to exe-
cute and return
process, &c. other
than execution, or
decree for sale.

sion, after the date of the latter. Such bonds may be sued on and prosecuted, in the same manner, and to the same uses, as similar bonds executed by sheriffs.(b)

64. THE marshal may transact any of the duties of his office by deputy; and he may appoint, within his district, as many deputies as he may deem proper, to be approved, however, by the Chancellor. Their appointment shall be by commission, under the hand and seal of the marshal, endorsed with the Chancellor's approbation, and recorded and preserved in the clerk's office of the Chancery Court. Before they enter upon the duties of their office, they shall take the proper oaths of office, either in open court, or before the clerk in vacation, or before some justice of the peace. When such oaths shall be taken before a justice of the peace, they shall be duly certified and transmitted to the clerk of the Chancery Court, to be by him preserved amongst the files of his office. The appointment of such deputies may be revoked at any time, at the pleasure of the marshal, or by an order of the Chancellor, made in court during term time, or in the office during vacation.(b)

65. THE marshal shall be liable for the conduct of his deputies in office, in the same manner as a sheriff is liable for the conduct of his deputies; and he and his representatives shall have the same remedy against them and their securities, and the heirs, executors and administrators of them and their securities, as is given by law to a sheriff and his representatives, against his deputies and their securities, and their heirs, executors, and administrators.(b)

66. It shall be the duty of the marshal, to execute within his district, and duly to return, all process, orders and decrees, which shall be directed to him, from any Superior Court of Chancery, within this Commonwealth. He shall execute all notices relating to suits in Chancery, all decrees for the sale of property within his district, made by any Superior Court of Chancery; unless when the court shall think it proper to appoint special commissioners for that purpose. He shall attend the court during its session, and perform all the duties heretofore assigned to a sergeant at arms. He shall be a conservator of the peace within his district, and shall have full power to summon the *posse comitatus*, whenever it shall be necessary to enable him to execute the duties of his office. He shall, within five days after every rule day, attend the clerk's office of the Chancery Court, and receive all process, orders, and decrees, to him directed, and give a receipt therefor.(b)

67. For failing to attend the clerk's office as aforesaid, and receive the process, orders, and decrees to him directed, and give a receipt therefor, the marshal, besides being liable to the action of the party aggrieved, may be fined by the court, whose officer he is, at their discretion, in any sum not exceeding fifty dollars, to the use of the *literary fund*. For failure to execute and make due return of any order or process to him directed, other than an execution or decree for the sale of property, he

(b) 1815, c. 8, § 7.

may be fined at the discretion of the court, from which such process or order issued, in any sum not exceeding fifty dollars, for such offence, to the use of the party injured, and shall be moreover liable to the action of such party, for damages. For a false return upon any process, order or decree, he shall forfeit and pay not less than one hundred, nor more than three hundred dollars, to be recovered by action of debt, or information in the superior or inferior court of law for the county in which such marshal may reside, for the benefit of the *literary fund*, or of any person aggrieved, who will sue for the same, and he shall be moreover liable to an action for damages in behalf of the party aggrieved.^(b)

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For a false return upon any process, order or decree.

68. THE compensation to the marshals for attending the court during term time, shall be 'five dollars per day,'^(c) to be certified by the court to the auditor of public accounts, and paid by the treasurer.*

Their compensation for attending court.

69. THE office of serjeant at arms in the Courts of Chancery, shall be discontinued, unless when it may be necessary to supply the want or absence of a marshal; in which case, the said courts or the respective judges thereof in vacation, shall have power to appoint a serjeant at arms, who, having in any court of record taken the oaths required by law, shall be entitled to perform the duties of such office, and receive the fees and emoluments thereto belonging.^(d)

Office of serjeant at arms in Chancery Courts discontinued. Proviso.

70. THE fees of the marshal may be distrained for by himself, or collected by any other marshal, in all respects in the same manner as the fees of a sheriff may be distrained for by himself, or collected by another sheriff; and the remedy to recover them from the collector, or his securities, or the executor, or administrator of the collector or his securities, shall be the same. He shall, in like manner with the sheriff, be bound to make out fair and distinct accounts of his fees, and give receipts therefor, to the person paying them; and, on failure thereof, or for demanding and receiving any other or greater fee, than is allowed by law, he shall be liable to the same penalties, which are imposed on a sheriff for the like failure or offence.^(e)

Marshal's fees how collectable.

His duty to furnish accounts and receipts for fees. Penalty for failure or receiving more than legal fees.

71. THE clerk of each Superior Court of Chancery shall keep a process book, in which he shall regularly note all process issued by him, whether final or mesne, and all orders and decrees which he shall issue, together with the dates thereof, the time of issuing the same from the office, and the person to whom delivered, or to whom transmitted. In this book he shall take a receipt from the marshal of the district for all process, orders and decrees, delivered to him. All process, orders and decrees intended to be executed in other districts,

Process book to be kept by clerk.

Receipts from marshal for process, &c. to be taken therein. Clerk's duty to transmit process &c. to other districts.

(b) 1815, c. 8, § 7.
(c) Altered from act of 1815, c. 8, § 7; which gave the marshal the same compensation as that formerly allowed to the serjeant at arms.

(d) 1815, c. 8, § 7; May 1778, c. 7; edi. 1794, 1803, and 1814, c. 64, § 10.
(e) 1815, c. 8, § 7.

* This provision authorising the court to certify the marshal's account for attendance, to the auditor, though made by the act of 1815, c. 8, § 7, was inserted in the present act by way of ryder: and the *formal* words of the ryder are here omitted, in order to incorporate the substantial enactment with this section, to which it properly belongs.

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Date of transmission to be noted in process book.
Clerk's accounts for postage, when to be rendered; how proved; and when payable by parties.

Remedy for non-payment.

What shall be evidence of receipt of process, &c. by marshal, when transmitted by mail.

Courts when to appoint guardians *ad litem*.

Persons appointed compelled to act; but not liable to costs.
Their reasonable charges allowed.

Process, by whom, and when to be executed.

Provision where executed too late to be returned before day of appearance.

To what days in term, appeals shall be.

Record on appeal, when to be brought up, or appeal dismissed.

unless when it shall be otherwise directed by the party or his attorney, shall be sent by the clerk to the marshal of the district within which they are to be executed. They shall be transmitted by the mail, postage paid, and the date of the transmission shall be noted in the process book. The clerk shall keep a regular account of the monies so paid by him for postage, which he may render to the court, from time to time at intervals not exceeding eighteen months. Such accounts, when distinctly made out, and verified by the oath or affirmation of the clerk, if deemed correct by the court, shall be allowed, and ordered to be paid by the parties chargeable therewith. The entry of an order to this effect in the order book, shall be deemed notice to all concerned; and if any person shall fail to pay the sum, with which such person stands charged, within sixty days, an execution may be issued for the same, as in case of a judgment, with interest at the rate of ten *per centum per annum.*^(f)

72. In any proceedings against a marshal for failing to return any process, order, or decree, proof that such process, order or decree, was put into the post office, duly addressed to him, and that the postage thereon was paid, shall be sufficient evidence of the receipt thereof by the marshal, unless he will make oath or affirmation, that he did not himself receive it, and that he verily believes, it was not received by any of his deputies.^(g)

73. THE court, before whom any suit in equity is depending, shall have power to appoint any person they may think fit, to be guardian *ad litem* to any infant or insane defendant in such suit, whether such infant or insane defendant shall have been served with process or not, and to compel the person so appointed to act: *Provided, however,* That such guardian *ad litem* shall not be liable to the payment of costs, and that he shall have his reasonable charges allowed him by the court, to be paid by the party at whose motion he was appointed, and to be taxed in the bill of costs.^(h)

74. ALL process issuing from the said courts respectively, shall be executed by the marshal or his deputies, or other proper officer, (as the case may be,) and may be executed at any time before the return day thereof; and if any process shall be executed so late, that the marshal or other officer hath not reasonable time to return the same before the day of appearance, and thereupon any subsequent process shall be awarded, the marshal or other officer shall not execute such subsequent process, but shall return the first process by him executed, on which there shall be the same proceedings, as if it had been returned in due time.⁽ⁱ⁾

75. ALL appeals from decrees in chancery, obtained in any inferior court, shall be made to the third day of the next term of the district Court of Chancery.^(k)

76. If either party shall hereafter enter an appeal from any decree pronounced in any inferior court of this Common-

(f) Altered from act of 1815, c. 8, § 8; which directed the amount of postage to be paid out of the public treasury.

(g) 1815, c. 8, § 8.

(h) 1815, c. 8, § 6.

(i) From ed. 1794, 1803 and 1814. c. 64, § 19, and 1815, c. 8, § 7.

(k) Edition 1794, 1803 and 1814. c. 64, § 19.

wealth, to any of the Superior Courts of Chancery, and shall fail to file the record with the clerk of such Superior Court, before or during the second term of such court after the same shall have been granted, such appeal shall be dismissed with costs, unless good cause be shewn to the contrary, in which case, the same may be docketed and heard, as if the record had been filed in proper time.(l)

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77. IN all suits in the said courts, the following rules and methods shall be observed :* the complainant shall file his bill within one calendar month after the day of appearance, or may be ruled, on the requisition of the defendant, to file such bill ; and if he fails to do so within one calendar month after such rule, the suit may be dismissed with costs ; and if he shall fail to file the same within three months after the *subpœna* shall be returned executed, the suit shall stand *ipso facto*, dismissed with costs.(m)

Rules of proceeding in courts.
Filing bill.
Rule to file it.
Effect thereof.
Suit when *ipso facto* dismissed, for want of bill.

78. AND upon the complainant's dismissing his bill, or the defendant's dismissing the same for want of prosecution, the complainant shall pay costs, to be taxed by the clerk of the court ; for which costs, an attachment, or other process of compulsion, or an execution may issue, at the election of the defendant, returnable on any return day.(n)

Costs on bill dismissed.
Process to compel payment.

79. THE complainant may amend his bill, before the defendant or his attorney hath taken out a copy thereof, or in a small matter afterwards, without paying costs ; but if he amend in a material point, after such copy obtained, he shall pay the defendant all costs occasioned thereby.(m)

Amendment of bill, when without costs ;
And when upon paying costs.

80. IF the defendant shall not appear on the day of appearance, (which in all cases shall be the second day after the term to which the *subpœna* is returnable,) an attachment shall be awarded, and issued against him, returnable to the next term, which being returned executed, if the defendant doth not appear, or, being brought into court upon any such process, shall obstinately refuse to answer, the complainant's bill shall be taken as confessed, and the matter thereof decreed accordingly.(m)

Attachment to compel appearance.
Bill taken as confessed.

81. THE defendant, within three calendar months after his appearance and bill filed, shall put in his answer, to be filed with the clerk in his office ; at the expiration of which time, if no answer be filed, the clerk, upon request, shall issue an attachment, returnable to the next court ; and if no answer be filed upon the return of such attachment *executed*, or a copy thereof left at the defendant's usual place of abode, or last place of residence, the complainant's bill shall be taken as confessed, and the matter thereof decreed ; and if the attachment be returned *not executed*, an attachment with proclamation, and such subsequent process of contempt, may issue, as was

Filing answer.
Attachment for answer.
If executed, bill taken as confessed.
If not executed, attachment with proclamation, &c.

(l) 1806, c. 23, § 3 ; edition 1808, c. 103, § 3.

(m) Edition 1794, 1803, and 1814, c. 64, § 22, 23.

* The rules of practice are essentially the same as prescribed by the act of October 1777, c. 15, establishing the High Court of Chancery : vid. Chan. Rev. p. 66. These were taken from the rules of the old general court, with amendments : vid. edi. 1752, act of 1748, c. 6, § 28 ; edi. 1769, act of 1753, c. 1, § 38. To prevent unnecessary repetition, the references will be to the revival of 1792, contained in the editions of 1794, 1803 and 1814, and the subsequent acts.

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As to the practice of taking bills for confessed, vid. 5 Geo. 2, c. 25.

Where bill may be taken as confessed, without attachment executed.

Restriction, as to process of contempt.

Answer, before whom sworn to.

Where, without answer filed, plaintiff may have general commission to take depositions, or defendant brought in to answer interrogatories.

Proceeding thereon.

Proviso.

Objection to jurisdiction, when too late.

Exceptions to this rule.

Answer to first, before answer to cross-bill.

Replication, or exceptions to answer.

Rule to reply.

heretofore issuable out of the general court sitting in chancery in like cases.(n)*

82. OR, if the defendant in any suit in a chancery district court, does not file his answer within three months after the plaintiff shall have filed his bill, having also been served with a *subpœna* at least three months before the said time for filing his answer, the plaintiff may proceed to take his bill for confessed, and proceed in the same manner as in the case of an attachment returned "executed."(o)

83. No process of contempt shall issue unless the *subpœna* be returned, served by a sworn officer, or affidavit be made of the service thereof.(p)

84. EVERY defendant may swear to his answer, before any judge of the Superior Courts of Chancery or of the general court, or any justice of the peace.(p)

85. IF the defendant does not file his answer within three months after the plaintiff shall have filed his bill, having also been served with the *subpœna* at least three months before the said time for filing his answer, the plaintiff may have a general commission to take depositions, or he may move the court to bring in the defendant to answer interrogatories, at his election, and proceed on to hearing in the two last cases, as if the answer had been filed, and the cause was at issue: *Provided*, That the court, for good cause shewn, may allow the answer to be filed, and grant a further day for such hearing.(p)

86. AFTER answer filed, and no plea in abatement to the jurisdiction of the court, no exception for want of jurisdiction shall ever afterwards be made; nor shall the said Superior Courts of Chancery, or any other court, ever thereafter delay or refuse justice, or reverse the proceedings for want of jurisdiction, except in cases of controversy respecting lands lying without the jurisdiction of such court, and also of infants and *femes covert*s.(p)

87. WHEN a cross-bill shall be exhibited, the defendant or defendants to the first bill shall answer thereto, before the defendant or defendants to the cross-bill shall be compelled to answer such cross-bill.(p)

88. THE complainant shall reply, or file exceptions, within two calendar months after the answer shall have been put in. If he fails so to do, the defendant may give a rule to reply with the clerk of the court, which being expired, and no replication or exceptions filed, the suit shall be dismissed with costs; but the court may order the same to be retained, if they see cause, on payment of costs.(q)

(n) Edl. 1794, 1806, and 1814, § 25, and 1790, c. 12, § 3.

(o) 1806, c. 23, § 4; edition 1806, c. 103, § 4.

(p) Edl. 1794, 1803, & 1814, c. 64, § 26, 27, 28, 29, 30.

(q) Edl. 1794, 1803, and 1814, c. 64, § 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41.

* The several acts concerning the practice of our Courts of Chancery in such cases, all contain the same provision, referring to the practice of the general court sitting in chancery, before the revolution. What was that practice? The practice of the High Court of Chancery of England. See edl. 1752, of acts of 1748, c. 6, § 28; edl. 1769, c. 1, § 38; both of which provide, that, in such cases, such further process of contempt may issue, as is issuable out of the High Court of Chancery of England in like cases.

89. If the complainant's attorney shall except against any answer as insufficient, he may file his exceptions, and give a rule with the clerk, to make a better answer within two calendar months; and if, within that time, the defendant shall put in a sufficient answer, the same shall be received without costs; but if any defendant insists on the sufficiency of his answer, or neglects or refuses to put in a sufficient answer, or shall put in another insufficient answer, the plaintiff may set down his exceptions, to be argued the next term in court; and, after the expiration of such rule, or any second insufficient answer put in, no farther or other answer shall be received, but upon payment of costs.(q)

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Rule to file better answer.
Sufficient answer, when receivable without costs.
Setting down exceptions for argument.

90. If, upon argument, the complainant's exceptions shall be over-ruled, or the defendant's answer adjudged insufficient, the complainant shall pay to the defendant, or the defendant to the complainant, such costs as shall be allowed by the court.(q)

Costs on exceptions over-ruled, or answer adjudged insufficient.

91. UPON a second answer adjudged insufficient, costs shall be doubled.(q)

Costs where doubled.

92. If a defendant shall put in a third insufficient answer, which shall be so adjudged, he or she may be examined upon interrogatories, and committed until he or she shall answer them, and pay costs.(q)

Effect of third insufficient answer.

93. If the defendant, after process of contempt, put in an insufficient answer, which shall be so adjudged, the complainant may go on with the subsequent process of contempt, as if no answer had been put in.(q)

Of insufficient answer after process of contempt.

94. RULES to plead, answer, reply, rejoin, or other proceedings not before particularly mentioned, when necessary, shall be given from month to month, with the clerk in his office, and shall be entered in a rule-book for the information of all parties, attorneys or solicitors concerned therein.(q)

Rules to be given from month to month.
Rule-book.

95. No defendant shall be admitted to put in a rejoinder, unless it be filed before the expiration of the rule to rejoin; but the complainant may proceed to set his cause down for hearing.(q)

Filing rejoinder.
Setting cause for hearing.

96. AFTER an attachment with proclamation returned, no plea or demurrer shall be received, unless by an order of court, upon motion.(q)

Effect of attachment, with proclamation, returned.

97. If the complainant conceives any plea or demurrer to be naught, either for the matter or manner of it, he may set it down with the clerk to be argued; or if he thinks the plea good, but not true, he may take issue upon it, and proceed to trial by jury, as has been heretofore used in other causes in Chancery, where trial hath been by jury: and if, thereupon, the plea shall be found false, the complainant shall have the same advantages, as if it had been so found by verdict at common law.(q)

Setting plea or demurrer for argument.
Taking issue as to fact.
Trial by jury.
Effect of finding plea false.

98. If a plea or demurrer be over-ruled, no other plea or demurrer shall be thereafter received, but the defendant shall answer the allegations of the bill.(q)

Of plea or demurrer over-ruled.

99. If the complainant shall not proceed to reply to, or set for hearing as before mentioned, any plea or demurrer, before

Dismission of bill for want of replication, &c.

(q) Edi. 1794, 1803, and 1814, c. 64, § 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41.

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Costs on plea or demurrer over-ruled, or adjudged good.

Refusal to answer after demurrer over-ruled.

Commissions to take depositions *de bene esse*, when.

Notice.

General commission.

Six months allowed.

Setting cause for hearing.

Depositions taken afterwards, when to be read.

Depositions of witnesses residing out of State, how obtainable.

Notice.

Taken within U. States, &c. how certified and authenticated.

Courts may regulate proceedings at rules, and re-instate suits.

Orders how drawn up, read and signed.

Full records of causes decided.

the second court after filing the same, the bill may be dismissed of course with costs.(r)

100. UPON a plea or demurrer argued and over-ruled, costs shall be paid as where an answer is judged insufficient; and the defendant shall answer within two calendar months after; but if adjudged good, the defendant shall have his costs.(r)

101. IF any defendant, after a demurrer shall have been over-ruled, shall refuse to answer, the bill shall be taken as confessed, and the matter thereof decreed.(r)

102. AFTER any bill filed, and before the defendant hath answered, upon oath made that any of the complainant's witnesses are aged and infirm, or going out of the country, the clerk may issue a commission for taking the examination of such witnesses *de bene esse*; the party praying such commission, giving reasonable notice to the adverse party, of the time and place of taking the depositions.(r)

103. WHENEVER a general commission shall issue for taking depositions upon answer and replication, six months from the time of the replication, shall be allowed the parties for taking their depositions; and either party, at the expiration of the said six months, may set the same for hearing; nor shall any deposition taken after that time, be read as evidence on the hearing, except the same was taken by consent of the parties, by special order of court, or out of the State.(r)

104. IF any party to a suit depending in equity, shall desire to take the deposition of any witness, residing out of the Commonwealth, it shall be lawful for the clerk of the court, in which such suit shall be depending, upon application of the party, to issue a commission to any two justices of the peace, in the state, territory, or dominion, in which the witness may reside; and a deposition taken in pursuance thereof, upon reasonable notice to the adverse party, shall be read as evidence in the cause. If the justices taking such deposition reside within the United States, or any territory thereof, their own certificates, that they are justices, shall be sufficient evidence of the fact; and if they reside in a foreign country, their official character shall be verified by such testimonials, as the court, in which the deposition is offered, shall have prescribed.(s)

105. THE courts, in their sittings, may regulate all proceedings in the office, and, for good cause shewn, may set aside any dismissions, and re-instate the suits, on such terms as shall appear equitable.(t)

106. FOR prevention of errors in entering up the decrees and orders of said courts, the proceedings of every day shall be drawn up at large by the clerk, and read in open court the next day, (except those of the last day of each term, which shall be drawn up, read, and corrected the same day,) and any necessary corrections made therein; when they shall be signed by the judge of the court, and preserved among the records.(t)

107. AND, for the more entire and better preservation of the records of the court, when any cause shall be finally

(r) Edi. 1794, 1803, and 1814, c. 64, § 42, 43, 44, 45, 46.
(s) 1815, c. 8, § 5.

(t) Edi. 1794, 1803, and 1814, c. 64, § 47, 48.

determined, the clerk shall enter all the pleadings therein, and other matters relating thereto together, in a book to be kept for that purpose, so that an entire and perfect record may be made thereof; and those wherein the title to lands is determined, shall be entered in separate books to be kept for that purpose only.(v)*

A. D. 1818.
A. R. C. 43.

Separate books
for land causes.

108. THE courts in session, or the judges thereof, respectively, in vacation, may grant writs of *certiorari*, for removing before the same, the proceedings in any suit in Chancery, depending in any county or other inferior court within their jurisdiction, writs of *ne exeat* to prevent the departure of any defendant out of the country, until security be given for performing the decree, and writs of injunction to stay execution of judgments obtained in any of the courts of common law; subject nevertheless to the rules following:(w)

Writs of *certiorari*, *ne exeat*, and injunctions, when grantable.

109. No writ of *certiorari* shall be granted to remove any suit, unless the matter in dispute be of value sufficient to entitle the Superior Courts of Chancery to original jurisdiction therein; nor unless ten days notice of the motion be given in writing to the adverse party; nor, in vacation, but upon such petition and affidavit, as are by law directed for writs of *certiorari* to be granted by the superior courts of law; and in all cases, bond and security shall be given, for performing the decree of such Superior Court of Chancery, before the issuing of the *certiorari*.(w)

Requisites for granting writs of *certiorari*.
Value of matter in controversy.
Notice.
Petition and affidavit.
Bond and security.

110. WRITS of *ne exeat* shall not be granted, but upon a bill filed and affidavits made to the truth of its allegations, which being produced to the court in term time, or the judge in vacation, such writ may be granted or refused as shall seem just; and if granted, he shall direct, to be endorsed thereon, in what penalty bond and security shall be required of the defendant.(w)

Writs of *ne exeat*.
Bill and affidavit.

111. If the defendant shall by answer satisfy the court, that there is no reason for his restraint, or give sufficient security to perform the decree, the writ may be discharged; or it may be discharged by the judge in vacation; provided, reasonable notice be given of the time of making the motion.(x)

Bond and security.
Such writs how dischargeable.

112. No injunction shall be granted to stay proceedings in any suit at law, unless the matter in dispute be of value sufficient to admit of original jurisdiction in the said Superior Courts of Chancery; nor unless the court in term time, or the judge thereof in vacation, shall be satisfied of the plaintiff's equity, either by affidavit, certified at the foot of the bill, that the allegations thereof are true, or by other means, and shall order the same.(y)

Injunctions.
Value of matter in controversy.
Equity in bill.
Affidavit.

(v) Edi. 1794, 1803, and 1814, c.

(x) Edi. 1794, 1803, & 1814, c. 64,

§ 49.

§ 53; and edi. 1803, & 1814, c. 223, § 4.

(w) *Ibid*, § 50, 51, 52.

(y) Edi. 1794, 1803, and 1814, c. 64, § 54, 55.

* This section is copied from the act of October 1777, c. 15, § 30 (Chan. Rev. p. 68,) which was a literal transcript from the acts of 1748, (Edi. 1752, c. 6, § 23; and 1753, (Edi. 1769, c. 1. § 24.) By act of 1804, c. 14, § 5, complete records were only required to be made up, in land causes, and in cases of appeal, writ of error, and supersedeas, by any clerk. The former law is now restored as to the Superior Courts of Chancery; and the provisions of the act of 1804 confined to the courts of law. *Vid.* act for *Limitations of Actions*, &c. § 99.

A. D. 1848.

A. R. C. 43.

Endorsement on
subpœna of injunc-
tion.

Bond and security.

Endorsement that
bond is filed.

Proceeding where
defendant in cus-
tody on process of
contempt, is bro't
into court by *habe-
as corpus*, &c. and
refuses to enter
appearance.

Copy of decree to
be served on such
defendant,

Or, if he die in
custody, on his
heir, &c.

Proceedings to be
stayed, where bill
of review is grant-
ed ;

Or stay of pro-
ceedings, at discre-
tion.
Security may be
required.

113. WHERE any injunction shall be granted, the clerk shall endorse on the *subpœna*, that the effect thereof is to be suspended, until the party obtaining the same shall give bond with sufficient security, in the office of the court in which the judgment to be enjoined shall have been obtained.(y)

114. THE party obtaining the injunction, shall then enter into bond with sufficient security, and file the same in the clerk's office of that court in which the proceedings at law were had, for paying all money and tobacco, and costs due, or to become due, to the plaintiff in the action at law, and also all such costs and damages, as shall be awarded against him or her in case the injunction shall be dissolved ; and the clerk shall endorse on the *subpœna* that the bond is filed.(z)

115. If any defendant or defendants shall be in custody upon any process of contempt, and be brought into court by virtue of a writ of *habeas corpus*, or other process, and shall refuse or neglect to enter his or her appearance, according to the rules of the court, or appoint an attorney of the court to do the same for him, the court, in such case, may direct an attorney to enter an appearance for the defendant or defendants, and thereupon such proceedings may be had, as if he or they had actually entered an appearance ; but if such defendant or defendants shall be in custody, at the time a decree shall be made, upon refusal or neglect to enter an appearance, or to appoint an attorney as aforesaid, or shall be forthcoming so as to be served with a copy of the decree, then such defendant or defendants shall be served with such copy, before any process shall be taken out to compel the performance thereof ; and if such defendant or defendants shall die in custody before such service, then his heir, if any real estate be sequestered or affected by such decree, or if only personal estate, his executor or administrator, shall be served with a copy, in a reasonable time, after such death shall be known to the plaintiff, and who is such heir, executor or administrator.(a)

116. AND whereas, upon bills of review in the Superior Courts of Chancery, the judges of such courts may think it reasonable during the pendency of such bills, or until cause shall be shewn to the contrary, to stay proceedings on the decrees, which such bills are intended to review : *Be it enacted*, That in such case, the judge of any such Superior Court of Chancery, either in term time, or in vacation, when a bill praying a review of the proceedings, in which a decree shall have been pronounced by the said court, shall be presented to him, may, upon such bill, and the circumstances of the case, as the same shall appear satisfactory to him, direct the proceedings on such decree to be stayed, until a decree on the said bill of review shall be made, or until the further order of the said judge : or the said judge may refuse to grant a stay of proceedings in that case, as to him shall seem right : *Provided*, That such judge of the Superior Court of Chancery shall, in either of the said cases, direct such security to be given, and in such place, as is usual in the

(y) Edi. 1794, 1803, and 1814, c. 64, § 54, 55.

(z) Edi. 1794, 1803, & 1814, c. 64, § 56.
(a) *Ibid*, § 58.

cases of appeal and injunction, or such other security as to him shall seem to be reasonable. (b)

A. D. 1818.
A. R. C. 43.

117. ALL acts and parts of acts, within the purview of this act, shall be, and are hereby repealed: saving, however, to all persons every right and remedy to which they may be entitled, under any of the said acts or parts of acts, in like manner as if this act had never been passed.

Repealing clause.
Proviso.

Commencement.

118. THIS act shall commence and be in force from and after the first day of January next.

C. 67.

*An act reducing into one the several acts and parts of acts concerning the General Court, and prescribing the manner of proceeding therein, in certain cases.**

A. D. 1818.
A. R. C. 43.

[Passed December 18, 1818.]

1. *BE it enacted by the General Assembly*, That the General Number of judges. Court of this Commonwealth shall consist of fourteen judges, to be chosen and commissioned in the manner directed by the constitution of the Commonwealth. A majority of the whole Quorum. number of the said judges shall be necessary to constitute a General Court for the transaction of business in term time, except as herein is excepted. The said court shall be holden at Place of session. the Capitol, in the city of Richmond, or at such other place as shall be appointed by the General Assembly, or, in their recess, by the Governor, with the advice of the Council of State, on any such emergency as will make the adjournment lawful. The said court shall be holden twice in every year, namely, Terms. on the fifteenth day of June and fifteenth day of November; or, if either of those days shall be Sunday, then on the succeeding day; and shall continue their session for sixteen juridical days at each term, unless the business before them be sooner dispatched. If a sufficient number of judges should Court how ad- not attend on the first day of any term, or on any other day journable if not during the term, any one of the said judges may adjourn the formed on first court from day to day, for six days successively; and if a day; and how along.

(b) Revision of 1792; ed. 1794, 1803, & 1814, c. 64, § 60.

* This act further suspended, till January 1st, 1820; *vid. ante*. c. 45. The General Court, before the revolution, consisted of the Governor and Council for the time being, any five constituting a court: and it had jurisdiction "to hear and determine all causes, matters and things whatsoever, relating to, or concerning any person or persons, ecclesiastical or civil, or to any person or thing, of what nature soever the same should be, whether brought before them by original process, appeal from any inferior court, or by any other way or means whatever." Its jurisdiction, both original and appellate, was limited to controversies of the value of £10 sterling, or 2000 lb. tobacco, and upwards. See ed. 1752, acts 1748, c. 6, § 2, 5, 24; ed. 1769, acts of 1753. c. 1, § 2, 5, 25. It had exclusive criminal jurisdiction, as a court of *oyer and terminer*, of all cases of free persons, wherein the judgment, on conviction, was loss of life or member: ed. 1769, acts 1748, c. 4, § 5, c. 9, § 1, and of all offences of blasphemy and irreligion, where the punishment was incapacity of any sort, or imprisonment; and of proceedings in cases of incestuous marriages. Same ed. acts 1750, c. 2, § 4, 5, acts 1705, c. 6, § 1. See note on § 5, *post*.

† There are now fifteen judges; *vid. post*. c. 67.

A. D. 1813.
A. R. C. 43.

For what purposes three judges shall be a quorum.

sufficient number should not be then able to attend, all suits depending in such court shall stand continued over to the next succeeding term. But, if, from any cause, a majority of the General Court shall be prevented from attending, so as to form a court for the transaction of business, until the sixth day of the term, then any three judges of the General Court may constitute a court for hearing and pronouncing judgment upon any motion against a sheriff, coroner, or any other collector of the public taxes, or any officer of, or debtor or delinquent to, the Commonwealth, liable, for any debt, claim or default whatever, to motion; and such court may render, on every such motion, such judgment, and with like effect to all intents and purposes, as if a majority of the judges of the said court were present.(a)

Judge's oath of office.

2. EVERY person so commissioned, before he enters upon the duties of his office, shall take and subscribe the oath of fidelity to the Commonwealth, and take the following oath of office, to wit:

You shall swear, that, well and truly, you will serve this Commonwealth in the office of a judge of the General Court; and that you will do equal right to all manner of people, great and small, high and low, rich and poor, according to law, without respect of persons. You shall not take, by yourself, or by any other, privily or openly, any gift, fee or reward, of gold, silver or any other thing, directly or indirectly, of any person or persons, great or small, for any matter done, or to be done, by virtue of your office, except such fees or salary as shall be by law appointed. You shall not maintain, by yourself or other, privily or openly, any plea or quarrel, depending in the courts of this Commonwealth. You shall not deny or delay any person of common right, for the letters or request of any person, nor for any other cause; and if any letter or request come to you contrary to law, you shall nothing do for such letter or request, but you shall proceed to do the law, any such letter or request notwithstanding; and, finally, in all things belonging to your said office, during your continuance therein, you shall faithfully, justly and truly, according to the best of your skill and judgment, do equal and impartial justice, without fraud, favor, affection or partiality. So help you God.

Before whom taken.

Certificate thereof, where recorded.

Penalty for acting, without taking oaths.

Court to appoint clerk, cryer and tipstaff.

Their tenure of office and fees.

WHICH oaths may be taken before the Executive, any court of record, or a justice of the peace, and a certificate thereof being obtained, shall enable such judge to do all the duties of his office: and such certificate shall be recorded in the General Court or superior court where such judge shall first sit. If any person shall presume to sit in court, or execute the said office, without having taken the said oaths, he shall, for such offence, forfeit the sum of fifteen hundred dollars.(b)

3. THE said court shall appoint a clerk, one or more assistant clerks, if necessary, a cryer and tipstaff, the first removable for misbehavior, in the manner directed by the constitution, the others at pleasure; who shall be entitled to such fees or

(a) Compiled of the revised act of 1792, ed. 1794, 1803 and 1814, c. 65, § 1; 1807, c. 3, § 1, 10; 1808, c. 6,

§ 1; *Ibid.*, c. 13; 1813, c. 18, § 15; 1815, c. 32, § 1; 1816, c. 3, § 5.

(b) Ed. 1794, 1803, & 1814, c. 65, § 1.

salaries as shall be established by law. And the sheriff, or so many of the under-sheriffs as shall be thought necessary, of the county where such court may be held, shall attend the said court during their sessions.(c)

A. D. 1818.

A. R. C. 43.

Sheriff to attend court.

4. In case of a vacancy in the office of clerk in the General Court, during vacation, any three judges of the said court, (of whom the senior justice shall be one,) shall appoint a clerk, who, upon taking the oath required by law, before any justice of the peace, shall continue in office until a clerk shall be appointed by the court.(d)

Clerk how appointed in vacation. Such clerk, how long to continue in office.

5. THE jurisdiction of the said court shall be general over all causes, matters and things at common law, as well criminal as civil, except in such cases as, by the constitution of the United States of *America*, or of this Commonwealth, or any statute made by the Congress of the said United States, or the General Assembly of this Commonwealth, are or shall be vested in any other tribunal; in any of which cases, the jurisdiction of the General Court shall cease, unless concurrent jurisdiction be thereto expressly given by this act, or some other statute.* The said court shall have jurisdiction in all causes, matters and things therein depending at the commencement of this act; and no discontinuance shall take place, in any case whatsoever, by reason of the passing of this act. The said court shall continue to have jurisdiction in all cases, suits and motions against public debtors and public defaulters of every denomination, for and in behalf of the Commonwealth. Writs of *scire facias* may be issued from and be tried in the General Court, upon all judgments which have been or shall be obtained therein; the said court may fine sheriffs, deputy sheriffs or coroners, for not returning executions issued, or to be issued, from the said court, and enter up judgments against the said officers, for all money or tobacco, for which they have made, or shall make themselves respectively liable by law upon such executions; may award executions upon replevy bonds, or bonds to have goods forthcoming at the day of sale; may quash executions, if illegally or improvidently issued, or executed, and award new ones; and, finally, may exercise full jurisdiction in every other legal mode necessary for carrying into complete execution, all judgments heretofore given, or hereafter to be given, in the said court; any law to the con-

Court's jurisdiction general, as to matters at common law, criminal or civil, not within jurisdiction of any other court.

Jurisdiction as to causes pending at commencement of this act.

Motions against public debtors, &c.

Scire facias to revive judgments.

Motions against sheriffs and coroners, for not returning executions.

On replevy and forthcoming bonds

(c) Edition 1794, 1803, and 1814, c. 65, § 2.

(d) Edition 1794, 1803, and 1814, c. 160, § 3.

* See note on the title. After the revolution, and before the 22d December, 1788, when the district courts were instituted, the civil jurisdiction of the General Court was "general, over all persons and in all causes, matters and things, at common law, whether brought before it by original process, appeal from any inferior court, *habeas corpus*, *certiorari*, writ of error, *supersedeas*, *mandamus*, or by any other legal ways or means," where the value in controversy was £10 or 2000 lb. of tobacco, or upwards; and its criminal jurisdiction, as a court of *oyer and terminer*, extended to "all treasons, murders, felonies and other crimes and misdemeanors, which should be brought before it;" that is, in cases of free persons, where the judgment, on conviction, was loss of life or member. And it was authorised to take cognizance of all actions at common law, petitions for lapsed lands, appeals, &c. depending in the former General Court. Acts of October, 1777, c. 17, § 1, 2, 3, 5, 6. Its former chancery jurisdiction was, on the establishment of the high court of chancery, transferred to that court; October, 1777, c. 15, § 36, ed. 1785, p. 66, 70.

A. D. 1818.

A. R. C. 43.

Correction of errors in fact.
Mandamus.

Motions against subscribers to Potowmac and James River companies; for sureties against principals, and sheriffs against deputies, and their sureties.

Court may direct causes in circuit courts to be tried at its own bar, or change venue from one circuit to another.

Provision for removal of suits in which judges are parties.

Jurisdiction in causes testamentary, probat of wills, and granting administration.

Deeds not to be recorded in General Court.

Proviso, as to deeds certified or partly proved, before November 1, 1814.

Adjourned criminal cases may be argued, though criminal absent.

trary, or seeming to the contrary, notwithstanding. The said courts shall have power to hear and determine upon all errors and matters of fact that shall or may have happened in the proceedings depending in the said court.(e)

6. THE said court shall have power to issue writs of *mandamus* to the superior courts of law.(f)

7. THE said court shall likewise have jurisdiction, to hear and determine motions against the delinquent subscribers of the *Potowmac* and *James River* companies, and for securities against their principals; and for sheriffs against their deputies and securities, or either of them.(g)

8. FOR good cause shewn, the General Court may direct the trial of any cause depending before a superior court of law, to be had by a jury at their own bar; (for which purpose, the sheriff, or any other officer attending them, shall summon a jury qualified as the law now directs in cases of juries in the General Court;) or may cause a suit depending in one circuit court to be tried in another.(h)

9. UNLESS good cause be shewn to the contrary, the General Court shall direct a suit depending before a superior court of law, in which a judge of the General Court is a party, to be removed to be tried at the bar of the General Court.(i)

10. THE General Court shall have jurisdiction and authority to hear and determine all causes, matters, suits and controversies testamentary, which shall be brought before the same, and to examine and take the proofs of wills, and to hear and determine the right of administration of the estates of persons dying intestate, and to do all other things concerning wills and administrations, according to law.(k)

11. No deeds or conveyances of land, or of any real or personal property, shall be admitted to record in the General Court: *Provided, however,* That such deeds or conveyances as were, on or before the first day of November, in the year one thousand eight hundred and fourteen, certified to be recorded in the said court, may still be recorded there; and that all such deeds and conveyances as were lodged, and partly proved in the General Court, prior to the said first of November, may still be admitted to record in that court; and that all commissions for the privy examination of *femes covert*, which issued from the General Court prior to that day, and which have been duly executed, may, together with the certificates of the execution of the same, be recorded in the General Court, if the deeds or conveyances under which the said commissions issued, have been, or may be recorded in that court.(l)

12. IF a question of law in any criminal case be adjourned to the General Court by any superior court of law, the same may be therein argued and determined, although such criminals be not present.(m)

(e) Edi. 1794, 1803, and 1814, c. 65, § 3.

(f) *Ibid.*, § 4.

(g) *Ibid.*, § 5.

(h) *Ibid.*, § 6.

(i) *Ibid.*, § 7.

(k) Edition 1794, 1803, and 1814, c. 65, § 8.

(l) 1813, c. 10, § 5; 1814, c. 23, § 1, 2.

(m) Edition 1794, 1803, and 1814, c. 65, § 10.

13. On the adjournment of any question of law in any civil suit, the said court shall hear and determine, and certify such determination on the same, to the court from whence the question was adjourned; but no costs shall be incurred on any adjourned question.(n)

A. D. 1818.
A. R. C. 43.

In civil suits, court's opinion to be certified.

No costs on adjourned questions. Process, how issuable, and when returnable.

14. ALL original process to bring any person or persons to answer in any action or suit, information, bill or plaint, in the said court, and all subsequent process thereon, all attachments, or other writs of what nature soever, awarded by the said court, shall be issued and signed by the clerk of the said court, in the name of the Commonwealth, shall bear *teste* by the clerk, and be returnable on the first day of the next succeeding court, except *subpœnas* for witnesses; and all such process may be executed at any time before the return day; except in such cases wherein it is otherwise directed by law.(o)

May be executed at any time before return day.

15. THE appearance day to all writs and process, awarded by the said court, shall be according to the direction thereof.(p)

Appearance day.

16. THE sheriff for the time being, of the county in which the General Court shall be held, shall, before every meeting of the General Court, summon twenty-four freeholders of this Commonwealth, qualified as the law directs, for grand jurors, to appear at the succeeding General Court, on the first day thereof, which the sheriff is hereby empowered to do, as well without his county, as within the same; and the said twenty-four men, or any sixteen of them, shall be a grand jury, who shall be sworn to enquire of, and present, all offences against the Commonwealth, which are cognizable in the said court. And if an indictment shall be found, or presentment made of any such offence, the like proceedings shall be thereupon had, to bring the party accused before the court, as on indictments and presentments in the superior courts of law, having regard to the nature of the offence.(q)

Grand jury, when and how summoned.

Their oath.

Proceedings on indictments and presentments.

17. THE rules and proceedings in the General Court, in all cases not otherwise specially directed, shall be the same as in the superior courts of law in similar cases, and the said court shall have the same power of awarding and refusing costs, as the superior courts have in like cases.(r)

Rules and proceedings generally.

Power as to costs.

18. If the clerk of the said court shall die, resign or be ousted of his office, and a rule day pass by, before a successor be appointed and qualified, no discontinuance shall take place, but all the causes on the rule docket shall stand continued until the rule day after the clerk shall be appointed and qualified; and all process issued before, but not returnable till after such vacancy, shall be returnable to the same rule day.(s)

No discontinuance by death, &c. of clerk.

Process when returnable in such event.

19. THE keeper of the public jail shall constantly attend the General Court, and execute the commands of the court.(t)

Public jailer to attend court.

20. If a judge of the General Court shall be charged with any crime or offence whatsoever, against the laws of this Commonwealth, he shall be triable before the General Court only, unless the prosecution against him be by impeachment, or the

Judge charged with crime or offence, where triable. Exceptions.

(n) Edition 1794, 1803, and 1814, c. 65, § 11.

(o) *Ibid*, § 12.

(p) *Ibid*, § 13.

(q) *Ibid*, § 14.

(r) Edition 1794, 1803, and 1814, c. 65, § 15.

(s) 1814, c. 31, § 11.

(t) Edition 1794, 1803, and 1814, c. 65, § 16.

A. D. 1818.
A. R. C. 43.

Proceedings to
bring accused to
trial, and witnesses
against him.

Person accused,
how bailable.

Venire facias.

Trial, judgment
and execution.

Compensation to
witnesses and *venire*
men.

Venire men from
the vicinage; by
whom to be sum-
moned.

Jury to try the ac-
cused, how impan-
nelled.

Writs of error to
circuit courts in
criminal cases.

Power of court
thereupon.

offence with which he is charged, be cognizable before some tribunal, other than a superior court of law.(v)

21. ANY magistrate, or court, before whom such charge shall be made or depending, shall take the same steps to bring the accused, and the witnesses against him, before the General Court, for his trial, that, during the existence of the former district courts of law, were required to bring an offender, and the witnesses against him, before the district court, which was holden in the city of Richmond.(w)

22. WHEN the offence is bailable, the party accused shall be admitted to bail under the same rules and regulations as are prescribed for admitting to bail persons charged with offences triable in the superior courts of law.(x)

23. A *VENIRE facias* to cause a jury of the vicinage to come before the General Court, for the trial of the accused, shall be issued in the same manner in which such writs are directed to be issued, in the case of persons remanded for trial in the said superior courts; which writ shall be made returnable before the General Court, and, together with all other process that may be issued upon such occasions, shall be executed and returned in the same manner, and under the same penalties, as by law is or may be directed with respect to like process issued from and returnable to said superior courts; and the trial, judgment and execution shall be the same as by law is directed to be had in said superior courts.(y)

24. WITNESSES and *venire* men, for attending the General Court on the trial of any such judge, shall be allowed the same compensation for travelling and attendance, as was allowed by law to witnesses and *venire* men attending the former district courts: And the sheriff, with his guard, for transporting the accused to the jail in the city of Richmond, shall be allowed the same compensation as was allowed to them by law for the transportation of offenders to the district jail.(z)

25. THE *venire facias* directed to issue as aforesaid, shall be directed to the sheriff or serjeant, commanding him to cause twelve good and lawful men, freeholders of his county or corporation, of the neighborhood or place where the fact shall have been committed, to come before the said General Court, at the time the witnesses shall be bound to appear there; which writ shall be executed by the said sheriff or serjeant; and the freeholders summoned by virtue thereof, or such of them as appear and be not challenged, together with so many other good and lawful men of the by-standers, being freeholders within this Commonwealth, as will make the number twelve, or, if the whole array be challenged, twelve of such by-standers shall be a lawful jury for the trial of the prisoner.(a)

26. THE General Court shall also have power to award a writ of *error* in any criminal case whatever, wherein final judgment shall have been pronounced by any superior court of law for the county, within this Commonwealth, convicting any person of any crime or misdemeanor; and, for any error apparent on the record, to reverse such judgment of the superior

(v) 1813, c. 18, § 1.

(w) *Ibid*, § 2.

(x) *Ibid*, § 3.

(y) 1813, c. 18, §

(z) *Ibid*, § 5.

(a) *Ibid*, § 17.

court, and render such other judgment, or remand the cause, and direct a new trial, or order such other proceedings therein, as the nature of the case may require. (b) A. D. 1818.
A. R. C. 43.

27. To enable the person so convicted by the judgment of such superior court of law for the county, to apply for a writ of error; *Be it enacted*, That, in all cases where the judgment shall be death or confinement in the penitentiary, the said superior court shall, on application of the convict, postpone the final execution of the judgment for a reasonable time beyond the next term of the General Court; not exceeding in any case thirty days after the end of such term. (c) Convict when res-
pited, to enable
him to apply for
writ of error;

And how long.

28. ALL and every act, clause and parts of acts within the purview of this act, shall be, and the same are hereby repealed: *Provided*, That all rights, remedies, fines, penalties and prosecutions heretofore accrued, incurred or pending, shall be and remain in the same condition as if this act had never been made. Repealing clause.

Proviso.

29. THIS act shall commence and be in force from and after the first day of January next. Commencement.

C. 68.

*The first and sixth sections of an act, establishing a new Judicial Circuit and for other purposes.** A. D. 1819.
A. R. C. 43.

[Passed February 24, 1819.]

1. *Be it enacted by the General Assembly*, That, in addition, to the fourteen judicial circuits heretofore established by law; the counties of *Lewis, Harrison, Mason, Cabell, and Kanaucha* shall form a fifteenth circuit: an additional Judge of the General Court shall be chosen and commissioned in the manner directed by the constitution of the Commonwealth, who shall be the judge of the said circuit, shall reside therein, and shall receive the same compensation as the other Judges of the General Court, to be paid in the same manner. New circuit.
Additional Judge
of the General
Court to be cho-
sen.

2. THIS act to be in force from the passage thereof. Commencement.

(b) 1813, c. 18, § 15.

(c) 1813, c. 48, § 16.

* The other sections of this act are incorporated in the act concerning the circuit courts, *post* c. 69.

C. 69.

A. D. 1819.
A. R. C. 43.

*An act to reduce into one, the several acts, and parts of acts concerning the establishment, jurisdiction and powers of the Superior Courts of Law.**

[Passed March 8, 1819.]

State divided into
circuits.
Judge assigned to
each circuit.
Court to be holden
in each county.

1. *Be it enacted by the General Assembly, That, the Commonwealth shall be divided into fifteen circuits, and one Judge of the General Court assigned to each circuit, who shall hold a court in each year, at the court-house of each county in his circuit, or at such other place within each county as shall be directed by this act, at the times and in the manner herein-after directed.*

Counties arranged
into circuits, and
court days ap-
pointed for each.

First circuit.

2. A COURT shall be holden in *Elizabeth City*, on the first day of April, and the first day of September; in *Warwick*, on the fifth day of April, and the fifth day of September; in *York*, on the ninth day of April, and the ninth day of September; in *James City*, on the fifteenth day of April, and the fifteenth day of September; in *Charles City*, on the twenty-first day of April, and the twenty-first day of September; in *New-Kent*, on the twenty-eighth day of April, and the twenty-eighth day of September; in *King-William*, on the sixth day of May, and the sixth day of October; in *Middlesex*, on the twelfth day of May, and the twelfth day of October; in *Gloucester*, on the twenty-second day of May, and the twenty-second day of October; in *Mathews*, on the twenty-eighth day of May, and the twenty-eighth day of October; and the said counties shall compose the first circuit. A court shall be holden in *Greensville*, on the seventh day of April, and the seventh day of September; in *Southampton*, on the first day of April, and the first day of September; in *Sussex*, on the twentieth day of April, and the twentieth day of September; in *Surry*, on the fifteenth day of April, and the fifteenth day of September; in *Isle of Wight*, on the ninth day of May, and the ninth day of October; in *Nansemond*, on the fifteenth day of May, and the fifteenth day of October; in *Prince George*, at the court-house in that part of the county called Blandford, on the twenty-fifth day of April, and the twenty-fifth day of September; in *Norfolk* county, on the twenty-second day of May, and the twenty-second day of October; in *Princess Anne*, on the eighth day of June, and the eighth day of November; and the said counties shall compose the second circuit. A court shall be holden in *Northumberland*, on the first Monday in April, and the first Monday in September; in *Lancaster*, on the Thursday after the first Monday

Second circuit.

Third circuit.

* Former general laws touching this subject.—See act for establishing the General Court, Oct. 1777, c. 17. The district courts succeeded to the greater part of the jurisdiction of the General Court in 1788; see acts of 1788, c. 67. Ed. 1794, 1803, and 1814, c. 66. The circuit courts were substituted for the district courts in 1809; see acts of 1807, c. 3, 1808, c. 6. This act is a compilation from the acts here cited, with some amendments at the late Revision, which are distinguished by being printed within single inverted commas.

A. D. 1819.
A. R. C. 43.

in April, and the Thursday after the first Monday in September; in *Richmond* county, on the second Monday in April, and the second Monday in September; in *Westmoreland*, on the Thursday after the second Monday in April, and on the Thursday after the second Monday in September; in *King George*, on the third Monday in April, and the third Monday in September; in *Stafford*, on the third Tuesday after the fourth Monday in April, and the third Tuesday after the fourth Monday in September; in *Prince William*, on the third Monday after the fourth Monday in April, and on the third Monday after the fourth Monday in September; in *Fairfax*, on the fourth Monday in May, and on the fourth Monday in October; and the said counties shall compose the third circuit. A court shall be holden in *Henrico*; at the Capitol in the city of Richmond, on the second Monday in March, the sixth day of July, and the first day of December; the July term to continue for six juridical days only; in *Goochland*, the Tuesdays after the third Mondays in April and September; in *Hanover*, on the fourth Mondays in April and September; in *King and Queen*, on the first Mondays after the fourth Mondays in April and September; in *Essex*, on the Thursdays next succeeding the commencement of *King and Queen* Superior Court in the spring and fall; in *Caroline*, on the third Mondays after the fourth Mondays in April and September; and in *Spottsylvania*, at the court-house within the corporation of Fredericksburg, on the fourth Mondays after the fourth Mondays in April and September; and the said counties shall compose the fourth circuit. A court shall be holden in *Dinwiddie*, on the first Monday in April and the first Monday in September; in *Brunswick*, on the second Monday in April, and the second Monday in September; in *Lunenburg*, on the third Monday in April, and the third Monday in September; in *Nottoway*, on the fourth Monday in April, and the fourth Monday in September; in *Amelia*, on the first Monday after the fourth Monday in April, and the first Monday after the fourth Monday in September; in *Powhatan*, on the second Monday after the fourth Monday in April, and the second Monday after the fourth Monday in September; in *Chesterfield*, on the second day of June, and on the second day of November; and the said counties shall compose the fifth circuit. A court shall be holden in *Mecklenburg*, on the first Mondays in April and September; and in *Charlotte*, on the second Mondays in April and September; in *Halifax*, on the third Mondays in April and September; in *Pittsylvania*, on the fourth Mondays in April and September; in *Henry*, on the first Mondays after the fourth Mondays in April and September; in *Patrick*, on the Fridays after the commencement of the said Superior Courts of *Henry*; and in *Franklin*, on the twentieth day of May, and the twentieth day of October; and the said counties shall compose the sixth circuit. A court shall be holden in *Campbell*, on the first Monday in April, and the first Monday in September; in *Bedford*, on the second Monday in April, and the second Monday in September; in *Buckingham*, on the third Monday in April, and the third Monday in September; in *Prince Edward*, on the fourth Monday in April

Fourth circuit.

Fifth circuit.

Sixth circuit.

Seventh circuit.

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Eighth circuit.

and the fourth Monday in September; in *Cumberland*, on the first Monday after the fourth Monday in April, and the first Monday after the fourth Monday in September; in *Louisa*, on the third Mondays after the fourth Mondays in April and September; in *Fluvanna*, on the second Tuesdays after the third Mondays, after the fourth Mondays in the months of April and September; and the said counties shall compose the seventh circuit. A court shall be holden in *Bath*, on the first Monday in April, and the first Monday in September; in *Rockbridge*, on the second Monday in April, and the second Monday in September; in *Augusta*, on the third Monday in April, and the third Monday in September; in *Amherst*, on the fourth Monday in April, and the fourth Monday in September; in *Nelson*, on the first Monday after the fourth Monday in April, and the first Monday after the fourth Monday in September; in *Albemarle*, on the second Monday after the fourth Monday in April, and the second Monday after the fourth Monday in September; and the said counties shall compose the eighth circuit. A court shall be holden in *Culpeper*, on the Thursday before the first Monday in April, and the Thursday before the first Monday in September; in *Madison*, on the second Monday in April, and the second Monday in September; in *Orange*, on the Fridays after the second Mondays in April and September; in *Rockingham*, on the fourth Monday in April and the fourth Monday in September; in *Pendleton*, on the first Monday after the fourth Monday in April, and the first Monday after the fourth Monday in September; in *Hardy*, on the Fridays after the Mondays on which the Superior Courts of *Pendleton* county are holden; in *Shenandoah*, on the fourth Mondays after the fourth Mondays in April and September; and the said counties shall compose the ninth circuit. A court shall be holden in the county of *Loudoun*, on the last Monday in March, and the last Monday in August; in *Fauquier*, on the second Monday in April, and the second Monday in September; in *Jefferson*, on the third Monday in April, and the third Monday in September; in *Berkeley*, on the fourth Monday in April, and the fourth Monday in September; in *Frederick*, on the first Monday after the fourth Monday in April, and the first Monday after the fourth Monday in September; in *Hampshire*, on the fourth Mondays after the fourth Mondays in April and September; and the said counties shall compose the tenth circuit. A court shall be holden in *Preston*, on the first Monday in April and September; in *Monongalia*, on the second Monday in April and September; in *Brooke*, on the third Monday in April and September; in *Ohio*, on the fourth Monday in April and September; in *Tyler*, on the first Monday after the fourth Monday in April and September; and in *Randolph*, on the second Mondays after the fourth Mondays in April and September; and the said counties shall compose the eleventh circuit. A court shall be holden in *Botetourt*, on the first Monday in April, and first Monday in September; in *Montgomery*, on the second Monday in April and September; in *Giles*, on the third Monday in April and September; in *Monroe*, on the fourth Monday in April and September; in *Greenbrier*, on the first Monday after the fourth Monday in

Ninth circuit.

Tenth circuit.

Eleventh circuit.

Twelfth circuit.

April and September; and in *Nicholas* on the second Monday after the fourth Monday, in April and September; and the said counties shall compose the twelfth circuit. A court shall be holden in *Lee*, on the last Mondays in March and August; in *Scott*, on the first Mondays in April and September; in *Russel*, on the second Mondays in April and September; in *Tazewell*, on the third Mondays in April and September; in *Wythe*, on the second Mondays after the fourth Mondays in April and September; in *Grayson*, on the third Mondays after the fourth Mondays in April and September; and in *Washington*, on the fifth Mondays after the fourth Mondays in April and September; and the said counties shall compose the thirteenth circuit. A court shall be holden for the county of *Accomack*, on the first Monday in May, and the third Monday in October; and for the county of *Northampton*, on the third Monday in May, and the first Monday in November; and the said counties shall compose the fourteenth circuit. A court shall be holden in *Lewis*, on the first Monday in April and September; in *Harrison*, on the second Monday in April and September; in *Wood*, on the third Monday in April and September; in *Mason*, on the fourth Monday in April and September; in *Cabell*, on the first Monday after the fourth Monday, in April and September; and in *Kanawha*, on the second Monday after the fourth Monday, in April and September; and the said counties shall compose the fifteenth circuit.

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Thirteenth circuit.

Fourteenth circuit.

Fifteenth circuit.

3. EACH of the aforesaid courts shall sit until the business thereof shall be dispatched, unless the judge holding the same be compelled to leave the court, in order to arrive in time at the next succeeding court of his circuit, or at the General Court.^(a)

Terms how long to continue.

4. IF any of the aforesaid days, on which courts are directed to be holden, should happen to be Sunday, then the court shall be holden on the next day.^(a)

Proviso, if day appointed be Sunday.

5. THE town of *Petersburg* shall be attached to, and within the jurisdiction of, the circuit court holden in the county of *Prince George*; ^(b) and the city of *Williamsburg* shall be attached to and within the jurisdiction of the circuit court of *James City*.^(c)

Town of Petersburg attached to circuit court of Prince George; and Williamsburg to James City.

6. ' WHEN any river, or other water-course, or bay, shall lie between any counties within this Commonwealth, the superior courts of law for the counties, on each side, shall have concurrent jurisdiction over so much thereof as is opposite to the respective counties; and the superior courts of law, for those counties, lying on the waters bounding this State, shall have jurisdiction over such waters opposite the counties, respectively, as far as the jurisdiction of this Commonwealth extends.'

Concurrent jurisdiction, where rivers, &c. lie between counties.

Jurisdiction over waters bounding the State.

7. EACH judge of the general court, besides the oaths required by law to be taken by him as such, shall take another oath, as judge of the circuit courts, in the same form as that prescribed by law for a judge of the general court, changing the words *general court* for *circuit courts*; which oaths may be taken

Oaths of office of judges.

Before whom taken.

(a) 1807, c. 3, § 1.
(b) 1808, c. 6, § 14.

(c) 1807, c. 3, § 19.

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Certificate thereof, where to be recorded.

Judge of general court, not having taken oath as such, may act as judge of circuit court.

Penalty for acting, without taking circuit judge's oath.

before the Executive, any court of record, or a justice of the peace; and a certificate thereof being obtained, shall enable him to do all the duties of his office, and to act as a general conservator of the peace throughout the Commonwealth. Such certificate shall be recorded in the general court, or the circuit court, where such judge shall first sit. Any person appointed a judge of the general court may act as a judge of the circuit courts, without having taken the oaths as a judge of the general court. Any judge, who shall sit as a judge of a circuit court, without having taken the oaths herein required to be taken by him, shall forfeit the sum of fifteen hundred dollars, to be recovered by action of debt, or information, in any court of record, one half to the use of the Commonwealth, and the other half to the use of the informer.(d)

Court adjourned, from day to day, judge not attending on first day. How long.

Causes continued, court not sitting to decide.

No discontinuance by court's not sitting on any day.

8. If the judge shall not attend on the first day of any circuit court, such court shall stand adjourned from day to day, until a court shall be made, if that shall happen before four of the clock in the afternoon of the third day. If a court shall not sit in any term, or shall not continue to sit the whole term, or, before the end of the term, shall not have heard and determined all matters ready for their decision, all such suits and things depending in court, and undecided, shall stand continued to the next succeeding term. If, from any cause, the court shall not sit, on any day in a term after it shall have been opened, there shall be no discontinuance, but, so soon as the cause is removed, the court shall proceed to business, until the end of the term, if the business depending before it be not sooner dispatched.(e)

Jurisdiction;

As to value in controversy;

And mode of proceeding.

Exceptions.

In cases of mills, wills, roads, letters of administration, public debtors, and caveats. Regulation as to caveats.

Proviso, touching locality of controversy.

9. THE jurisdiction of the said courts, respectively, shall be over all persons, and in all causes, matters or things at common law, which were cognizable in the General Court, on the twenty-second day of December one thousand seven hundred and eighty-eight, and which shall amount to one hundred dollars or three thousand pounds of tobacco, whether brought before them by original process, by *habeas corpus*, appeal, writ of *error*, *supersedeas*, *mandamus*, *certiorari* to remove proceedings for any purpose, or by any legal ways or means whatever; except in the cases herein-after mentioned, and such cases as, by the constitution of this Commonwealth, or some particular statute heretofore made, or hereafter to be made, are or shall be exclusively vested in, or reserved to, the General Court. They shall also have the same jurisdiction concerning mills, wills, roads and letters of administration, public debtors, whether sheriffs or others, and *caveats*, as the General Court heretofore had by law; allowing the person entering any *caveat*, to return a certified copy thereof, from the register to the circuit court office, within thirty days from the time of entering the said *caveat*: And the said courts shall hear and determine all controversies touching the same. *Provided, also*, That writs of *habeas corpus*, appeal, *error*, *supersedeas*, *mandamus*, and *certiorari*, and controversies concerning mills, wills, roads, *caveats*, and letters of administration, shall not be heard or determined by any cir-

(d) 1807, c. 4, § 4; 1792, ed. 1794, 1803, and 1814, c. 66, § 4.

(e) 1807, c. 4, § 6; 1792, ed. 1794, 1803, and 1814, c. 66, § 5.

cuit court, unless such writ of *error*, *supersedeas*, *mandamus*, or *certiorari*, relate to some record or proceeding within the county for which such court is holden, or the person praying the *habeas corpus*, or the mills, or roads, or lands for which the *caveats* have been instituted, be within the same, or the wills or letters of administration be cognizable by the court of such county, 'except those cases, in which it is otherwise particularly provided by act of the Legislature.' And those cases in which the court of admiralty heretofore had jurisdiction by law, and which are not taken away by the constitution of the United States, are hereby transferred to the circuit courts, to be proceeded on, as the law requires in the said court of admiralty. And the said circuit courts shall have power to hear and determine all treasons, murders, felonies, and other crimes and misdemeanors, committed within their respective jurisdictions, except such as may be exclusively cognizable in some other court, by express act of Assembly. (f) *

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Cases in admiralty.

Criminal cases.

10. THE superior court, directed by this act to be holden in the city of *Richmond*, shall possess and exercise all the special powers formerly exercised by the district court holden in the said city. (g) †

Special jurisdiction of superior court for Henrico county.

11. THE said courts shall have concurrent jurisdiction with the quarterly courts of the counties in all matters of detinue and trover. (h)

Concurrent jurisdiction in detinue and trover, with county courts.

12. THE circuit courts shall have power, to try all issues and enquire of damages by a jury, in all causes before them, and to determine all questions concerning the legality of evidence and other matters of law which may arise; for which trials, the court shall cause the sheriff attending them to summon, impanel and return jurors. (i)

Power to try issues, &c. by jury. To decide points of law. Jurors how summoned, &c.

13. THE said court shall hear and determine motions against sheriffs or other officers, and attorneys at law, for refusing to pay money due to clients, for the directors of the James river, Potowmac, 'and other incorporated' companies, and for securities against their principals, or each other for contribution, in all cases, and according to the rules prescribed by law. (i)

Jurisdiction in motions, against sheriffs, &c. and attorneys at law—for directors of incorporated companies; for sureties against principals, &c.

14. THE said courts, when a question new or difficult arises, may adjourn any matter of law to the General Court; or any party thinking himself aggrieved by the judgment of the said courts, may appeal thereupon as of right, or obtain a writ of *error* thereto from the court of appeals, not of right, but at the

Law questions adjournable to general court. Appeals, or writs of error.

(f) 1807, c. 3, § 2; 1792, ed. 1794, 1803, and 1814, c. 66, § 6, 16.

(h) 1808, c. 6, § 9.

(g) 1807, c. 4, § 9.

(i) 1792, ed. 1794, 1803, and 1814, c. 66, § 7, 8, 9.

This act (following in this, the act passed at the revival of 1792, concerning the district courts) ascertains the general jurisdiction of the circuit courts, by reference to the jurisdiction of the general court, before the institution of the district courts on the 22d December 1788. As to the general jurisdiction of the general court, previous to the institution of the district courts; see note *ante*, c. 67, § 5.

† For special powers exercised by the district court of Richmond; *vid.* acts 1803, c. 117, § 3: This act provided that prisoners escaping from the penitentiary should be tried in that court. By the act of 1814, c. 9, jurisdiction was given to the circuit court of Henrico, to try the crimes of rebellion and conspiracy of convicts in the penitentiary; and by the act of 1817, c. 25, the trial of the identity of prisoners convicted a second time of the same offence, is directed to be had in this circuit court. These acts are now incorporated with the general penitentiary law.

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Questions how adjournable in criminal cases.

Proceedings on adjourned questions and appeals.

No costs on adjourned questions.

Vacancy in office of clerk, how to be supplied:

In term time:

Bond and security required.

Where to be recorded.

Clerk when to be sworn in office.

In vacation:

Bond and security.

Where to be recorded.

Certified copy.

To be also recorded.

Clerk's bond, how suable.

discretion of the court.(i) And the said circuit court, in any criminal case, may, with the consent of the person accused, adjourn a question of law, to the General Court, which may be there argued, and decided, though such accused person be not present.(ii)

15. On an adjournment of a question to the general court, or an appeal, or writ of error, to the court of appeals, the same proceedings shall be had as in cases heretofore going from the general court to the court of appeals; but no costs shall be incurred on any adjourned question.(k)

16. EVERY vacancy in the office of clerk of a superior court of law, shall be supplied by appointment of the judge permanently assigned to the circuit, in which the vacancy may be, in the following manner:(l)

17. In term time, the appointment shall be by entry of record in the proceedings of the court, and the person appointed shall forthwith enter into bond, with sufficient security, to be approved by the court, in the penalty of ten thousand dollars, payable to the Governor for the time being, and his successors, and conditioned for the faithful performance of the duties of the office. The bond, when so executed and approved, shall be acknowledged or proved by two witnesses, recorded in the superior court, and certified and delivered to the inferior court of the county, to be there also recorded, and to be preserved by the clerk thereof. When the bond shall be so recorded in the superior court, and certified, the proper oaths of office shall be administered, in open court, to the person so appointed, and he shall thereupon be qualified to discharge all the duties of clerk.(m)

18. IN vacation, the appointment shall be by commission under the hand and seal of the judge. The person appointed shall execute bond with security, as above prescribed, and produce the same to the judge for his approbation. If he approve it, he shall endorse his approbation thereon, administer the proper oaths of office, and endorse a certificate thereof, also on the bond. The person so appointed clerk shall cause the said bond forthwith to be acknowledged, or proved by two witnesses, before the clerk of the inferior court of the county, who shall record the same, together with the endorsements thereon, and preserve them in his office. When such record shall have been made, the clerk appointed shall obtain a copy of the bond and endorsements, with a certificate of their admission to record, and shall thereupon be qualified to discharge the duties of his office. He shall, moreover, at the next succeeding term of the court of which he is clerk, produce the said certified copy in court, to be there also admitted to record.(n)

19. THE bond, so executed, may be put in suit from time to time, as often as need be, for the benefit and at the costs of any person or persons, body politic or corporate, who shall be aggrieved by the non-feasance, mis-feasance or mal-feasance

(i) 1792, *edi.* 1794, 1803, and 1814,

c. 66, § 7, 8, 9.

(ii) *Ibid.*, § 16.

(k) *Ibid.*, § 10.

(l) 1814, c. 31, § 2.

(m) *Ibid.*, § 3.

(n) *Ibid.*, § 4.

of the clerk, until the whole penalty shall be recovered and levied.(o)

A. D. 1819.

A. R. C. 43.

20. If any person, so appointed clerk, shall presume to execute any of the duties of the office before he shall be fully authorised by the provisions of this act, or shall fail to have recorded in the inferior court, as soon as practicable, the bond which shall have been certified to be there recorded as aforesaid, or shall fail to have recorded in the court of which he is clerk, at the first term after his appointment, the copy of the bond, with its endorsements, certified by the clerk of the inferior court as aforesaid, he shall forfeit and pay to the Commonwealth, for the benefit of the literary fund, a fine not less than one hundred nor more than five hundred dollars.(p)

Penalty on clerk for acting without having qualified; Or failing to have his bond, &c. recorded.

21. EVERY clerk of the said courts shall, moreover, take the oath for giving assurance of fidelity to the Commonwealth, and the oaths required to be taken by clerks of courts, adapting the same to the superior courts; which oaths may be taken by the clerks respectively, before any court of record in the Commonwealth, and a certificate thereof shall be entered of record in his court.(q)

Clerk's oath of office.

Where to be taken.

Where recorded.

22. DURING the vacancy of the office of clerk, in any superior court of law, and during the unavoidable absence of the principal clerk and his deputies, if any he have, the judge thereof, either in term time, or in vacation, may appoint a clerk *pro tempore*, who, after taking the necessary oaths of office, shall be authorised to perform the duties of a clerk, and, during his continuance in office, shall be entitled to all the fees thereof.(r)

Clerk *pro tempore*, when and how appointed.

His duties and fees.

23. THE clerks of the said courts shall hold their offices during good behaviour, to be judged of by the general court.(s)

Clerk's tenure of office.

24. THE clerks of the said courts shall have power to appoint deputies, with the approbation of their several courts, who shall be qualified as deputies of the county clerks are usually qualified; and, thereupon, such deputies shall have full power and authority to do and perform all the several acts and duties enjoined upon their principals.(t)

Deputy clerks, how appointed and qualified.

25. THE clerks of the courts aforesaid shall keep their offices at the court-houses of the counties, in which they are or may be clerks. But, in all cases where offices have not been provided for the clerks of the said courts, such clerks may keep the records and papers of the said courts at such places as the judges thereof shall think fit, and so enter of record.

Clerk's office, where to be kept.

26. THE clerks of the said courts shall, respectively, if the profits of their said offices shall exceed three hundred dollars *per annum*, pay, annually, into the public treasury, such proportion of the excess, not exceeding one half thereof, as shall from time to time be directed by law: *Provided, nevertheless*, That nothing herein contained shall be so construed as to tax the clerks of the late district courts, who have become clerks of the said Superior Courts, according to former laws. The clerk's fees shall be the same with those of the county courts

Power reserved to tax clerks.

Proviso, in favor of clerks of former district courts.

Fees of clerk of Superior Courts of Law.

(o) 1814, c. 31, § 5.

(p) *Ibid.*, § 6.(q) 1792, *ed.* 1794, 1803, and 1814,

c. 66, § 13.

(r) 1814, c. 31, § 7.

(s) *Ibid.*, § 8.

(t) 1807, c. 3, § 13.

A. D. 1819.
A. R. C. 43.

How collectable,
&c.
Clerk not to act as
justice of peace.
Penalty for doing
so.

Special sessions
for trial of prison-
ers charged with
crimes, &c.

Judge to issue war-
rant to clerk.
His duty on receiv-
ing it.

Sheriff's duty.

Proviso, in case
special court be
not held according
to appointment.

Jurisdiction of such
special courts.

Provision where
the judge is relat-
ed to the accused,
or person injured,
&c.

Entry on the re-
cord.

Certificate to coun-
ty court, if offence
be there cogniza-
ble.

Trial, &c.

for similar services, and, for all other services, the same as those of the clerk of the general court, and shall be collected and accounted for in the same manner, and under the same penalties as those of the clerks of the county courts now are. (v)

27. It shall not be lawful for any clerk of a superior court of law to exercise the office of a justice of the peace; and any clerk so offending, shall be subject to the same penalties, to be recovered and applied in like manner with those incurred by persons presuming to act as magistrates, without first qualifying as the law directs. (w)

28. WHENEVER it shall happen that any term of the Superior Court of Law, to be holden in any county within this Commonwealth, shall, from any cause, not be holden, and, previously to such term, any person shall have been imprisoned in the jail of such court, or let to bail, charged with any crime or offence, punishable with loss of life, or by imprisonment in the jail and penitentiary house, or any other imprisonment, it shall be the duty of the judge of such court to appoint a special session of such court for the trial of such offence or offences; and, in such case, the judge shall issue his warrant under his hand and seal, directed to the clerk of the court, who shall thereupon give notice to the commonwealth's attorney, the other officers of the said court, and the party charged, and shall issue all necessary process, returnable to such special session; which process the sheriff of the county shall be bound to execute, as also to summon a grand jury, together with a *venire*, to attend the said special court, under the same limitations and restrictions, as in the case of a regular court in course: *Provided, however*, That, in case the judge shall fail to attend such special court, or, from any other cause, the court shall not be holden, such failure shall not operate as a discharge to any person or persons confined, or charged with the commission of any criminal offence whatsoever. And such special court shall have all the power and authority which a stated court now hath or may have. (x)

29. WHEN, in any prosecution for an offence against the laws of this Commonwealth, depending before any Superior Court of Law for the county, the judge of such Superior Court shall be so nearly connected with the accused, or with the person upon whom the offence charged may be alledged to have been committed, as to render it unfit that the judge assigned to such Superior Court should preside on the trial, or when, for any other cause, it may be unfit that such judge should preside on such trial, he shall enter upon the record the cause of such unfitness, and that he is unwilling to preside upon the trial. (y)

30. If the offence charged be cognizable in the county court, the judge shall forthwith cause the proceedings thereupon to be certified and transmitted to the court of the county having jurisdiction thereof: and it shall be the duty of such county court to proceed to trial, judgment and execution therein, in

(v) 1808, c. 6, § 6, 7, p. 14; 1810,
c. 12, § 2; 1792, edi. 1794, 1803 and
1814, c. 66, § 14.
(w) *Ibid.*, c. 233.

(x) 1814, c. 30, § 1, 2
(y) 1813, c. 18, § 6.

the same manner in every respect, as if the proceedings so certified had originated in that court.(z)

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31. If the offence charged be not cognizable in the county court, the cause shall be continued until the next term, and the clerk of the Superior Court shall forthwith certify to the General Court, the pendency of such prosecution, and a copy of the entry testifying the unfitness and unwillingness of the judge to preside at the trial. The General Court shall thereupon assign to the circuit, in which such Superior Court of Law may be, some other judge of the General Court, whose duty it shall be to hold all the courts within that circuit at their next succeeding terms, and to continue to hold them, from term to term, until such prosecution shall have been finally tried and decided. During the time that the judge, so designated by the General Court, shall hold the courts within that circuit, the judge, who had been assigned thereto by law, shall hold all the courts within the circuit, which by law had been assigned to the judge so designated by the General Court.(a)

Continuance, and certificate to General Court, if offence be not cognizable in county court.

Judges to exchange circuits, by order of General Court; and how long.

32. IN all cases, where the circuit court is holden at the county court-house, the county jail shall be used as the jail of the circuit court; the jail of the county of *Henrico* shall be used as the jail of the circuit court, to be holden at the Capitol in the city of *Richmond*; the jail within the corporation of *Fredericksburg*, shall be the jail of the circuit court for the county of *Spottsylvania*; and the jail of the corporation of *Petersburg*, shall be the jail of the circuit court, for the county of *Prince George*.(b)

What jails shall be used as circuit court jails.

33. THE keepers of the jails of the aforesaid counties and corporations, shall act as jailors for the aforesaid circuit courts, respectively; shall attend them during their sessions, be amenable to their authority, and obedient to their lawful orders. They shall take into their custody, all persons committed by the orders of the circuit courts, or by any process issuing therefrom, and all persons committed, by whatever lawful authority, for trial in such courts.(b)

Duty of jailors, to attend circuit courts, &c.

34. 'It shall be the duty of the jailor, to furnish every prisoner confined in his jail, whether committed by the circuit or the county courts, or by other lawful authority, with whole-some and sufficient food; with sufficient fire where necessary and proper; and with cleanly and sufficient bed-covering.' The fee, to be allowed the jailor for keeping and so furnishing the prisoners, shall be regulated by the circuit court, from time to time, so as not to exceed forty cents *per diem* for each prisoner.(c)

To furnish prisoners with food, fire, and bed covering.

Their fees.

35. 'THE prison rules and bounds assigned by the several county and corporation courts, whose jails are used for the circuit courts, shall be the rules and bounds for all prisoners, entitled to the privilege of the rules, whether committed by the authority of the circuit courts, or by any other authority.'

Prison rules and bounds.

(z) 1813, c. 18, § 7.

(a) *Ibid.* § 8.

(b) Altered, from 1792. cdi. 1794, 1803, and 1814, c. 66, § 17.

(c) From edi. 1803, and 1814, c. 213, with amendments.

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Duty of judges to cause inspections of county and corporation jails; And reports to be made thereupon.

To punish jailors for neglect or breach of duty, in manner of keeping or furnishing prisoners.

Commonwealth to pay fees for poor prisoners in custody for contempts.

Guards for prisoners may be summoned by warrant from any two justices.

Expense how defrayed.

Sheriff to execute circuit court judgments in criminal cases,

And to act as sheriff of such court.

Compensation for public services of clerks.

Proviso.
Of sheriffs and jailors.
Proviso.

When such allowances may be made.

36. 'It shall be the duty of the judges of the circuit courts, at their first terms after the commencement of this act, and afterwards, from time to time, as often as they may deem it expedient, at least once in every year, to cause an inspection to be made of the jails of the several counties and corporations, within their circuits, respectively, and a report to be made to the court, of the condition of such jails, and of the manner in which they are kept.'

37. 'If it shall appear, by the report aforesaid, or by other satisfactory evidence, that the jailor hath neglected or violated his duty, in the manner of keeping or furnishing any prisoner in his custody, or otherwise, it shall be lawful for such court to punish him, as for a contempt, in any sum not exceeding thirty dollars for each offence.'*

38. WHEN any prisoner in custody, for a contempt, shall be unable to support himself or herself in prison, the jailor shall be allowed by the public, a sum not exceeding forty cents per day, for the maintenance of every such poor prisoner; and no security shall be demanded of him or her, nor shall he or she be detained for such prison fees.(e)

39. WHENEVER, in the opinion of any two justices of the county or corporation, a guard shall be necessary for the safe-keeping of any prisoner, confined in jail under a charge of any criminal offence, it shall be lawful for such justices, by warrant, under their hands and seals, to command the sheriff or jailor to summon such guard as they may deem necessary; and such guard shall be paid as other guards summoned in like cases.(e)

40. To prevent misconstruction, it is hereby declared that the sheriff of the county, in which any circuit court shall sit, shall execute all judgments rendered by such court in any criminal case; provided, such judgments are by law to be executed in the said county; and shall, in all respects, act as sheriff of the said court.(f)

41. THE judge of the Superior Court of each county shall make such allowance to the clerk thereof for his services in behalf of the Commonwealth, as may be deemed reasonable: *Provided*, The same shall not exceed thirty dollars for any one year. An allowance or compensation shall be made, in like manner, to the sheriffs and jailors of the Superior Courts of counties, for their services for the Commonwealth: *Provided*, no sheriff of any one of the said courts shall be allowed a sum exceeding twenty dollars, and no jailor thereof a sum exceeding thirty dollars per year.(g)

42. IF the court fail to make such allowances, during the term next succeeding the performance of such services, or during which they were performed; in such case, the court, at

(e) 1792, edi. 1794, 1803 and 1814, (g) 1807, c. 4, § 1.
c. 66, § 17.

(f) *Ibid*, § 12.

* Sections 35, 36 and 37, were introduced at the revision of 1818; the former law, in relation to prison rules, merely prescribed that they should "be assigned by the district courts;" *vid* 1792, edition 1794, 1803, and 1814, c. 66, § 18: and, with respect to the jails and jailors, a general power was given to superintend the jails, and direct what allowance should be made for the prisoners: *vid* same edition, c. 66, § 17.

a subsequent term, shall and may proceed, in like manner, to make such allowances.^(h)

43. Writs of *habeas corpus* may be granted by the said courts, in manner prescribed by law. And where any person shall be committed in any civil action to the jail of any county or corporation, for any cause or matter cognizable in the said courts, it shall be lawful for the clerk of the Superior Court of the county wherein such commitment shall be, and he is hereby required, upon the application of such person, and a certificate of his or her being actually in jail, to issue a writ of *habeas corpus cum causa*, to remove the body of such prisoner into the circuit court jail, and the cause of his commitment into such Superior Court, returnable on the first day of the succeeding court, if issued in vacation, and on the last day of the term, if sued out whilst the court is sitting: *Provided, however*, That such writ of *habeas corpus* shall not be awarded, after issue or demurrer joined in the cause.⁽ⁱ⁾

44. WHEN any suit or action shall hereafter be removed, from any county or corporation court, to any circuit court, by writ of *habeas corpus*, or *certiorari*, such cause shall be placed in the same situation in such circuit court, as it stood in the inferior court, when such writ of *habeas corpus* or *certiorari* was delivered. And it shall be the duty of every such circuit court to proceed to a final judgment in the manner such inferior court ought to have done, without any new pleadings, unless the same would have been proper if such suit had remained in the inferior court.^(k)

45. A *CERTIORARI* to remove proceedings for any purpose, except the removal of a suit from an inferior court, may be granted by the said Superior Courts of Law, or by the judges thereof in vacation, within their respective jurisdictions, without notice.^(l)

46. FOR preventing errors in entering up the judgments of the said courts, the proceedings of every day shall be drawn up at large, by the clerk, against the next sitting of the court; when the same shall be read in open court, and such corrections as are necessary being made therein, they shall be signed by the presiding judge, and carefully preserved among the records. On the last day of each court, the proceedings therein shall be drawn up, read, corrected, signed and preserved as aforesaid.^(m)

47. If any person or persons shall desire to remove any suit depending in any inferior court, into the circuit court, provided the same be originally cognizable therein, a *certiorari*, for such removal, may be granted by the circuit court, for good cause shewn, upon motion, and ten days previous notice thereof, given in writing to the adverse party; or, in vacation, the party desiring such writ, shall, by petition to the judges of the general court, set forth his or her reasons, and make oath before a magistrate of the truth of the allegations of such petition; whereupon, any judge of the said court may, under his hand,

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Habeas Corpus how granted. In civil actions to remove prisoner from county or corporation to circuit court jail.

When returnable-

Not to be awarded after issue joined.

Suit removed by *habeas corpus* or *certiorari* how to stand, and be proceeded in.

Where *certiorari* may be granted without notice.

Orders how to be drawn up, read & signed.

Certiorari for removal of suits, how granted, in term time.

Notice required.

How in vacation.

(h) From edition 1803 and 1814, c. 213, § 4.

(i) *Ibid.* c. 66, § 22.

(k) 1806, c. 23, § 2; ed. 1803, c. 108, § 2.

(l) 1792, ed. 1794, 1803, & 1814, c. 66, § 45; 1807, c. 4, § 12.

(m) 1792, ed. 1794, 1803, and 1814, c. 66, § 46.

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Notice.

Bond and security.

Suit remanded by *procedendo*, or otherwise, not removable afterwards.

Suit when removable by *certiorari*, after issue joined.

When, for unreasonable neglect or delay of county court.

Proviso.

Clerks to keep petitions for *certiorari*, with the *affidavits* thereto. False swearing in such affidavits, perjury.

Where the venue may be changed by a superior court of law.

Where by general court.

Where by a judge in vacation.

order the *certiorari* to issue, and direct the penalty of the bond, to be taken previous thereto, or may reject such petition, as to him shall seem just; *Provided*, That ten days previous notice of the time and place of applying for such writ, be given in writing to the adverse party; upon which order of the judge, the clerk shall issue the *certiorari*: *Provided*, That the party shall enter into bond, with sufficient security, in the penalty so directed, with condition for satisfying all money or tobacco and costs, which shall be recovered against the party in such suit; but if any suit, so removed by *certiorari* shall be remanded to the inferior court, by *procedendo* or otherwise, such cause shall not afterwards be removed to the circuit court, before judgment shall be given therein in the inferior court.(n)

48. It shall be lawful for any judge, if it shall appear to him, that justice cannot be done in any cause depending in any county or corporation court within his circuit, and that it has come to the knowledge of the party after issue joined or a writ of enquiry awarded, to award a writ of *certiorari* at the instance of either party, in the manner other writs of *certiorari* are awarded.(o)

49. WHENEVER any county court of this Commonwealth, shall unreasonably neglect or delay to decide any suit at law, which now is, or hereafter shall be, depending in such court, upon application of either of the parties, so precluded from justice by the neglect or delay of the county court, the judges of the Superior Courts of Law are hereby directed and authorised to issue writs of *certiorari*, to remove such cause or causes before them, in the same manner as in cases of partiality or injustice: *Provided*, nevertheless, That no writ of *certiorari* shall issue in cases, where the court, from whence the writ issues, has not jurisdiction.(p)

50. THE clerks of the circuit courts shall carefully preserve all such petitions for writs of *certiorari*, with the affidavits thereto, in the office; and if any person, in such affidavit, shall wilfully make a false oath, and be thereof convicted, upon a prosecution commenced within three years after the offence committed, such offender shall suffer the pains and penalties directed for wilful and corrupt perjury.(q)

51. EACH judge of the general court shall have power, on motion made, and for good cause shewn, at the bar of any Superior Court within his circuit, to change the venue, in any cause depending in either of the courts hereby established within his circuit; so that such change be to some other court within the same circuit. But the general court shall have power as heretofore, to change the venue from circuit to circuit.(r)

52. AND it shall be lawful for any judge of the general court, in vacation, to remove any cause from one court in his circuit, to any other court in his circuit; or to remove a cause depending in any court within his circuit, to the most convenient

(n) 1792, ed. 1794, 1803, and 1814, c. 66, § 49.

(o) 1808, c. 6, § 13; ed. 1812, c. 6, § 13.

(p) 1803, c. 11, § 1; ed. 1812, c. 41, § 1.

(q) 1792, ed. 1794, 1803, and 1814, c. 66, § 50.

(r) 1807, c. 3, § 14; ed. 1808, c. 120, § 14.

court in an adjoining circuit, in the same manner that he might remove the same in term time: *Provided*, That such removal in vacation shall only be by consent of parties, or upon the application of one party, reasonable notice thereof being given to the other party.(s)

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53. If either of the judges of the general court be interested in any suit, which in the case of any other person would have been proper for the jurisdiction of such judge, it shall be lawful to institute such suit in any court within an adjacent circuit; and the process from such adjacent court, may be served in the circuit to which such judge shall be allotted, or in which he shall reside; and proceedings shall be thereupon had.(t)

Suit in which a judge is interested, where to be instituted.

Process where to be served in such case.

54. WHEN any judge of a circuit court shall be interested in any cause depending in his circuit, or related to either of the parties, or in any manner situated so as to render it improper in his judgment to preside at the trial, it shall be lawful for such judge to cause the same to be removed to the next circuit, and to the most convenient court in that circuit, for trial.(v)

Power of judge to remove suit in which he is interested, &c. to adjoining circuit.

55. No writ of error or *supersedeas* shall be granted in any case, until a final judgment in the county or other inferior court.(w)

Writ of error or *supersedeas* granted to final judgment only.

56. WHERE any person or persons, body politic or corporate, shall think themselves aggrieved by the judgment or sentence of any county court, or court of hustings, in any action, suit or contest whatsoever, where the debt or damages, or other thing recovered or claimed in such suit, exclusive of the costs, shall be of the value of one hundred dollars, or three thousand pounds of tobacco, or upwards, or where the title or bounds of land shall be drawn in question, or the contest shall be concerning mills, roads, the *probat* of wills, or certificates for obtaining administration, such person or persons, body politic or corporate, may enter an appeal from such judgment or sentence, to the first day of the next Superior Court for the county,(x) 'having jurisdiction over the county or corporation 'wherein such judgment or sentence may be pronounced.'

Appeals from county or corporation courts to circuit courts, where allowable.

57. THE party praying a writ of *supersedeas*, shall petition the circuit court for the same, or a judge in vacation, pointing out the errors he means to assign in the proceedings, and procure some attorney practising in such court, to certify that, in his opinion, there is sufficient matter of error for reversing the judgment; whereupon, such court in session, or any judge in vacation, may order such writ to be issued, or reject the petition, as to him shall seem just.(y)

Writs of *supersedeas*, how obtainable.

58. WRITS of error or *supersedeas* may be granted by a circuit court, or any judge of the general court, to a judgment of a county court, where such judgment, including interest and costs to the time of rendition, shall be of the value of thirty-three dollars and thirty-three cents, or one thousand pounds of tobacco, or upwards.(z)

To judgments of what amount, writs of error or *supersedeas* may be granted.

59. BEFORE granting any appeal, or the issuing of any writ of error or *supersedeas*, the party praying the same, shall enter

Bond and security for prosecuting appeal, writ of error or *supersedeas*.

(s) 1813, c. 18, § 11.

(t) 1807, c. 4, § 10; edi. 1808, c. 121, § 10.

(v) 1808, c. 6, § 12; edi. 1812, c. 6, § 12.

(w) 1792, edi. 1794, 1803, and 1814, c. 66, § 51.

(x) *Ibid*, § 53.

(y) *Ibid*, § 54.

(z) *Ibid*, § 55.

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How to be given,
where several ap-
peal.
Bonds valid, tho'
party to suit be
not obligor.

Judgment on re-
versal.

Damages on affir-
mance, in personal
actions;

In real or mixed
actions.

Record on appeal
&c., when to be
delivered to clerk
of circuit court.
After dismission,
no writ of error
&c. allowable.

Decisions of court
of appeals to
be certified and
transmitted to
clerks of circuit
courts.
Their duty in re-
lation thereto,
when received in
vacation.

Damages on affir-
mance, to what
time to be calcula-
ted.

Provision where
such certificates
are received in
term time.

Judgments of for-
mer district courts
how executed,

into bond with sufficient security, in a penalty to be fixed by the court or judge granting the same, with condition to pay the amount of the recovery, and all costs and damages awarded, in case the judgment or sentence be affirmed. Where several appeal, or obtain a writ of *error* or *supersedeas*, bond and security given by any party shall be sufficient; and any bond for obtaining a writ of *error*, *supersedeas*, *certiorari*, *appeal*, or any other writ or order, in term time or vacation, shall be valid and sufficient, if executed by any responsible person with security, though the party to the suit be not an obligor.(a)

60. IF, upon hearing any writ of *error* or *supersedeas*, the judgment of the inferior court be reversed in whole, or in part, the circuit court shall enter such judgment thereupon as ought to have been entered in the inferior court.(b)

61. WHERE the defendant in any personal action appeals, or obtains such writ of *error* or *supersedeas*, if the judgment be affirmed, the damages, besides costs, shall be ten *per centum per annum*, upon the principal sum and costs recovered in the inferior court, in satisfaction of all damages or interest.(c)

62. IN real or mixed actions, the damages shall be thirty-three dollars and thirty-three cents, besides costs.(d)

63. IF a record on an appeal, writ of *error*, or *supersedeas*, be not delivered to the clerk of the circuit court, before or during the second term of such court after the same was granted, the same shall not be received at any time thereafter, unless good cause be shewn to the court to the contrary; and after such dismission, no writ of *error* or *supersedeas* shall be allowed.(e)

64. THE clerk of the court of appeals shall, as by law directed, certify and transmit to the clerks of the respective Superior Courts of Law, from whence appeals were transmitted, copies of the judgments and decisions given thereon, which, if received by the clerk of a Superior Court, in vacation of such court, shall be entered by him of record at the end of the proceedings of the preceding term of that court; and thereupon the said clerk shall, upon application, issue execution thereon, if, by the decision of the court of appeals, it be proper so to do; and, in all other respects, shall proceed according to the directions of such judgments and decisions, in the same manner as if they had been entered during the session of such Superior Court. And when, by such judgments and decisions, damages are given for retarding the execution, the said clerks shall calculate the same until the time the copies of the said judgments or decisions were delivered to them. When such copies shall be received by the clerk of a Superior Court, during the session thereof, the same proceedings shall be had thereon, as have heretofore been had in such cases.(f)

65. ALL judgments rendered in the former district courts which were wholly or in part unexecuted, shall be executed

(a) 1792, edi. 1794, 1803, and 1814,
c. 66, § 56, 58.

(b) *Ibid.*, § 57.

(c) *Ibid.*, § 59.

(d) 1792, edi. 1794, 1803, and 1814,
c. 66, § 60.

(e) *Ibid.*, § 61.

(f) *Ibid.* c. 249, § 6.

by the respective Superior Courts of those counties, in which the same shall have been rendered. And every judgment, rendered by the court of appeals, touching judgments of the said district courts, upon any *appeal*, writ of *error*, or *supersedeas*, shall be certified to the Superior Court of that county, in which the first judgment shall have been rendered. And the powers and duties of the said last mentioned court, and of the clerk thereof, in respect to such judgments, shall be the same, as in the last preceding section prescribed.(g)

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To what courts judgments of court of appeals relating to such judgments shall be certified.

66. THE judges of the Superior Courts of Law within this Commonwealth, shall, respectively, have power to appoint attorneys, to prosecute for the Commonwealth in their courts, and to allow them such compensation for their services, as they shall deem reasonable; not exceeding, however, in any case, the sum of one hundred dollars *per annum* for the court of one county. The allowance so made shall be certified by the court, and paid out of the public treasury.(h)

Judges may appoint attorneys for Commonwealth. Their compensation.

How certified, and paid.

67. WHENEVER judgment shall be rendered for the Commonwealth, in any Superior Court of Law, upon a prosecution for a misdemeanor, the penalty whereof is not ascertained by law to be less than thirty dollars, there shall be taxed, in the bill of costs, a fee for the Commonwealth's attorney of ten dollars, instead of the fee heretofore taxed. And when judgment shall be rendered for the Commonwealth in such court, in any other case, wherein it hath been heretofore used to tax an attorney's fee, there shall be taxed hereafter a fee of five dollars: *Provided*, however, That this section shall not be construed to extend to those cases, in which a higher fee is allowed by law, than those hereby directed to be taxed.(i)

Attorney's fee taxable in bill of costs on judgments in prosecutions for misdemeanor,

And in other cases of judgments for Commonwealth.

Proviso.

68. No attorney for the Commonwealth, in any Superior Court of Law, shall be at liberty to resign his appointment, without the leave of the court, unless he shall have given to the judge of the court, in which he shall be attorney, at least thirty days' notice of his intention to resign.(k)

How attorneys for Commonwealth may resign.

69. The judges of the general court, except such as were in commission on the eighth of February, one thousand eight hundred and nine, shall reside within the circuits to which they have been or may be allotted. In those cases where two or more of the judges then in commission reside in the same circuit, and the circuit shall have become vacant, by the death, resignation or removal from office, of the judge allotted to it, the judge next oldest in commission, resident within the same circuit, shall succeed thereto, and the judge, who shall be appointed to fill the vacancy occasioned by such death, resignation or removal, shall be allotted to and reside in the circuit left vacant by such succession.(l)

Judges of general court, where to reside.

70. THE judges of the said courts may, at any time, make a permanent exchange with each other, of the circuits to which they may be or have been assigned, and the said judges shall reside in the circuits so permanently exchanged. And it shall

How judges may make permanent exchanges of circuits.

(g) 1807, c. 3, § 15; Edi. 1808, c. 120, § 15.

(h) Edi. 1803 and 1814, c. 260; 1815, c. 27, § 1.

(i) 1815, c. 27, § 2.

(k) 1815, c. 27, § 3.

(l) 1807, c. 3, § 11; edi. 1808, c. 120, § 11; 1808, c. 6, § 9, 10, p. 14; edi. 1812, c. 6, § 9, 10.

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And how temporary exchanges.
Proviso.

Farther proviso,
as to residence in
such cases.

*Subpœna duces
tecum* may be or-
dered in vacation.

Jurisdiction of cir-
cuit courts in mo-
tions by sureties,
against their prin-
cipals, or co-sure-
ties.

Judge may adjourn
court to convenient
day in recess, and
hold intermediate
term.

How long to con-
tinue.

Proviso.

be lawful for them to make a temporary exchange with each other, of the circuits to which they are respectively assigned, by an arrangement made between any two of them, approved by the general court, and there entered of record: *Provided*, That such exchange shall not be for a longer period than one year at any one time. Whenever any such arrangement shall have been made, approved and recorded as aforesaid, it shall be the duty of each judge, making such arrangement, to hold courts in the several counties of the circuit, to which the other may have been assigned, during the period of time for which the exchange shall have been agreed on, in the same manner as the judge assigned by law to that circuit is now bound to do: *Provided*, That nothing herein contained shall be construed to authorise any judge, during the period of such exchange, to reside out of the circuit to which he may have been assigned by law.(m)

71. ANY judge in vacation, for good cause shown, shall have power to order a *subpœna duces tecum* to be issued, returnable to any court to be holden by him, in like manner as the same could be ordered by him holding a session of the court.(n)

72. AND whereas, in construing the several laws concerning the Superior Courts of Law in this Commonwealth, doubts have arisen whether the said courts, or any of them, have jurisdiction to hear and determine motions, on behalf of securities against their principals, and of a security or securities against others, jointly bound with them, as security in the same obligation, to recover money paid under the judgment of a former district court; for the removal whereof,

BE it enacted, That each Superior Court for the county in which a district court may have been holden, shall have, exercise, possess and enjoy the same jurisdiction, to hear and decide all questions arising on motions made, either by the security against his principal, to recover money paid under a judgment of the said district court, or of a security or securities against others jointly bound with him or them in the same obligation, where the principal obligor proves insolvent, to recover their and each of their respective shares and proportions of the debt paid under the judgment of the said district court, as the said district court had, previous to the passage of the act, entitled, *An act to organize and establish a Superior Court of Law in each county of this Commonwealth*.(o)

73. THE judge of any Superior Court of Law, at the end of any term, when the same may be necessary, may, and he is hereby authorised to adjourn said court, to such day in the recess, as to him may seem most convenient to the suitors in said court, and, agreeably to such adjournment, to hold an intermediate term, not exceeding twelve judicial days, for the trial of all causes, civil and criminal, which were depending, and could lawfully have been tried, but had not been tried at the term from which such intermediate term had been adjourned: *Provided*, That such intermediate term, shall not, in any

(m) 1808, c. 6, § 20, p. 16; edi. 1812,
c. 6, § 20; 1810, c. 11, § 5; edi. 1812,
c. 65, § 5.

(n) 1809, c. 11, § 3; edi. 1812, c. 41,
§ 3.
(o) 1810, c. 11, § 1; edition 1812,
c. 65, § 1.

wise, interfere with the district chancery court, to the jurisdiction of which, the county for which such intermediate term is to be holden, may belong; nor with any quarterly court of the county for which such intermediate court is to be holden. (p)

A. D. 1819.
A. R. C. 43.

74. THE Superior Courts, at their intermediate terms, may hear and determine all motions cognizable by them, whether the same were depending, and could have been tried at the preceding term or not. (q)

All motions determinable at such intermediate terms.

75. THE said courts shall have jurisdiction, respectively, in all causes, matters and things in the circuit courts respectively depending, at the commencement of this act; and no discontinuance shall take place in any case whatsoever, civil or criminal, which shall be depending in any circuit court at the commencement of this act, by reason of the passing thereof, but the same shall be therein tried and determined, as if this act had never been made. (r)

Circuit courts to have jurisdiction in all causes pending at commencement of this act. Provision to prevent discontinuance.

76. ALL and every act and acts, clauses and parts of acts coming within the purview of this act, shall be, and are hereby repealed: *Provided, however,* That nothing herein contained, shall be construed to take away or impair any right which shall have accrued, or prevent the prosecution and punishment of any offence, which shall have been committed or done, before the commencement of this act; but such right shall be and remain, and such offence may be prosecuted and punished, as if this act had never passed.

Repealing clause. Proviso.

77. THIS act shall commence and be in force, from and after the first day of January, eighteen hundred and twenty.

Commencement.

C. 70.

*An act providing seals for the Superior Courts of Law in this Commonwealth.**

A. D. 1818.
A. R. C. 42.

[Passed January 10, 1818.]

1. BE it enacted by the General Assembly, That it shall be the duty of the Executive and they are hereby required to procure, or cause to be made, as soon as convenient, a seal, of such metal, and with such device, as they shall think proper, for the use of each Superior Court of Law within this Commonwealth; which shall be deposited with the clerk of such court; and on each certificate under every such seal, and also on each certificate under the seal of every Superior Court of Chancery, there shall be paid to the clerk a tax of one dollar, and a fee to himself of twenty-five cents. And the said clerks shall account for the taxes, by them received under this act, in the same manner, and under the same penalties, as for taxes on law process.

Executive required to procure the seals.

Tax imposed on certificates, under such seals.

Fee to the clerk.

2. THIS act shall be in force from the passing thereof.

Commencement.

(p) 1813, c. 18, § 9.

(q) 1814, c. 31, § 13.

(r) From the revival of 1792, in relation to district courts, and adapted to

circuit courts. Vid. 1792, edi. 1794, 1803, and 1814, c. 66, § 64.

* 1817, c. 36.

C. 71.

A. D. 1819.
A. R. C. 43.

*An act to reduce into one act, the several acts and parts of acts, concerning the County and other Inferior Courts, and the jurisdiction of justices of the peace within this Commonwealth.**

[Passed March 2, 1819.]

County and corporation courts, by whom holden.

Quorum.

Quorum in Norfolk borough.

Recommendations of justices, how made,

1. *Be it enacted by the General Assembly, That in every county, city, corporation and borough, within this Commonwealth, in which the power of holding courts hath been heretofore, or shall hereafter be, vested by law, a court, to be denominated the court of such county, city, corporation or borough, respectively, shall hereafter continue to be held by the justices of such counties, and the magistrates of such cities, corporations and boroughs respectively, at the times and places, and in the manner herein-after directed; any four of which justices or magistrates shall constitute a court, except in such cases where a greater number may by any law be directed; and except that all courts held in Norfolk borough, for the trial of civil causes, may be composed of the mayor, recorder and one alderman, the mayor and two aldermen, the recorder and two aldermen, or any three aldermen, and shall be, and are hereby empowered to adjourn from day to day, until all the business which is before them shall be dispatched.(a)*

2. *It shall not be lawful for the justices of any county to make a recommendation of any person or persons, to be by the*

(a) 1748, *edi.* 1752, c. 7, and *edi.* 1769, c. 4, § 1; 1792, *edi.* 1794, 1803 and 1814, c. 67, § 1; 1807, c. 101.

* The institution of the county courts originated as early as 1623-4; and, as it is the most ancient, so it has ever been one of the most important of our institutions, not only in respect to the administration of justice, but for police and economy. They were first called *monthly courts*; and, at first, only two of them were established, and their jurisdiction jealously limited to the most petty controversies, reserving the right of appeal for the party cast, to the Governor and Council, who were the judges of what were then called the quarter courts. In 1642-3, the style of *monthly courts* was changed to that of *county courts*; the colonial assembly having previously begun, and continuing thenceforward, to enlarge their duties, powers and jurisdiction, and to extend the system to every county, as it was laid off. As early as 1645, they had been matured into their present form, (though somewhat rude and irregular,) of courts of general jurisdiction, in law and equity; and the most important duties in matters of police and economy were confided to them. See 1 *Hen. st. at lar.* p. 125-7, 132, 145, 168, 185, 224, 272-3, 302-3-4-5, 310, 328, 335-6, 345-6-8, 350, 398, 448, 462-6-9, 477-8, 521-2. In 1661-2, the Governor and Council were constituted itinerant justices, to sit in the county courts; but that provision was repealed the next year: See 2 *Hen. st. at lar.* p. 64, 179. Hitherto, the judges of the county courts had been styled *commissioners of the monthly courts*, and afterwards, *commissioners of the county courts*; but, in 1661-2, it was enacted, that they should take the oath of a justice of the peace, and be called *justices of the peace*. *Id.* p. 70. These tribunals now assumed a perfectly regular form; and their functions have ever since been so important, that their institution may well be considered as a part of the constitution, both of the colonial and present government. No material change was introduced by the revolution in their jurisdiction, or general powers and duties of any kind; *vid.* the revised act of 1748, *edi.* c. 1752, c. 7; *edi.* 1769, c. 4; and the revised act of 1792, *edi.* 1794, 1803 and 1814, c. 67. It would perhaps be impossible for any man, to estimate the character and utility of this system, without actual experience of its operation.

Governor and Council appointed and commissioned justices of such county, unless a majority of the acting justices of such county shall be present at the time of making such recommendation, or unless the court of such county shall have, at a preceding term of such court, signified and entered on record, their intention of making such recommendation, and caused the sheriff or other proper officer, to summon the justices thereof to attend at the next court, for the purposes aforesaid. And it shall be the duty of the clerk of such county, certifying such recommendation to the Executive, to certify therewith a copy of the previous order of such court, if any shall have been made; and if none such was made, he shall certify the names of the justices present, where such recommendation shall have been made, as also of all the justices of such county.^(b)

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A. R. C. 43.

And certified to Executive.

3. EVERY person appointed a justice of the peace, for any county or corporation, before his entering upon and executing the said office, shall, publicly, in the court-house of his county or corporation, and on a court-day, take the oath of fidelity to the Commonwealth, as also the following oaths, to wit:

You shall swear, that, as a justice of the peace, in the county (or corporation) of _____, in all articles in the commission to you directed, you shall do equal right, to the poor and to the rich, to the best of your ability and judgment, and according to law; and you shall not be of counsel of any quarrel hanging before you; and issues, fines and amercements that shall happen to be made, and all forfeitures, which shall fall before you, you shall cause to be entered, without any concealment or embezzling; you shall not let, for gift or other causes, but well and truly you shall do your office of a justice of the peace, as well within your county (or corporation) court, as without; and you shall not take any fee, gift or gratuity, for any thing to be done by virtue of your office, and you shall not direct, or cause to be directed, any warrant by you to be made, to the parties; but you shall direct them to the sheriff or other officer of the Commonwealth, or other indifferent person, to do execution thereof. So help you God.

The oath of a justice of the county or corporation court in chancery:

Oath of justice in chancery.

You shall swear, that, well and truly, you will serve the Commonwealth, in the office of a justice in the county (or corporation) court of _____, in Chancery; and that you will do equal right to all manner of people, great and small, high and low, rich and poor, according to equity and good conscience, and the laws and usages of the Commonwealth of Virginia, without favor, affection or partiality. So help you God.^(c)

4. AND if any person whatsoever shall presume to execute the office of a justice of the peace, or magistrate of a county or corporation court, without first qualifying himself in the manner by this act before required, he shall, for every such offence, forfeit and pay one thousand dollars, one moiety to the

Penalty for acting without taking oaths.

(b) 1805, c. 57, § 1; edition 1808, c. 69, § 1.

(c) 1792, edition 1794, 1803 and 1814, c. 67, § 2, 3, 4.

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Length of terms.

Court adjournable,
if not formed on
first day, and how
long.

No discontinuance
by court's failing to
sit on any day,

Nor by justices
failing to make a
court, or to ad-
journ.

In such case, re-
turns and appear-
ances to next
court in course,
&c.

Causes to stand
continued, without
fee to clerk for
continuance.

Jurisdiction of
courts at common
law and in chan-
cery.

Exceptions; as to
criminal cases;

use of the Commonwealth, and the other moiety to the informer, to be recovered by action of debt, in any court of record in this Commonwealth.(c)

5. If the business of any of the said courts cannot be determined on the court day, the justices may adjourn from day to day, not exceeding six days, until all causes and controversies, then depending before them, shall be heard and determined, or otherwise continued in the manner herein-after directed.(c)

6. If a sufficient number of justices should not attend to form a court on the first day of any court, or any subsequent day thereof, it shall and may be lawful for any one justice to adjourn the court from day to day, for the space of three days; 'and, if no justice shall attend for that purpose, the court shall stand adjourned of course from day to day for three days;' and if there shall not be a sufficient number convened at four o'clock in the afternoon of the fourth day, all causes, matters and things therein depending, shall stand continued to the next succeeding court. If, from any cause, the court shall not sit on any day in a term after it shall have been opened, there shall be no discontinuance, but, so soon as the cause is removed, the court shall proceed to business until the end of the term, if the business depending before them be not sooner dispatched. No discontinuance shall take place, in any case, by reason of the justices failing to make a court, or to adjourn: but, in such cases, all suits, process, matters and things depending, shall stand continued, and all returns and appearances shall be made to the next succeeding court in course, in the same manner as if such succeeding court had been the same court to which such process stood continued, or such returns or appearances should have been made. And all recognizances, bonds and obligations, for appearance, and all returns shall be of the same force and validity, for the appearance of any person or persons at such succeeding court, as if the next succeeding court had been expressly mentioned therein. And all causes depending upon the docket, and undetermined at any adjournment to the court in course, shall stand continued in the same order to such court, without any fee to the clerk for the continuance of such as shall not then be called over.(c)

7. THE justices of every such court, or any four of them, as aforesaid, shall and may take cognizance of, and are hereby declared to have power, authority and jurisdiction to hear and determine all causes whatsoever now pending, or which shall hereafter be brought, in any of the said courts, at the common law or in chancery, within their respective counties and corporations, and all such other matters as, by any particular statute, is or shall be made cognizable therein; except such criminal causes, where the judgment, upon conviction, shall be for the loss of life or member, or imprisonment in the public jail and penitentiary house, as shall not be expressly declared cognizable in the said courts, by act of assembly; and except the

(c) 1792, *edi.* 1794, 1803 and 1814, c. 67, § 2, 3, 4.

County and Corporation Courts.

prosecution of causes to outlawry against any person or persons; and except all causes whose value does not exceed twenty dollars, or four hundred pounds of tobacco, other than prosecutions on any penal law of this Commonwealth; and also, except such cases as are by law exclusively vested in any other tribunal.(d)

8. The said courts shall be held at the several respective places at present assigned by law for that purpose, or at such place or places as shall be hereafter lawfully assigned on the several days herein-after appointed for holding courts in such counties or corporations, in the four months herein-after mentioned in every year, for the trial of all presentments, criminal prosecutions, suits at common law, and in chancery, where the sum or value of the subject in controversy exceeds twenty dollars, or four hundred pounds of tobacco, and all *caveats* against grants for land within the jurisdiction of the said courts respectively, now depending, or which shall hereafter be brought in any of the said courts; and shall continue for the space of six days, unless the business be sooner determined; which sessions of the said courts shall be denominated the quarterly sessions of such courts, respectively.(e)

9. The quarterly sessions of the counties of *Accomack*, *Brunswick*, *Amelia*, *Amherst*, *Bedford*, *Botetourt*, *Brooke*, *Dinwiddie*, *Elizabeth City*, *Essex*, *Fauquier*, *Goochland*, *Hali-fax*, *Henrico*, *Isle of Wight*, *James City*, *Jefferson*, *King and Queen*, *King William*, *Lancaster*, *Lunenburg*, *Mathews*, *Mecklenburg*, *Middlesex*, *Nelson*, *New Kent*, *Northumberland*, *Not-toway*, *Orange*, *Preston*, *Prince Edward*, *Prince George*, *Randolph*, *Richmond*, *Shenandoah*, *Surry*, *Sussex*, *Warwick*, *Westmoreland*, and of the corporation courts of *Petersburg*, *Richmond*, *Staunton*, and *Winchester*, shall be held in the months of March, May, August and November in every year.

10. The quarterly sessions of the counties of *Louis*, *Albe-marle*, *Bath*, *Berkeley*, *Cabell*, *Campbell*, *Franklin*, *Pittsylvan-ia*, *Fairfax*, *Fluvanna*, *Frederick*, *Gloucester*, *Greenbrier*, *Greensville*, *Hampshire*, *Hardy*, *Henry*, *Harrison*, *Kanawha*, *King George*, *Monroe*, *Loudoun*, *Mason*, *Monongalia*, *Mont-gomery*, *Nansemond*, *Nicholas*, *Norfolk*, *Ohio*, *Patrick*, *Pen-gleton*, *Powhatan*, *Princess Anne*, *Prince William*, *Rockbridge*, *Scott*, *Stafford*, *Tyler*, *Washington*, *Wood*, *York*, and *Wythe*, and of the corporations of *Lynchburg*, *Norfolk Borough*, and *Williamsburg*, shall be held in the months of March, June, August and November in every year.

11. The quarterly sessions of the counties of *Caroline* and *Spottsylvania*, shall be held in April, June, August and November; of the county of *Hanover*, shall be held in February, April, July and October; of the county of *Giles*, in March, June, August and October; in *Northampton* and *Southampton*, in March, June, September and November; of *Grayson*, in March, June, August and November; of *Lewis*, in March, June, Sep-tember and November; of *Lee*, in April, June, August and

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Prosecutions to outlawry; Causes not exceeding \$20, &c. in value; and exclusively vested in other tribunals. Courts where holden. Exclusive jurisdiction of quarterly sessions.

(d) 1792, ed. 1794, 1803 and 1814, c. 67, § 5; 1806, c. 7, § 1.

(e) From act of 1792, ed. 1794, 1803, and 1814, c. 67, § 7, 11.

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November; of *Madison*, in March, May, August and November; of *Augusta*, in March, May, August and October; of *Rockingham*, in February, May, August and October; of *Russell*, in March, May, August and December; and of *Cumberland*, in February, May, July and October; and of *Tazewell*, in February, May, July and November; and of the corporation of *Fredericksburg*, in March, May, July and November, in every year.

Exclusive jurisdiction of monthly sessions.

12. A MONTHLY session of the said courts shall be held in like manner, on the days herein-after appointed for holding courts, in such counties and corporations respectively, in every month in which there shall not be a quarterly session, for proving and recording deeds and wills, and granting certificates of *probat* and administration, and for the transaction of all business, which by law is or shall be made cognizable, in a county or corporation court, except such as has been herein assigned to the court of quarter sessions: *Provided, nevertheless, That* all matters in chancery may be heard and determined, judgments on attachments against absconding debtors, where the property attached shall not be replevied, entered up, and all matters touching the breach of the peace and good behaviour, motions on replevy and forthcoming bonds, and against sheriffs and other public officers and defaulters, and all causes cognizable by motion in such courts, may be heard and determined; special bail may be taken; the *probat* of deeds and wills may be received; and letters of administration and letters testamentary may be granted, either at a monthly or quarterly court.(f)

Probats of wills, &c. at quarterly terms, confirmed.

13. In all questions which shall hereafter arise in any court of law or equity, touching the *probat* of wills, the granting of letters testamentary or letters of administration, heretofore made or granted at quarterly terms of the county or corporation courts, such *probat*, letters testamentary, or letters of administration, shall be taken and adjudged to be as good and valid, to every intent and purpose, as if the same had been made or granted at a monthly term.(g)

Deeds recorded at quarterly terms, how far valid.

14. In all questions, which shall hereafter arise on any deed heretofore proved, wholly or in part, at a quarterly term of a county or corporation court, and admitted to record, the *probat* thereof, and the order admitting it to record, shall be taken, as against the grantor, bargainor, or lessor, his heirs and devisees, and as against subsequent purchasers with notice, to be as good evidence of the execution of such deed, as if such *probat* and order had been made at a monthly term.(g)

Court days.

15. THE days on which the courts of the said counties and corporations shall commence their sessions in each month of the year, shall be as follow: the court day of the county of *Accomack*, shall be on the last Monday in each month; of *Albemarle*, on the first Monday; of *Amelia*, on the fourth Thursday; of *Amherst*, on the third Monday; of *Augusta*, on the fourth Monday; of *Bath*, on the second Tuesday; of *Bedford*, on the fourth Monday; of *Berkeley*, on the second Mon-

(f) From act of 1792, ed. 1794, 1803, and 1814, c. 67, § 8, 10; 1797, c. 8, § 2; ed. 1803, and 1814, c. 226, § 2; 1808, c. 25, § 5.

(g) 1808, c. 25; ed. 1812, c. 26.

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day; of *Botetourt*, on the second Tuesday; of *Brooke*, on the last Monday; of *Brunswick*, on the fourth Monday; of *Buckingham*, on the second Monday; of *Cabell*, on the fourth Tuesday; of *Campbell*, on the second Monday; of *Charles City*, on the third Thursday; of *Chesterfield*, on the second Monday; of *Charlotte*, on the first Monday; of *Caroline*, on the second Monday; of *Culpeper*, on the third Monday; of *Cumberland*, on the fourth Monday; of *Dinwiddie*, on the third Monday; of *Elizabeth City*, on the fourth Thursday; of *Essex*, on the third Monday; of *Fairfax*, on the third Monday; of *Fauquier*, on the fourth Monday; of *Fluvanna*, on the fourth Monday; of *Franklin*, on the first Monday; of *Frederick*, on the Monday before the first Tuesday; of *Giles*, on the last Tuesday; of *Gloucester*, on the first Monday; of *Goochland*, on the third Monday; of *Grayson*, on the fourth Tuesday; of *Greenbrier*, on the fourth Tuesday; of *Greensville*, on the Wednesday after the second Monday; of *Halifax*, on the fourth Monday; of *Hanover*, on the fourth Wednesday; of *Hampshire*, on the Monday next after the second Tuesday; of *Hardy*, on the second Tuesday; of *Harrison*, on the third Monday; of *Henrico*, on the first Monday; of *Henry*, on the second Monday; of *James City*, on the second Monday; of *Jefferson*, on the fourth Monday; of *Isle of Wight*, on the first Monday; of *Kanawha*, on the second Tuesday; of *King George*, on the first Thursday; of *King and Queen*, on the second Monday; of *King William*, on the fourth Monday; of *Lancaster*, on the third Monday; of *Lee*, on the fourth Tuesday; of *Lewis*, on the second Monday; of *Loudoun*, on the second Monday; of *Louisa*, on the second Monday; of *Lunenburg*, on the second Thursday; of *Madison*, on the first Thursday after the second Monday; of *Mason*, on the third Tuesday; of *Mathews*, on the second Monday; of *Mecklenburg*, on the third Monday; of *Middlesex*, on the fourth Monday; of *Monongalia*, on the fourth Monday; of *Monroe*, on the third Tuesday; of *Montgomery*, on the first Tuesday; of *Nansemond*, on the second Monday; of *Nelson*, on the fourth Monday; of *New Kent*, on the second Thursday; of *Norfolk*, on the third Monday; of *Northampton*, on the second Monday; of *Northumberland*, on the second Monday; of *Nottoway*, on the first Thursday; of *Ohio*, on the first Monday; of *Orange*, on the fourth Monday; of *Patrick*, on the first Thursday after the second Monday; of *Pendleton*, on the first Tuesday; of *Pittsylvania*, on the third Monday; of *Preston*, on the second Monday; of *Powhatan*, on the third Thursday; of *Princess Anne*, on the first Monday; of *Prince Edward*, on the third Monday; of *Prince George*, on the second Tuesday; of *Prince William*, on the first Monday; of *Randolph*, on the fourth Monday; of *Richmond*, on the first Monday; of *Rockingham*, on the third Tuesday; of *Rockbridge*, on the Monday before the first Tuesday; of *Russel*, on the first Tuesday; of *Scott*, on the second Tuesday; of *Shenandoah*, on the Monday preceding the second Tuesday; of *Southampton*, on the third Monday; of *Spottsylvania*, on the first Monday; of *Stafford*, on the second Monday; of *Surry*, on the fourth Monday; of *Sussex*, on the first Thursday; of *Tazewell*, on the fourth Tuesday; of *Tyler*,

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on the second Monday; of *Warwick*, on the second Thursday; of *Washington*, on the third Tuesday; of *Westmoreland*, on the fourth Monday; of *Wood*, on the first Monday; of *Wythe*, on the second Tuesday; and of *York*, on the third Monday. The court days of the corporations, of *Fredericksburg*, shall be held on the second Thursday; of *Lynchburg*, on the first Thursday after the first Monday; of *Norfolk Borough*, on the fourth Monday; of *Petersburg*, on the third Thursday; of the city of *Richmond*, on the last Monday; of *Staunton*, on the third Monday; of the city of *Williamsburg*, on the fourth Monday; and of *Winchester*, on the Friday before the first Monday, in every month.

Buildings to be erected, at county or corporation charge.

Court-house, jail, pillory, whipping post and stocks.

Land to be purchased.

Lands annexed to court-houses now established.

Penalty on justices failing to keep good jail, &c.

Action allowed sheriff against them.

Mode of recovery.

Quorum to make orders for erection of public buildings.

16. FROM time to time, forever hereafter, the court of every county and corporation within this Commonwealth, shall cause to be erected and kept in repair (or, where the same shall be already built, shall maintain and keep in good repair,) within each respective county and corporation, and at the charge of such county or corporation, one good and convenient court-house of stone, brick or timber, and one common jail and county prison, well secured with iron bars, bolts and locks, and also one pillory, a whipping post, and stocks; and, where land shall not be already provided and appropriated for that purpose, such court may purchase two acres, whereon to erect the said public buildings, for the use of their county or corporation, and for no other use whatsoever. And to every court-house already built and established, two acres of the land, built upon and adjacent thereto, not having any house, orchard, or other immediate convenience thereon, shall be, and remain appropriated to such court-house; and the fee simple thereof is hereby declared to be in the court of the same county, and their successors, to the use of such county as aforesaid; but where a court-house is already built in any city or town, the land now laid off for the same and the other public buildings, shall be judged and held to be sufficient. And if the justices of any county or corporation court, shall, at any time hereafter, fail to keep and maintain a good and sufficient prison, pillory and stocks, every member of the court, so failing, shall forfeit and pay ten dollars, one moiety to the Commonwealth, the other moiety to the informer, to be recovered, with costs, by action of debt or information in any court of record of this Commonwealth. And, moreover, the court so failing shall be liable to the action of the sheriff, from time to time, for all damages recovered against him, for any escape for want of a sufficient prison; and such sheriff, or his executors or administrators, shall and may sue for the same, by action of debt or information brought in the general court against the justices so failing, or the survivors of them; and, upon recovery in such suit, the judges of the said court are hereby empowered and required, to proportion how much every particular justice of the court so failing, who shall be then living, and the executors or administrators of such as shall be deceased, shall pay respectively, and to enter up judgment accordingly, whereupon one or more executions shall and may be issued: *Provided, however, and be it further enacted*, That it shall not be lawful for the justices of any county or other inferior court, to make an order for

the erection of any public building or buildings, unless a majority of the acting justices of such court shall be present, at the time of making such order; or, unless such court shall have, at a preceding term, entered on record their intention of making such order, and caused the sheriff, or other public officer, to summon the justices thereof, to attend at the next court, for the purposes aforesaid. (h)

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17. ALL persons taken on civil, or criminal process, in the county of *James City*, may be committed to the public jail in the city of *Williamsburg*, in like manner as if the same was within the limits of the said county; and the city of *Williamsburg* shall have a right to use the public jail therein, as the jail of the said city. (i)

Provision concerning the public jail in *Williamsburg*.

18. THE justices of every county and corporation shall be, and they are hereby empowered and required to mark and lay out the bounds and rules of their respective county and corporation prisons, not exceeding ten acres of land adjoining to such prison; which marks and bounds shall be recorded, and renewed from time to time, as occasion shall require; and every prisoner, not committed for treason or felony, giving good security to keep within the said rules, shall have liberty to walk therein, out of the prison, for the preservation of his or her health, and, keeping continually within the said bounds, shall be adjudged in law a true prisoner. (i)

Prison bounds in each county, &c. how laid off, and of what extent.

19. AND, for preventing errors in entering the judgments of the court, the justices, before any adjournment, shall cause the minutes of their proceedings to be publicly read by the clerk, and corrected, where necessary, and then the same shall be signed by the first justice in commission then sitting; which minutes, so signed, shall be taken in a book, and carefully preserved among the records; and no proceedings or judgments of any court shall be of force or valid, until the same be so read and signed. (k)

Who may have benefit of prison bounds.

Minutes of court's proceedings, when and how read and signed.

20. WHEN any debt or penalty, (exclusive of interest,) or the subject in controversy in trover and conversion, or detinue, shall not exceed twenty dollars, or four hundred pounds of tobacco, the same shall be cognizable and determinable by any one justice of the peace, who may give judgment thereon, according to the principles of law and equity, for the principal and interest due thereon, or for the value of the subject in controversy, with damages, as the case may be, and costs, and award an execution to be directed to any constable or other officer within this Commonwealth, against the goods and chattels of the debtor, or party against whom such judgment shall be rendered; to be executed and returned as other writs of *fiery facias* are by law directed to be executed and returned; but no writ of *capias ad satisfaciendum* shall be granted by any justice of the peace: *Provided, however,* That no justice of the peace shall take cognizance of any attachment where the sum demanded shall exceed ten dollars. (l)

Jurisdiction of one justice, in cases of small debts or penalties, &c.

Principles of decision.

Judgment how to be given. Execution.

Restriction as to attachments.

(h) 1792, edi. 1794, 1803, and 1814, c. 67, § 13; 1803, c. 57, § 1; edi. 1808, c. 68, § 1.

(i) 1792, edi. 1794, 1803, and 1814, c. 67, § 14, 15.

(k) *Ibid*, § 55.

(l) Altered from 1748, edi. 1760, c. 4, § 5; Revisal of 1792, edi. 1794, 1803, and 1814, c. 67, § 6; Act of 1800, edi. 1803, and 1814, c. 271, § 1; and taken from 1806, c. 7, § 1.

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Warrants, what to
state; and
when returnable.

Stay of execution;
security being given.

Execution against
party and his sure-
ty jointly.

Appeal, where al-
lowable.

Within what time
to be taken.

Security on ap-
peal.

Verbal acknow-
ledgment of sure-
ties sufficient.

Endorsement on
warrant, evidence.

Appeals, how, and
when, to be tried.

Principles of de-
cision.
Evidence receiva-
ble.

Damages on affir-
mance.

Judgment against
principal and
surety jointly.

Execution.

Costs on renewal.

Duty of justice,
from whose de-
cision appeal is
taken.

21. THE cause of action shall be stated in every warrant, issued by a justice, requiring any person to appear before him, or some other justice, to answer in any suit for debt, detinue or trover; and all such warrants shall be made returnable on a certain day, not exceeding thirty days from the date thereof.(m)

22. EXECUTIONS shall be stayed on judgments given by a justice of the peace for any sum exceeding ten dollars, exclusive of costs and interest, forty days; the person requesting such stay, giving such security as the justice rendering such judgment shall approve, for the payment thereof, with interest, until the same shall be satisfied. And unless such judgment shall be paid and satisfied within the period before mentioned, execution shall thereupon be granted by such justice, against the party and his security jointly; on which execution, no security shall be taken.(m)

23. IF either party, in any suit hereafter to be brought before any justice of the peace, shall think himself, herself, or themselves grieved, where the debt, or subject of trover, or detinue, or damages, exclusive of interest, shall exceed ten dollars, or the sum demanded on any penal statute shall exceed five dollars, such party, within five days from the rendition of such judgment, may enter an appeal to the next monthly term of the county or corporation court, giving such security, as the justice rendering the judgment shall deem sufficient, for the payment thereof, and all costs and damages, in case the same shall be affirmed.(m)

24. THE verbal acknowledgment of any security required to be taken under this act, shall be sufficient, and the endorsement by the justice, of the name of such security upon the warrant, on which the judgment shall be rendered, shall be conclusive evidence of such acknowledgment.(n)

25. APPEALS granted under this act shall be tried in a summary way, without pleadings in writing, on the day to which such appeal shall be returnable, unless good cause be shewn by either party for a continuance; and the courts, in rendering judgments thereon, shall govern themselves by the principles of law and equity, and shall hear all the evidence produced by either party, whether the same were produced before the justice from whose judgment said appeal was prayed, or not. And where judgment is affirmed, the same shall be entered for the amount of the original judgment, and the costs of appeal, together with damages after the rate of ten *per centum per annum*, upon the whole amount of the original judgment and costs, from the date thereof until payment; and such judgment shall be entered against the principal and his security jointly; and execution thereon shall issue accordingly and be endorsed, *no security to be taken*. And if the judgment of the justice shall be reversed, the appellant shall recover full costs.(o)

26. EVERY justice of the peace, from whose decision an appeal is prayed, shall, on or before the day to which the same

(m) 1806, c. 7, § 2, 3, 4; cdi. 1808, c. 88, § 2, 3, 4.

(n) 1808, c. 7, § 5; cdi. 1808, c. 88, § 5.

(o) 1806, c. 7, § 6; edi. 1808, c. 88, § 6.

shall be returnable, transmit to the clerk the original warrant, with the judgment and the name of the security endorsed thereon; and the clerk shall docket the same, and be entitled to the same fees upon such appeals, as clerks of circuit courts are entitled to for similar services. Any person or persons, who shall be compelled to pay money under this act, as a security, his, her or their executors and administrators, shall have the same remedy against the principal or principals, his, her or their executors and administrators, by motion, for the amount so paid, with interest and costs thereon, as other securities are by law entitled to. *(p)*

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Clerk's duty and fees.
Remedy of surety against principal.

27. WHEN the constable, or other officer, to whom any execution shall hereafter be directed by a justice of the peace, shall not be able to find goods and chattels to satisfy the same, he shall make return thereof to the clerk of his county or corporation, who shall docket the same; and the party shall be entitled to such writ or writs of execution for the recovery of the amount due thereon, as if the judgment, upon which such execution issued, had been rendered in court. And the same proceedings shall be had, upon executions to be issued by the clerks under this act, as upon executions founded upon judgments rendered by courts of law; and the clerks shall be entitled to the same fees, for the services hereby required of them, to which they would have been entitled, if such judgments had been rendered in court. *(q)*

Execution not satisfied, returnable to clerk.

His duty on receiving it.
Farther executions allowed.
Proceedings thereon.

Clerk's fees.

28. EVERY justice of the peace shall have power to issue executions and *subpoenas* for witnesses, to be directed to the constable or other officer, of any county or corporation, within this Commonwealth, where the party or witness resides. *(r)*

Executions and subpoenas for witnesses, issuable by justices, to constable, &c. of any county, &c.

29. IF any constable or other officer shall fail to make return of any execution to him to be directed under this act, on or before the return day thereof (which shall, in no case, exceed sixty days from the date thereof,) it shall be lawful for any justice of the peace, ten days notice being given, upon the motion of the party injured, to fine such constable or other officer in any sum, not exceeding five *per centum per* month, upon the amount of such execution, counting from the return-day thereof. *(s)*

Such executions when returnable. Penalty on constable, &c. for not returning.

30. WHosoever shall bring any action or suit, if it shall appear, either by his own shewing or the verdict of a jury, that a justice of the peace had cognizance under this act, shall be non-suited. *(t)*

How recoverable. Non-suit, if other action be brought where justice has jurisdiction.

31. IF any constable or other officer, shall hereafter receive any money or tobacco, upon any execution hereafter to be directed by any justice of the peace, and shall not pay the same to the party or his agent entitled thereto, upon the return of such execution, the party or parties, his, her, or their executors or administrators, injured thereby, shall be entitled to the same remedy, by motion, for the sum so received, with interest and costs, against such constable, or other officer, and his security or securities, his, her, or their executors and administrators, to

Remedy against constable, &c. failing to pay money received on execution.

(p) 1806, c. 7, § 7; Edi. 1808, c. 88, § 7.

(s) 1806, c. 7, § 10; edi. 1808, c. 88, § 10.

(q) *Ibid*, § 8.

(t) *Ibid*, § 11.

(r) 1792, c. 1; 1806, c. 7, § 9.

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which he would have been entitled against a sheriff, for money received on an execution issued upon the judgment of a court of law. And any justice of the peace of the county, the mayor, or any alderman of the corporation in the court of which the bond of such constable or other officer is, or shall be deposited, shall have power to hear such motion, and to render judgment thereon.(v)

Judgment on reversal of Justice's judgment.

32. EVERY court within this Commonwealth, on reversing any judgment of any justice of the peace, shall pronounce such final judgment, as, in their opinion, such justice ought to have rendered.(w)

Penalty on witness failing to attend before a justice.

33. WHEN any person, who shall be summoned as a witness to attend before any justice of the peace, in any county or corporation within this Commonwealth, to give evidence in any matter depending before such justice, shall fail to attend accordingly, not having a reasonable excuse for such failure, such witness shall be fined by the justice before whom he shall fail to attend, in such sum as the magistrate shall think fit to impose, not exceeding five dollars, for the use of the party for whom such witness was summoned; and the witness so failing, shall further be liable to the action of the party, for all damages sustained by his or her non-attendance; but, if sufficient cause of his or her inability to attend, be shewn to the said justice at the time he or she ought to have appeared, or at any time within one month after he shall have been served with the copy of an order requiring him to shew cause why he should not be fined, then no fine shall be incurred by such failure.(x)

How imposed.

Action allowed against him.

How he may be excused.

Compensation to witness attending.

34. EVERY witness summoned, and who shall attend to give evidence as aforesaid, 'shall be allowed the same compensation for his attendance and travelling, as is allowed a witness attending the county court;' and such allowance shall be taxed in the bill of costs: *Provided, nevertheless*, that the attendance of not more than one witness to each particular fact, shall be so taxed. Such witness shall be privileged from arrest, in all cases except treason, felony, and breaches of the peace, in the same manner as witnesses attending the courts of this Commonwealth are.(y)

Not more than one to be taxed in bill of costs.
Privilege of witnesses.

Rules of proceeding in Chancery suits.

35. In all suits in the county or corporation courts in chancery, the following rules and methods shall be put in practice and observed, to wit: (z)

Filing bill.

36. THE complainant shall file his bill on the first rule-day after the return of the *subpœna* executed, or upon the first appearance of the defendant, upon pain of having the same dismissed by the defendant; and if he shall fail to file the same within three months from the time of such return, the suit shall stand dismissed with costs.(a)

Dismissal for want of bill.

(v) 1806, c. 7, § 13; edi. 1808, c. 88, § 13, am. at Rev. of 1818, by giving jurisdiction to a justice, instead of the court.

(w) *Ibid*, § 14.

(x) 1802, c. 8, § 1; 1806, c. 17; edi. 1808, c. 11, 96, am. at Rev. of 1818.

(y) 1802, c. 8, § 2; edi. 1808, c. 11, § 2.

(z) These rules of practice are from act of 1748, edi. 1752, c. 6, § 28, and edi. 1769, c. 4, § 25, and 1787, c. 9, § 2, as amended at the revival of 1792, which will alone be referred to.

(a) 1792, edi. 1794, 1803 and 1814, c. 67, § 40, 41, 42.

37. UPON the complainant's dismissing his bill, or the defendant's dismissing the same for want of prosecution, the defendant shall recover his costs.(a)

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38. THE complainant may amend his bill before the defendant appears, or in a small matter afterwards, without paying costs; but if he amend after appearance, and in a material point, whereby the defendant shall be put to any extraordinary costs, such costs shall be paid before the complainant shall be at liberty to amend his bill.(a)

Costs to defendant.
Amendment of bill where without costs;
And where on paying costs.

39. If any defendant shall not appear upon attachment returned *executed*, or, being brought into court upon such process, shall obstinately refuse to answer the complainant's bill, such bill shall be taken for confessed, and the matter thereof decreed accordingly.(b)

Bill taken as confessed, on attachment executed.

40. THE defendant shall file his answer at the next rules, after his appearance, and bill filed; and if no answer be then put in, an attachment may be awarded, returnable to the next court; and if no answer be put in upon return of the attachment *executed*, the complainant's bill shall be taken for confessed, and the matter thereof decreed.(b)

Filing answer.
Attachment for answer.

41. AND if the attachment be returned *not executed*, an attachment with proclamation shall be issued; and if, upon the return thereof, no answer shall be put in, the complainant's bill shall be taken for confessed, and the matter thereof decreed as aforesaid.(b)

Attachment with proclamation.

42. No process of contempt shall issue without oath made of the service of the *subpoena*, unless the same be returned served by a sworn officer.(b)

Process of contempt.

43. If the defendant does not file his answer within three months after the plaintiff shall have filed his bill, having also been served with the *subpoena* at least three months before the said time for filing his answer, the plaintiff may proceed to take his bill for confessed, and proceed in the same manner as in a case of an attachment returned *executed*; or he may have a general commission to take depositions; or he may move the court to bring in the defendant to answer interrogatories, at his election, and proceed on to hearing in the two last cases, as if the answer had been filed, and the cause was at issue: *Provided*, That the court, for good cause shewn, may allow the answer to be filed, and grant a further day for such hearing.(b)

Taking bill as confessed for want of answer after three months.

General commission to take depositions.
Bringing in defendant to answer interrogatories.
Allowance to file answer, for cause shewn.

44. EVERY defendant shall be at liberty to swear to his answer, before any justice of the peace.(b)

Answer how sworn to.

45. WHEN any cross-bill shall be preferred, the defendant or defendants in the first bill shall answer thereto, before the defendant or defendants in the second bill shall be compellable to put in his or their answer to such cross-bill.(b)

Answer to first bill required, before answer to cross-bill.

46. THE complainant shall reply or file exceptions, at the next rules after defendant's putting in his answer; and if the complainant shall not then reply, nor file exceptions, his bill shall be dismissed with costs.(b)

Filing replication, or exceptions to answer.

(a) 1792, edi. 1794, 1803, and 1814,
c. 67, § 40, 41, 42.

(b) 1792, edi. 1794, 1803, and 1814,
c. 67, § 43, 44, 45, 46, 47, 48, 49,
50, 51, 52, 53, 54.

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Putting in sufficient answer, without costs.

Setting down exceptions for argument.

Answer where receivable, only on paying costs.

Costs, on over-ruling exceptions, or adjudging answer insufficient.

Double costs, on second answer so adjudged.
Effect of third insufficient answer.

Of insufficient answer, after process of contempt.

Of sufficient matter confessed by answer.

Objection to court's jurisdiction, when not receivable.

Exceptions to this rule.

Filing rejoinder.

Receiving plea or demurrer after attachment with proclamation.

Setting plea or demurrer for argument.

Taking issue in fact.
Effect of plea adjudged false.

Of plea or demurrer over-ruled.

47. WHEN the complainant files exceptions against the answer of any defendant or defendants, as insufficient, if the defendant puts in a sufficient answer at the next rules, the same shall be received without costs; but if the defendant's attorney insists on the sufficiency of the answer put in, and neglects or refuses to put in a sufficient answer, or shall put in another insufficient answer, the plaintiff may set down his exceptions to be argued the next court; and after exceptions so filed, or any second insufficient answer put in, no further or other answer shall be received, but upon payment of costs.(b)

48. AND if, upon argument, the complainant's exceptions shall be over-ruled, or the defendant's answer adjudged insufficient, the complainant shall pay to the defendant, or the defendant to the complainant, as the case shall be, such costs as shall be allowed by the court.(b)

49. UPON every second answer adjudged insufficient, costs shall be doubled. If any defendant shall put in a third insufficient answer, which shall be so adjudged, such defendant shall be examined upon interrogatories, and committed till he shall perfectly answer these interrogatories, and pay costs.(b)

50. IF the defendant, after process of contempt, put in an insufficient answer, which shall be so adjudged, the complainant shall not be obliged to take out a new *subpœna*, but may go on to the attachment with proclamation, as if no answer had been put in.(b)

51. WHERE the complainant conceives sufficient matter to be confessed by the defendant's answer, he may set down the cause, and proceed to hearing.(c)

52. AFTER answer filed, and no plea in abatement to the jurisdiction of the court, no exception for the want of jurisdiction shall ever afterwards be made, nor shall the court, or any other court, ever thereafter delay or refuse justice, or reverse the proceedings for want of jurisdiction, except in cases of controversy respecting lands lying without the jurisdiction of such court, and also of infants and *femes covert*.(c)

53. No defendant shall be admitted to put in a rejoinder, unless it be filed at the next rules after replication put in, but the complainant may proceed to the examination of witnesses.(c)

54. AFTER an attachment with proclamation returned, no plea or demurrer shall be received, unless by order of court upon motion.(c)

55. IF the complainant conceives any plea or demurrer to be nought, either for the matter or manner of it, he may set it down to be argued; or if he thinks the plea good, but not true, he may take issue upon it, and proceed to proofs; and if such plea shall be adjudged false, the complainant shall have the same advantages, as if the same plea were found false by verdict at the common law.(c)

56. IF a plea be pleaded, or demurrer put in, and over-ruled, no other plea or demurrer shall thereafter be received, but the defendant shall answer the allegations of the bill.(c)

(b) 1792, *edi.* 1794, 1803, and 1814,
a. 67, § 43, 44, 45, 46, 47, 48, 49, 50,
51, 52, 53, 54.

(c) 1792, *edi.* 1794, 1803, and 1814,
c. 67, § 55, 56, 57, 58, 59, 60, 61, 62,
63, 64.

County and Corporation Courts.

57. THE complainant, at the next rules after a plea or demurrer put in, may cause the same to be set down to be argued; but if the complainant shall not proceed to have the same set down, before the second court after the plea or demurrer put in, the bill may be dismissed of course, with costs.(c)

58. UPON a plea or demurrer argued and over-ruled, costs shall be paid, as where an answer shall be adjudged insufficient, and the defendant shall answer at the next rules; but if adjudged good, the defendant shall have his costs.(c)

59. IF any defendant shall obstinately insist on a demurrer, and refuse to answer, where the court shall be of opinion that sufficient matter is alleged in the bill to oblige him to answer, and for the court to proceed upon, the bill shall be taken for confessed, and the matter thereof decreed accordingly.(c)

60. THE said court in its discretion, may direct an issue to be tried at their own bar, whenever it shall be judged necessary.(c)

61. IN all suits hereafter instituted on the chancery side of a county or corporation court within this Commonwealth, it shall and may be lawful for the clerk thereof, in all cases where there shall be more than one defendant in such suit, to issue process against such of the defendants as do not reside within the said county or corporation, directed to the sheriff or serjeant of any county or corporation within this Commonwealth; upon whose return, the same proceedings shall take place, as if the process had been served by the proper officer of such county or corporation court.(d)

62. WHENEVER an injunction shall be obtained in any county or corporation court, to stay proceedings at law upon a judgment of such court, or a bill exhibited to foreclose the equity of redemption in mortgaged premises, (which is hereby declared to be sustainable in the court of the county or corporation where the land lies, notwithstanding the defendant or defendants, or any of them, may reside out of such county or corporation,) it shall and may be lawful for the clerk thereof to issue any legal process, against such defendant or defendants as do not reside within the said county or corporation, directed to the sheriff or serjeant of any county or corporation within this Commonwealth, upon whose return the same proceedings shall be had, as if the process had been served by the proper officer of the county or corporation in which the suit may be depending.(e)

63. THE several county and corporation courts within this Commonwealth, shall appoint one or more master commissioners, resident within their county or corporation; and, in all cases in chancery therein depending, in which it may be deemed necessary to refer the accounts of the parties litigant to a commissioner, the said courts shall direct one of the said commissioners to examine, state and return the same, with his report thereon, to the court; and shall cause a reasonable allowance for his services, to be taxed in the bill of costs.(f)

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Of failing to set down plea or demurrer to be argued.

Costs on plea or demurrer over-ruled.

Costs, if adjudged good.

Taking bill as confessed, for defendant's insisting on demurrer, and refusing to answer.

Discretionary power to direct trial of issue.

Process against non-residents, issuable to sheriff, &c. of any county or corporation.

Process on injunctions, or bills to foreclose, issuable in like manner.

Such bills sustainable in county or corporation where the mortgaged land lies, against non-resident defendant.

Courts to appoint commissioners in chancery.

Orders of account.

Their compensation.

(c) 1792, edi. 1794, 1803, and 1814, c. 67, § 55, 56, 57, 58, 59, 60, 61, 62, 63, 64.

(d) Edi. 1803, and 1814, c. 226, § 1.

(e) 1804, c. 8, § 4; edition 1808, c. 57, § 4.

(f) 1802, c. 13, § 1; edi. 1808, c. 1, § 1.

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Commissioners au-
thorised to admin-
ister oaths to wit-
nesses.

False swearing be-
fore them, perjury.

Justice being com-
missioner, not to
sit on orders of ac-
count, &c.

Commissioners to
issue *subpœnas* for
witnesses.

Proceeding against
witness not attend-
ing.

Action allowed a-
gainst him.

Courts empower-
ed to grant writs of
ne exeat.

Power of any two
justices to grant
such writ.

Bond and security
required of person
applying.

Penalty how fixed.

Clerk's duty to
take the bond, &c.

64. THE commissioners in chancery, in the county and corporation courts, shall be, and they are hereby, empowered to administer an oath or affirmation in all cases to them referred, by their respective courts, wherein it shall be necessary to examine witnesses on oath or affirmation; and if any person sworn or affirmed by any of the said commissioners, by virtue of this act, shall give any evidence, under such circumstances, as would have constituted the same to be perjury, if given in the presence of a court of record, the same shall be deemed perjury to all intents and purposes.(g)

65. No justice of the peace of any county, mayor, recorder or alderman of any corporation court, who is, or shall be commissioner in chancery, shall give an opinion in the reference of any cause, nor on the trial of any suit in which he has, or shall have acted as commissioner.(h)

66. THE commissioners in chancery of the said courts, shall and may issue *subpœnas* for witnesses to attend before them, to be executed and returned in like manner as *subpœnas* issued by the clerks of such courts; and if a *subpœna* be issued by a commissioner in chancery, and served upon the witness or witnesses named therein, and he, she, or they, shall fail to attend, according to the requisition of such *subpœna*, such commissioner shall report such default, and thereupon such proceedings shall be had before the court, to which such report shall be made, as would be had, if such witness or witnesses had been summoned to such court, to give evidence on a trial therein depending, and had made default. And, moreover, such witness or witnesses shall be liable to such action for damages, at the suit of the party aggrieved, as he, she, or they would have been liable to for a default in court as aforesaid.(i)

67. THE several county and corporation courts within this Commonwealth, at their monthly and quarterly sessions, shall have the same power to grant writs of *ne exeat*, to prevent the departure of any defendant out of the county, till security be given for performing the decree of the court, as is given to the superior courts of chancery in term time, and to be exercised in the same manner.(k)

68. ANY two justices of the peace of a county or corporation, when the court is not sitting, shall have the same power of awarding writs of *ne exeat*, as is exercised by the judges of the superior courts of chancery in vacation.(l)

69. ON application to an inferior court, whilst in session, or to two of the members thereof in vacation, it shall be the duty of the said court, or of the two justices in vacation, to require of the applicant bond with sufficient security, in a sum at least double the amount of the debt, or value of the thing claimed.

The court, when in session, shall by order fix the penalty of the said bond; and, in vacation, the justices shall, by their endorsement on the affidavit required by this act, in like manner ascertain the penalty in which the bond is to be taken. It shall be the duty of the clerks of the respective county and corpora-

(g) 1805, c. 30, § 2; ed. 1808, c.

67, § 2.

(h) *Ibid*, § 3.

(i) *Ibid*, § 4.

(k) 1809, c. 17, § 1; edition 1812,

c. 47, § 1.

(l) *Ibid*, § 2.

tion courts, to take the said bond, when sufficient security is offered; and on the applicant's complying with the provisions hereof, the clerk of the said court shall furnish to him a writ of *ne exeat* in the following form: *The Commonwealth of* Form of writ.

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Virginia to the sheriff or coroner of _____ *county, (or*
serjeant of the city, corporation or borough of _____ *) greet-*
ing: whereas it is represented to the court of the county of
_____ (as
the case may be,) or to two of the members of one of the afore-
said courts, viz: A. B. and C. D. two justices or aldermen (as
the case may be,) on the part of E. F., in a suit instituted by him,
against G. H. defendant, that the said G. H. designs quickly to
leave this Commonwealth, as by oath made in that behalf appears,
which tends to the great prejudice and damage of the said E. F.;
therefore, in order to prevent this injustice, you are hereby com-
manded that you do, without delay, cause the said G. H. to come
before you, and give sufficient bail or security in the sum of

_____ that he will not go, or attempt to go, out of the
limits of this Commonwealth, without the leave of our said
court, or performing such decree as may be made in the suit
aforesaid; and, in case the said G. H. shall refuse to give such
bail or security, then you are to commit him to the jail of your
county, city or borough, (as the case may be,) there to be kept in
safe custody, until he shall do so of his own accord; and, when
you have taken such security, you are forthwith to make and
return a certificate thereof to the justices of our said court,
distinctly and plainly, under your seal, together with this writ.
Witness, &c.(m)

70. THE clerks of the county and other inferior courts of this Commonwealth, for performing the several duties required by this act, in relation to writs of *ne exeat*, shall be allowed the same fees as the clerks of the superior courts of chancery for similar services.(n) Clerk's fees in relation to writs of ne exeat.

71. AND, to prevent oppression and delay, *Be it enacted*, That the court, to which the proceedings on a writ of *ne exeat* granted by two magistrates, may be returned, shall have full power to revise and control the judgment of the said magistrates, and to affirm or reverse the decision, as to the propriety of having awarded such writ. All questions concerning such writs of *ne exeat*, granted in vacation, shall be among the first motions concerning civil business acted on by the court, without regard to their order on the docket.(o) Court's power to revise and control, where two justices grant the writ. Such questions, when to be acted on.

72. THE right of appeal from the county and corporation courts, to the superior courts of chancery, and to the circuit courts, shall be exercised in the same manner as prescribed in the acts, *Reducing into one, all acts and parts of acts, concerning the superior courts of chancery, and To reduce into one, the several acts and parts of acts, concerning the establishment, jurisdiction and powers of the superior courts of law.*(p) Appeals from county or corporation courts, to superior courts.

73. If the plaintiff or demandant appeals, then the special bail given by the defendant or tenant in the county or inferior courts, shall be a special bail bound to answer judgment of the court to which the appeal is made. Where plaintiff appeals, special bail bound to answer judgment of circuit court.

(m) 1809, c. 17, § 1; edition, 1812, c. 47, § 3.

(o) 1809, c. 17, § 5; edition, 1812, c. 47, § 5.

(p) 1792, edition, 1794, 1803, and 1814, c. 67, § 65, 66.

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Bond and security
required of appel-
lant.

No cause remova-
ble by *habeas cor-
pus*, after issue
joined.

Cause remanded
by *procedendo*, not
again removable,
&c.

Rules concerning
granting injunc-
tions.

Equity in bill.

Affidavit.

Bond and security.

Endorsement on
subpoena.

Proceedings at
common law to
conform to circuit
court practice, and
in chancery to that
of superior courts.

Allowance to jail-
ors for keeping &
dieting prisoners,
for whom State is
chargeable.

When to be made,
and certified to au-
ditor.

Jailor's compen-
sation for public
services.

court, shall also stand bound to answer the judgment of the circuit court, and such appellant shall give bond and security, in the sum of sixty-three dollars and thirty-three cents, that he will prosecute his appeal with effect; and if he do not appear and prosecute the same, his bond shall be forfeited to the defendant or appellee.(p)

74. No cause shall be removed from the county or other inferior court by *habeas corpus*, after issue or demurrer joined in the cause or causes depending in such court or courts, and intended to be removed by such writ; but the said court may proceed in the said cause or causes, as though no such writ had been sued forth, or delivered to them, or any of them; and if any cause be removed or stayed by such writ, and afterwards the same cause shall be remanded or sent back again, by any writ of *procedendo* or other writ whatever, such cause shall never afterwards be removed, or stayed before judgment, by any other writ or writs whatsoever, to be sued forth from either of the superior courts of law or chancery.(q)

75. BEFORE any injunction in chancery shall be granted to stay proceedings at law in any action, suit or judgment whatsoever, in any county or corporation court, if the court shall not be otherwise satisfied with the matter of equity, the party praying such injunction shall make oath before the court or before some magistrate, of the truth of the allegations of his injunction bill, which affidavit shall be certified at the foot of the bill; and he, she or they shall, moreover, enter into bond, with one or more sufficient securities, in the clerk's office, for satisfying and paying all such sums of money and tobacco, and costs, which shall be then due, or become due to the plaintiff or plaintiffs in the action, suit or judgment so to be stayed, and also for the payment of such costs, as shall be awarded against him, her or them, in case the injunction shall be dissolved; and the clerk shall endorse on the *subpoena*, that the bond is filed.(r)

76. THE proceedings of the said courts in common law cases, shall, as nearly as may be, conform to the practice of the circuit courts; and in chancery cases, the same shall conform to the practice of the superior courts of chancery in like cases, except in such cases, as are or shall be otherwise particularly directed by any act of the General Assembly.(r)

77. THE keepers of county and corporation jails, shall be allowed for keeping and dieting each prisoner in their custody, with whose support the Commonwealth is by law chargeable, so much as the courts of their respective counties and corporations shall judge reasonable: *Provided*, the allowance so made shall not exceed that made by the superior court of law having jurisdiction over such county or corporation. The allowance shall be made after each session of the superior court, and shall be certified to the auditor, who shall debit the same, and issue his warrant on the treasurer for the payment thereof.(s)

78. AN annual allowance not exceeding fifty dollars *per annum*, shall be allowed by each county and corporation court.

(p) 1792, edi. 1794, 1803, and 1814,
c. 67, § 65, 66.

(q) Compiled of *Ibid*, § 67, as amen-
ded by act of 1808, c. 6, § 13, p. 18.

(r) 1792, edition, 1794, 1803, and
1814, c. 67, § 68, 69.

(s) 1796, c. 20; edi. 1803, and 1814,
c. 213, § 1.

for the public services of their jailor, which sum shall be levied by the said courts, at laying their respective levies.(t)

A. D. 1819.
A. R. C. 48.

79. NOTHING in this act before contained, shall be construed to enlarge, alter or abridge any of the powers, jurisdictions, or constitutions of any court of any city, town, corporation or borough within this Commonwealth, but the same shall remain as if this act had not been made, any thing herein to the contrary, or seeming to the contrary notwithstanding: *Provided always*, That the respective corporation courts, or courts of hustings in any city, town or borough, shall have jurisdiction, only in suits or controversies instituted between the respective inhabitants or citizens of such city, town or borough, and between one or more of the inhabitants of such city, town or borough, and any person or persons, not an inhabitant or inhabitants of this Commonwealth; and in either case, only where the contract hath been made, or cause of action hath accrued, within such city, town or borough; and in all such suits and controversies, their respective jurisdictions shall not be limited to any particular sum, but shall be co-extensive with the jurisdiction of the county courts.(v)

Payable out of county levy.
Powers of courts not to be enlarged, altered or abridged by this act.
Special provision as to jurisdiction of corporation courts,

80. NOTHING in this act before contained shall be construed to prejudice, or in any manner affect, the charters of the city of *Williamsburg*, and borough of *Norfolk*, or either of them.(v)

And charters of Williamsburg and Norfolk.

81. No person being a member of any corporation court, court of hustings, or common council-man of any city, town or borough whatsoever, within this Commonwealth, except common council-men of the city of *Williamsburg* and borough of *Norfolk*, shall, while a member of such corporation court, court of hustings or common council, be capable of acting as a justice of any county court.(w)

Members of corporation courts & common councilmen, not to act as justices of counties.

82. ALL and every act, clause and parts of acts, within the purview of this act, shall be, and the same are hereby repealed: *Provided*, That all rights, remedies, fines, penalties and prosecutions, heretofore accrued, incurred or pending, shall be, and remain in the same condition as if this act had never been made.

Repealing clause.
Proviso.

83. THIS act shall commence and be in force, from and after the first day of January eighteen hundred and twenty.

C. 72.

An act concerning certain Corporation Courts.†

A. D. 1793.
A. R. C. 18.

[Passed December 12, 1793.]

1. *Be it enacted*, That, from and after the passing of this act, it shall be lawful for any corporation courts, whose powers of levying money on the inhabitants thereof are limited by law to

Corporation courts empowered to levy money for building jails, pillories, &c.

(t) 1804, c. 14, § 6, amended at revision of 1818, by encreasing the allowance from 25 to 50 dollars.

(v) 1792, editions, 1794, 1803, and 1814, c. 67, § 71, 72.

(w) *Ibid*, § 72, from 1788, c. 76.

† 1793, c. 17.

A. D. 1793.
A. R. C. 18.

any specific and certain sum, to levy on the inhabitants of the said corporations, in addition thereto, so much money in each year, as will enable them to build, and keep in repair, sufficient jails, pillories and stocks in the said corporations respectively; any thing in any other law to the contrary in any wise, notwithstanding.

C. 78.

A. D. 1818.
A. R. C. 42.

*An act concerning the adjournment and places of session of certain Courts in certain cases.**

[Passed January 12, 1818.]

Governor and council may, by proclamation, change time and place of holding courts of appeals, chancery and general court.

1. *Be it enacted by the General Assembly, That*, so often as it shall appear necessary, it shall be lawful for the Governor, with the advice of the Council of State, by a proclamation, bearing date one month, at least, before the first day of meeting, and dispersed throughout the several counties, to cause the court of appeals, and the general court, to meet at any convenient place within this Commonwealth, and the superior courts of chancery, to meet at any convenient place within their respective districts, there to hold their respective sessions, immediately succeeding each proclamation. If it shall so happen that the cause of adjournment shall occur within the space of a month next preceding the day of meeting, it shall be lawful for the Governor, with the advice of the Council of State, by a proclamation dispersed as aforesaid, to postpone the time of meeting beyond the day, taking care that one month at least shall intervene between the date thereof and such new day, and that the new day does not fall within the month next preceding the stated term.(a)

Judges may adjourn if they cannot sit with safety.

2. *If*, after a session begun, a majority of the judges of the aforesaid courts, who are present, shall be of opinion, and so record, that they cannot sit with safety at the place fixed by law, or the proclamation aforesaid, it shall be lawful for them to adjourn to the succeeding term; and, thereupon, all business shall stand continued over.(a)

Copies of proclamations to be sent to judges.

3. *COPIES* of any proclamation of adjournment shall be sent, under signature of the Governor, and seal of the Commonwealth, to each of the judges aforesaid, whose court may be so adjourned.(a)

Noncontinuance, if courts be not held in usual terms.

4. *THERE* shall be no discontinuance in any proceeding whatsoever, if the courts aforesaid, or either of them, should not be held in their usual terms.(a)

Executive may direct courts to be held in other buildings, when those erected for the purpose are destroyed.

5. *IT* shall in like manner be lawful for the Executive, whenever any building or buildings duly appointed for the holding of any court shall be destroyed, by proclamation to direct such

* To take effect January 1st, 1820, *vid. ante*. c. 45.

(a) May, 1781, c. 1; ed. 1794, 1803 and 1814, c. 68, § 1, 2, 3, 4.

court to be holden in any other building or buildings, until the building or buildings so destroyed shall be rebuilt: *Provided always*, That the court of appeals and general court shall, in such case, be continued to be holden in the city of Richmond, the district courts of chancery in the counties in which they are appointed to be holden by law, and the superior courts of law, and the county and corporation courts, within the respective counties and corporations where they are appointed by law to be held.(b)

A. D. 1818.
A. R. C. 42.
Proviso.

6. ALL and every act and parts of acts, within the purview of this act, shall be and the same are hereby repealed.

7. THIS act shall commence and be in force from and after the first day of January next.

C. 74.

An act declaring who shall be conservators of the peace within this Commonwealth.

A. D. 1818.
A. R. C. 42.

[Passed January 7, 1818.]

1. *Be it enacted by the General Assembly*, That the judges of the Court of Appeals, Superior Courts of Chancery and General Court, shall be conservators of the peace throughout the Commonwealth, and the justices of the peace in each county and corporation shall be conservators of the peace within their several counties and corporations respectively; and the said judges and justices within the limits aforesaid, respectively, shall have power to demand of such persons, as are not of good fame, sufficient surety and main-prize of their good behaviour.* (c)

Who shall be conservators of the peace.
And may demand of persons of evil fame, security of good behaviour.

2. EVERY act, clause, and part of any act, within the purview of this act, shall be and the same is hereby repealed.

3. THIS act shall commence and be in force, from and after the passing thereof.

(b) 1781, c. 1; edi. 1794, 1803 and 1814, c. 68, § 5; from 1788, c. 73. (c) 1789, c. 80, § 16; 1792, edi. 1794, 1803, and 1814, c. 69.

* Marshals of Superior Courts of Chancery are also declared to be conservators of the peace. *Vid. ante.* c. 66, § 66. By the common law, every sheriff, coroner, and constable is a conservator of the peace, (*Hawk. P. C. lib. 2, c. 8, § 4, 5, 6,*) *virtute officii*.

A. D. 1819.
A. R. C. 43.

C. 75.

*An act to reduce into one the several acts, concerning Grand Juries and Petit Juries.**

[Passed January 7, 1819.]

Preamble.

For the more regular inquiry into breaches of penal laws, and trials of matters of fact, in the several courts of justice within this Commonwealth by juries;

Grand Jury to be
summoned to each
circuit court.
Qualifications of
Grand Jurors.

1. *BE it enacted by the General Assembly*, That the sheriff of each county, where a circuit court is appointed to be holden, shall, before every meeting of such court, summon twenty-four of the most discreet freeholders of the county, being citizens of this Commonwealth, and not constables, nor ordinary keepers, nor surveyors of highways, nor owners or occupiers of a mill,[†] to appear at the succeeding circuit court, on the

Number required.

Their duty.

By-standers when
to be impannelled.

first day thereof; and the said twenty-four freeholders, or any sixteen of them, shall be a Grand Jury, who shall be sworn to enquire of and present all treasons, murders, felonies, or other misdemeanors whatsoever, which shall have been committed or done within the county, for which they are impannelled; and, if a sufficient number of the said freeholders should not attend on the first day of the court, the sheriff shall summon, from the by-standing freeholders, qualified according to law, a sufficient number to form, together with such of the first-mentioned freeholders as do attend, a Grand Jury.(a)

Grand Juries in
county and corpo-
ration courts, by
whom and when
to be summoned.

Their qualifica-
tions.

Number required.

Duty.

By-standers, when
to be impannelled.

2. *THE* sheriff of each county, and the serjeants of the cities of Williamsburg, Richmond, and Borough of Norfolk, and other corporations within this Commonwealth, shall, before every quarterly session of the county or corporation courts respectively, summon twenty-four freeholders of his county, or corporation, being citizens of this Commonwealth, and not being ordinary keepers, constables, surveyors of highways, or owners or occupiers of a mill, out of which number shall be impannelled a Grand Jury of sixteen at least, who shall be sworn to enquire into the breach of the penal laws, and make presentment of the offenders. And, if a sufficient number of the said freeholders should not attend, on the first day of the county or corporation court, the sheriff or serjeant, (as the case may be,) shall summon, from the by-standing freeholders qualified according to law, a sufficient number, to form, together with such of the first-mentioned freeholders as do attend, a Grand Jury: *Provided, however*, That the inhabitants of any corporate town, shall not be Grand Jurymen for the inferior court of the county, in which such corporation shall be.(b)

Citizens of corpo-
rate towns, not to
be Grand Jurors
in county courts.

* Former general laws on this subject; acts of 1748; ed. 1769, c. 7; 1788, c. 67, Revision of 1792, ed. 1794, 1803 and 1814, c. 73.

† By act of 1795, (Edi. 1803 and 1814, c. 188, § 3,) ordinary keepers, surveyors of highways and owners or occupiers of mills, were declared not to be disqualified to serve as Grand Jurors, in the general court or any of the district courts, and this section was reported accordingly by the late revisors; but the legislature have restored the law to what it was before the act of 1795.

(a) From Edi. 1794, 1803 and 1814, c. 73, § 1. *Ibid.* c. 158.

(b) 1792; ed. 1794, 1803 and 1814, c. 73, § 2, 4; ed. 1803 and 1814, c. 188, § 1.

Juries.

3. An oath in the following words, shall be administered to the foreman of the Grand Jury :

You, as foreman of this inquest, shall diligently enquire into, and true presentment make of all such matters and things, as shall be given you in charge, or otherwise come to your knowledge, touching the present service; you shall present no person through malice, hatred or ill will; nor shall you leave any unpresented, through fear, favor, or affection, or for any reward, hope or promise thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding. So help you God.

A. D. 1819.
A. R. C. 43.

Foreman's oath.

4. THE following oath shall be administered to the other Grand Jurors.

The same oath, that A. B. your foreman, hath now taken before you on his part, you and each of you shall well and truly observe and keep, on your respective parts. So help you God.

5. EVERY such Grand Jury for a Superior Court of Law, or for the inferior court of a county or corporation, shall and may present all offences made penal by the laws of this Commonwealth, although the recovery of the fines for such offences shall be otherwise directed by the laws inflicting the same; except only, that no presentment shall be made, in a superior court of law, of any offence, where the penalty inflicted by law is less than five dollars. What offences presentable by Grand Jury. Exception, where penalty is less than five dollars.

6. EVERY freeholder summoned to appear on a Grand Jury as aforesaid, and failing to attend, not having a reasonable excuse, shall be fined by the courts, respectively, not exceeding eight dollars, unless good cause be shewn to the contrary, at or before the next court, to be paid to the Commonwealth, for the use of the literary fund. Penalty for not attending when summoned as Grand Juror. Excuse, when receivable.

7. GRAND JURORS shall be privileged from arrest in all cases, except treason, felony and breaches of the peace, during their attendance at court, coming to and returning from thence, allowing one day for every twenty miles from their places of abode; and all such arrests shall be void. Privilege of Grand Jurors.

8. No Grand Jury shall make presentment of their own body; and when they make any presentment, they shall write at the foot thereof, the name and surname of the prosecutor or informer, if there be one, and the name of the town or county, in which he shall reside, with his title or profession, for the more effectual prosecution of such presentment. When a presentment shall be made upon the knowledge of two of their own body, the names of the Grand Jurors giving the information, shall be written at the foot of the presentment; and when a presentment shall be made on the testimony of a witness called on, either by the court, or the Grand Jury, to give testimony concerning the same, the name of such witness shall likewise be written, at the foot of the presentment: When the Presentments on what information to be made. Name &c. of prosecutor or informer. Or names of grand jurors informing, to be written at foot of presentment. Also name of witness called on by court or grand jury. Grand Jury, when discharged.

(c) 1792, edi. 1794, 1803 and 1814,
c. 73, § 3.
(d) From *Ibid.*, § 5, 6.

(c) 1792, edi. 1794, 1803 and 1814,
c. 73, § 7.
(f) *Ibid.*, § 8.

A. D. 1819.
A. R. C. 43.

Provision in case of sickness, death &c. after being sworn.

Petit juries in superior and inferior courts, by whom, and when to be summoned.

Penalty for non-attendance.

Power of circuit courts to make special orders, for summoning juries to particular days.

Penalty for non-attendance.

Qualifications of petit jurors, in criminal cases, and land causes generally; or, in any case, in a circuit court.

In county or corporation courts.

Infants, under age of 21 years, disqualified.

Exception not allowable after juror is sworn.

Juries *de medietate linguae*.

Jurors to give evidence in open court.

Grand Jury shall have presented all such matters, as come to their knowledge, they shall be discharged.(g)

9. In case of the sickness, death, or non-attendance of any Grand Juror or Grand Jurors, after he or they shall be sworn, it shall be lawful for the court to cause others to be sworn in his or their stead.(h)

10. For the trial of all cases in the superior courts, and in the county and other inferior courts, where a jury may be necessary, the sheriff or other officer, attending such courts respectively, shall, every day the court sits, summon a sufficient number of by-standers, or others, qualified as herein-after is directed, to attend the court that day, that out of them may be impannelled sufficient juries for the trial of causes depending in such courts; and if any person so summoned, shall fail to attend the court accordingly, he shall be fined eight dollars, to be paid to the Commonwealth, for the use of the literary fund.(i)

11. ' WHEN any superior court of law, during term time, shall deem it necessary to secure the attendance of fit jurors, on any subsequent day of the same term, it shall be lawful for such court to make an order, directing the sheriff or other officer to summon any number of jurors not exceeding twenty-four, to attend the court on such subsequent day; and if any person so summoned, shall fail to attend the court accordingly, without good cause therefor, he shall, in like manner, pay a fine to the Commonwealth, of eight dollars, for the benefit of the literary fund.'

12. No person shall be capable to be of a petit jury for the trial of treason, felony, breach of the peace, misprision of treason, breach of the penal laws, or any pleas of the Commonwealth, or of any estate of freehold, or estate or title in or to lands, tenements or hereditaments, in any court of record in this Commonwealth, or to be a juror in any case whatsoever depending in any of the superior courts of the Commonwealth, unless such person be a freeholder, and possessed of a visible estate, real or personal, of the value of three hundred dollars at the least. No person shall be capable to be of a jury for the trial of any cause whatsoever, in any county court or other inferior court, unless he be possessed of a visible estate, real or personal, of the value of one hundred and fifty dollars at the least. No person under the age of twenty-one years, shall serve as a juror. No sheriff or other officer shall, at any time, summon or return any juror not qualified as this act directs: *Provided, always*, That no exceptions against any juror, on account of his estate, or age, or any other legal disability, shall be allowed after he is sworn.(k)

13. JURIES *de medietate linguae* may be directed by the courts respectively.(l)

14. JURORS knowing any thing relative to the point in issue, shall disclose the same in open court.(l)

(g) Compiled of 1792; edi. 1794, 1803 and 1814, c. 73, § 2, 9, and edi. 1803, and 1814, c. 188, § 2.

(h) 1788, c. 67, § 106; 1792, edi. 1794, 1803, and 1814, c. 73, § 10.

(i) 1792, edi. 1794, 1803 and 1814, c. 73, § 11.

(k) 1792, edi. 1794, 1803, and 1814, c. 73, § 12, from 1748, edi. 1769, c. 7, § 5, 6.

(l) *Ibid*, § 13, 14; from 1788, c. 67, § 44, 45.

15. ANY juror guilty of a contempt to the court, may be fined by such court in any sum not exceeding thirty dollars.(l)

A. D. 1819.
A. R. C. 43.

16. No sheriff shall converse with a juror, but by order of the court, after the jury have retired from the bar.(l)

Fine of juror for contempt of court. Sheriff not to converse with jurors. Penalty on sheriff for not summoning grand jury and returning pannel. Penalty on juror accepting a bribe.

17. If any sheriff shall fail to summon a Grand Jury, and return a pannel of their names, as herein directed, he shall forfeit and pay twenty dollars to the Commonwealth, for the use of the literary fund.(m)

18. If any juror, upon any inquest whatsoever, shall take any thing, by himself or another, to give his verdict, and shall be thereof convicted, such juror shall not thereafter be put on any jury, and shall pay ten times as much as he shall have taken; whereof one half shall go to him who will sue for the same, and the other half to the Commonwealth, for the use of the literary fund.(n)

19. THE sheriff of the county of James City, for the time being, and his under sheriffs and deputies, and every of them, shall be, and are hereby empowered and authorised to summon jurors of the inhabitants of *James City* county, in all and every part of the city of *Williamsburg*, as well in that part lying in the county of *York*, as *James City*, to serve on juries on the days appointed for holding courts in the said county of *James City*.(o)

Inhabitants of James City may be summoned as jurors in any part of Williamsburg.

20. ALL and every act and acts, clauses and parts of acts, containing any thing within the purview of this act, shall be, and the same are hereby repealed. But all fines or penalties incurred, and all rights and remedies which have accrued, under such acts, clauses and parts of acts, shall remain in force, and be recovered as if this act had never been made. Repealing clause. Proviso.

21. THIS act shall commence and be in force, from and after the first day of January eighteen hundred and twenty. Commencement.

C. 76.

*An act to reduce into one, the several acts concerning Counsel and Attornies at Law.**

A. D. 1819.
A. R. C. 43.

[Passed February 15, 1819.]

For prescribing the mode of licensing Counsel and Attornies at Law, and regulating their practice; Preamble.

1. BE it enacted by the General Assembly, That, before any person shall be licensed to practise as Counsel or Attorney at

Certificate to be produced on applying for license to practise law.

(l) 1792, ed. 1794, 1803 & '14, c. 73, § 15, 16; from 1788, c. 67, § 46, 48.

(n) 1789, c. 26, § 3; 1792, ed. 1794, 1803, and 1814, c. 73, § 19.

(m) 1748, ed. 1769, c. 7, § 1; 1792, ed. 1794, 1805, and 1814, c. 73, § 17.

(o) 1748, ed. 1769, a. 6, § 18; 1792, ed. 1794, 1803, and 1814, c. 73, § 20.

* For the ancient mode of licensing Attornies, and some curious laws concerning them, see 1 *Hen. st. at lar. p.* 275, 302, 313, 349, 419, 482, 495; 2 *Id.* 81, 478. Attornies were first licensed by the courts before which they practised: 3 *Id.* 275, (1642-3;) then by the governor; 2 *Id.* 478, (1680;) then by examiners appointed by the governor; 4 *Id.* 360, (1732;) then by examiners appointed by the judges of the general court; 5 *Id.* 345, ed. 1769, acts 1761, c. 3; last, by the judges, acts 1786, c. 56. The provisions introduced or restored by the present act, are distinguished by being printed within single inverted commas.

A. D. 1819.
A. R. C. 43.

License, by whom
and how grantable.

Law, in any of the courts of this Commonwealth, he shall produce, to those hereby authorised to grant licenses, a certificate from the court of that county 'or corporation,' where he hath usually resided for the last preceding twelve months, that he is a person of honest demeanor, and is upwards of twenty one years of age; and three of the judges of the superior courts, upon such certificates being produced to them, may, and they are hereby authorised and empowered, to grant to the person producing the same, a license, under their hands and seals, to practise the law in the superior and inferior courts of this Commonwealth, if, after examination, they shall be of opinion that he is duly qualified.(a)

Oaths of counsel
or attorney at law.

2. EVERY Counsel and Attorney, before he shall be permitted to practise in any of the courts of this Commonwealth, shall first produce his license in each court where he intends to practise, and, in the presence of such court, shall give assurance of fidelity to the Commonwealth, and shall moreover take the following oath of office, to wit:

I, A. B., do solemnly swear, that I will honestly demean myself in the practice of the law, as Counsel or Attorney, and will, in all respects, execute my office, according to the best of my knowledge and abilities.(b)

Penalty for practising without license, or without having qualified.

3. IF any person shall presume to practise as Counsel or Attorney, in any of the said courts, without a license first obtained as aforesaid, or without qualifying himself in such court, in the manner before directed, he shall, for every such offence, forfeit and pay the sum of one hundred and fifty dollars for every cause he shall prosecute or defend, in any of the said courts, one moiety to the use of the informer, and the other moiety to the 'Commonwealth, for the' use of the literary fund, to be recovered by action of debt in any court of record.(b)

Proviso, in favor of counsel, &c. duly qualified in courts of adjoining states.

4. *PROVIDED, however, and be it further enacted, That Counsel and Attornies at Law licensed and duly qualified to practise as such in the respective courts of Pennsylvania, Ohio, Kentucky, Tennessee, the District of Columbia, North Carolina and Maryland, shall be, and they are hereby authorised to practise as such in the several courts of law and equity of this Commonwealth, upon producing proper certificates of their qualifications and licenses, and taking the oath of office only.(c)*

Persons convicted of felony incapable of license; or their license may be superseded.

5. EVERY person that hath already been, or shall hereafter be, convicted of any felonious crime, shall be incapable of obtaining such license; or, if licensed, the judges of any court in which such person may practise, on proof thereof being made to them, may supersede his license.(d)

Proceedings against counsel or attorney, for mal-practice, in general court or circuit court.

6. If the judges of the general court, either in the general court or circuit courts, from their own observation, detect any mal-practice in either of the said courts, in any Counsel or Attorney of those courts, or either of them; or if a complaint in writing be made to them, of such mal-practice in the said

(a) 1786, c. 56, am. at rev. of 1792; edi. 1794, 1803 and 1814, c. 71, § 1.

(b) *Ibid*, § 2.

(c) 1815, c. 44, § 1.

(d) 1792, edi. 1794, 1803 and 1814, c. 71, § 3.

Counsel and Attornies.

courts, or in the court of any county or corporation, the party accused shall be summoned to shew cause why an information should not be filed against him: And if such information should be ordered, and the Counsel or Attorney thus offending should be found guilty of the matter therein charged, the said judges, either in the general court or circuit courts, as the case may happen, may either suspend his license during a certain time, or vacate it altogether, as they shall judge most proper. The judges of the court of appeals, and of the superior courts of chancery, shall have the like power over Counsel and Attornies practising at the bars of their respective courts; and in case an information should be directed by the judges of either of the said courts, they may cause a jury to be impanelled to try such information, in like manner as informations are tried in the general court, or in the circuit courts: *Provided always*, That nothing herein contained shall be construed to hinder the justices of any county court, or other inferior courts, from causing any attorney practising in such courts, to find security for his good behavior, or fining such Counsel or Attornies for misdemeanors, or contempts offered to them, in the same manner as if this act had never been made. (e)

A. D. 1819.
A. R. C. 43.

Summons to shew cause.
Information.
Judgment suspending or vacating license.

For mal-practice in court of appeals.

Trial by jury.

Power of county or corporation courts to bind attornies to good behavior, or fine them for misdemeanors or contempts.

Counsel, &c. prosecuting suit, not to prosecute appeal.

Penalty for breach of this regulation.

How recoverable and appropriated.

7. No Counsel or Attorney, who shall prosecute any suit in an inferior court, in which an appeal may be prayed, shall be permitted to appear, or prosecute such appeal in any superior court, to which the same may be carried or removed; and any Counsel or Attorney who shall appear to, or prosecute such appeal in any superior court, shall forfeit the sum of sixty dollars, to be recovered with costs by action of debt, in any court of record within this Commonwealth. The whole penalty shall be appropriated to him who will sue for and recover the same. (f)

8. If any suit shall be dismissed for the non-attendance of an Attorney practising either in the superior or inferior courts, not having a just and reasonable excuse, it shall be at his costs, and he shall moreover be liable for all damages his client shall sustain by such dismissal, or any other neglect of his duty, to be recovered in any court of record within this Commonwealth. (g)

9. EVERY Attorney receiving money for his client, and refusing to pay the same when demanded, shall be proceeded against in a summary way, on notice, before any court of record, in the same manner as sheriffs are liable to be proceeded against for money received on executions; and 'damages, in lieu of interest, not exceeding fifteen *per centum per annum*, from the time of receiving such money, until it shall be paid, may be awarded on the principal sum recovered.' (g)

10. In all cases where the sheriff is authorised by law to take the engagement of an Attorney endorsed upon the writ, that he, such Attorney, will appear for the defendant or defendants, every Attorney thus entering into such engagement, who shall fail to enter an appearance agreeably thereto, Or not appearing for defendant, according to engagement endorsed on writ.

(e) 1786, c. 56; ed. 1794, 1803 and 1814, c. 71, § 4.
(f) 1788, c. 50; same ed. and c. § 5.

(g) 1787, c. 10, § 3; same ed. and c. § 6, 7.

A. D. 1819.

A. R. C. 43.

Not more than
two attornies to
argue on one side.

Exceptions to this
rule.

Penalty on attor-
ney, &c. appear-
ing under any
power, made be-
fore action brought
for confessing
judgment, &c.

Justices, sheriffs or
clerks, not to ap-
pear or plead, as
attornies in their
respective courts.
Exception.

Penalty.

Lawyers' fees.

In the general
court.

In suits in chauce-
ry.
In superior courts
of law.
In county or other
inferior courts.

shall forfeit to the defendant or defendants, eight dollars, for which judgment shall be immediately entered, and execution may issue thereon.(h)

11. THE judges of the general court, of the circuit courts, and the justices of the county or other inferior courts, shall not suffer, in suits hereafter to be commenced, more than two Attornies to argue on any one side, except in criminal cases, unless good cause be shewn for departing from this regula- tion.(i)

12. If any Attorney, or other person practising as an Attor- ney, shall presume to appear under any power of attorney, made before action brought, for confessing or suffering judg- ment to pass by default or otherwise, for any defendant in any court of record within this Commonwealth, such Attorney shall, for every such offence, forfeit and pay fifteen hundred dollars, to such defendant, for his own use, to be recovered, with costs, by action of debt or information, in any court of record; and, moreover, shall be liable to an action for damages, at the suit of the party grieved.(k)

13. No justice of the peace, sheriff, under-sheriff or clerk of any county court, shall appear or plead as Attorney, for any person or persons whatsoever, in the court of the county whereof he is a member, officer or clerk; except only as general attorney for any person or persons not residing or being within this Commonwealth; under penalty of being fined by such court in the sum of thirty dollars for every such offence, to the use of the Commonwealth, for the benefit of the literary fund.(l)

14. THE lawyers of this Commonwealth shall not demand, nor, directly or indirectly, or by any device, way or means whatsoever, take or receive, before the suit or suits, they are or shall be employed in, shall be finally determined, any greater or other fees or rewards, for the following services, than what are herein particularly mentioned and expressed: that is to say; Lawyers practising in the general court, may demand and receive for an opinion or advice, where no suit is, or shall be brought and prosecuted, or defended, by the Attorney giving such advice, but not otherwise, three dollars and fifty-eight cents; and in any suit other than where the title or bounds of land shall or may come in question, eight dollars and thirty-three cents; in those cases where the title or bounds of lands shall or may come in question, sixteen dollars and sixty-six cents; in any suit in chancery, the fee last mentioned; in any suit in a superior court of law, where the title or bounds of land shall or may come in question, five dollars; and in all other cases, two dollars and fifty cents: and lawyers practising in the county courts, or other inferior courts, for services to be by them done in such courts, may demand, for an opinion or advice, where no suit is or shall be brought or prosecuted, or

(h) 1788, c. 67, § 27; same edi. and c. § 8.

(i) 1792, edi. 1794, 1803 and 1814, c. 71, § 9; from 1761, edi. 1769, c. 3, § 11.

(k) 1748, edi. 1769, c. 5, § 7; edi. 1794, 1803 and 1814, c. 71, § 10.

(l) 1758, edi. 1769, c. 4, § 29; edi. 1794, 1803 and 1814, c. 71, § 11.

defended, by the attorney giving such advice, but not otherwise, one dollar and sixty-seven cents; and in any suit at common law, other than the actions hereafter mentioned, two dollars and fifty cents; in all chancery suits, or real, mixed or personal actions, where the title or bounds of land shall or may come in question, five dollars; on an appeal to a county or corporation court, from the judgment of a magistrate, one dollar and twenty-five cents: and any lawyer, for attending a survey in the country, for every day he shall attend, may demand three dollars and fifty-eight cents; which last mentioned fee may be taxed in the bill of costs. And every lawyer exacting, taking, receiving or demanding any greater fee, or other reward, for any of the above services, before he has performed the said services, or finished the said suits, shall forfeit and pay one hundred and fifty dollars for every offence; one-half to the Commonwealth, for the use of the literary fund, and the other half to the informer, to be recovered by action of debt or information, in any court of record within this Commonwealth.(m)

A. D. 1819.
A. R. C. 43.

For attending surveys in the country: such fee taxable in bill of costs. Penalty for receiving or demanding more than lawful fee.

15. No lawyer, in any suit to be brought for his fees or services, shall recover more than the fees above-mentioned, notwithstanding any agreement, contract or obligation made or entered into by the party against whom such suit shall be brought, 'if such agreement, contract or obligation shall have 'been entered into before the suit or suits in which such fees 'shall have accrued, or services been rendered, were finally 'determined.'(m)

More not recoverable by virtue of any contract, made before suit determined.

16. THE clerk of the court of appeals shall tax in the bill of costs, on all judgments and decrees rendered in that court, a fee of twenty dollars.(n)

Fee taxable in bill of costs, in court of appeals.

17. THE clerks of the high court of chancery and general court, respectively, shall tax in the bill of costs, on all decrees obtained in the former, and on all judgments in the latter, in any action wherein the title or bounds of land shall or may come in question, a fee of sixteen dollars sixty-six cents; and in all other cases in the said last mentioned court, the clerk shall tax a fee of eight dollars and thirty-three cents, where the party obtaining such decree or judgment employed a lawyer; except where the plaintiff may not recover more costs than damages; and the clerks of the respective superior courts of law, and county courts, or other inferior courts, shall tax in the bill of costs in all judgments in any action where the title or bounds of land shall or may come in question, and on all decrees in chancery, either when the plaintiff shall recover or be non-suited, or where his suit shall be dismissed, five dollars: and in all other actions or suits, except appeals from the judgment of a magistrate to the county or other inferior courts, two dollars and fifty cents, for an Attorney's fee, if the party employed one; except where the plaintiff may not recover more costs than damages: and in all appeals from the judgment of a magistrate, the clerks of the said county courts, and other inferior courts, shall tax in the bill of costs, where an Attor-

In high court of chancery and general court.

In superior courts of law, and county or other inferior courts.

(m) 1761, *edi.* 1769, c. 3, § 11, 12; *edi.* 1794, 1803, and 1814, c. 71, § 12.

(n) 1816, c. 12, § 1.

A. D. 1819.
A. R. C. 43.

Attornies for Coun-
monwealth, in
county and corpo-
ration courts, how
appointed.
Their fees as such.
Salary to be allow-
ed ;
Payable out of
county or corpora-
tion levy.

Right of lawyers
to inspect papers
and records, with-
out taking copies.
Repealing clause.

Proviso.

Commencement.

ney shall be employed, one dollar and twenty-five cents, as an Attorney's fee, against the party who shall be cast.(o)

18. ATTORNIES to prosecute on behalf of the Commonwealth, shall be appointed in the county and corporation courts of this Commonwealth, by an order of the said courts respectively; which said Attornies shall be entitled to recover of delinquents the fees allowed by law, and shall be allowed by the said courts a reasonable sum for those public services for which no other fee or reward is allowed by law ; which sum shall be annually levied by such court on the county or corporation : and it shall not be lawful for the auditor of public accounts, to allow the claim of any Attorney for any county or corporation court, for any services to be performed by him therein.(p)

19. THE lawyers practising in any court, shall be allowed at all times to inspect the papers and records of such court, without being constrained to take copies thereof.(q)

20. ALL and every act and acts, clause or clauses of acts, containing any thing within the purview of this act, shall be, and the same are hereby repealed: *Provided, always,* That nothing in this act contained shall be construed so as to prevent the prosecution of any offence committed or done before the commencement of this act ; but such offence may be prosecuted and punished in the same manner as if this act had never passed.

21. THIS act shall commence and be in force, from and after the first day of January eighteen hundred and twenty.

C. 77.

*An act concerning Clerks of Courts.**

[Passed January 9, 1818.]

A. D. 1818.
A. R. C. 42.

Oath of office of
clerks of county
and other inferior
courts.

1. *BE it enacted by the General Assembly,* That every person hereafter admitted into office by any county or other inferior court, as Clerk or Deputy Clerk of such court, shall, at the time of his adimission or appointment to such office, take the following oath :

I, A. B. do swear, that I will well and truly exercise the office of _____, according to the best of my skill and judgment, making due entries and record of all orders, judgments, decrees, opinions or proceedings of the Court, and carefully filing and preserving in my office all books and papers whatsoever, which shall be delivered me in charge, or otherwise come to my hands or possession, by virtue of my said office ; and that I will not willingly or wittingly commit any mal-

(o) Compiled of 1764, edition 1769, c. 15, § 3; revival of 1792, edi. 1794, 1803, and 1814, c. 71, § 14; 1806, c. 7, § 12; 1813, c. 13, § 2.

(p) Edition 1803, and 1814, c. 260, § 1, 2.

(q) 1804, c. 14, § 5; edition 1808, c. 61, § 5.

* Suspended till January 1st, 1820; *vid. ante.* c. 45.

feasance of office, but, in all things, and at all times, keep my said office free and accessible to every person having a right or claim to business therein, and faithfully execute the duties thereof, without favor, affection or partiality. So help me God.

A. D. 1818.
A. R. C. 42.

AND, if any person shall presume to execute the office of Clerk or Deputy Clerk of any county or other inferior court, without taking such oath, he shall forfeit and pay fifteen hundred dollars, and suffer one year's imprisonment, without bail or mainprize.(a)

Penalty for acting without taking such oath.

2. If any Clerk shall wittingly make any false entry, or raze, alter or change any record in his keeping belonging to his office, every such Clerk, so offending, shall be amerced and imprisoned at the discretion of a jury, and shall moreover be liable to the action of the party grieved. And if any judgment be reversed, by reason of any such false entry, rature, alteration or change, the party grieved may sue by writ of error or otherwise, according to law, if he see it expedient for him.(b)

Punishment of clerks for wittingly making false entries, or altering records.
Party injured, how relievable.

3. EVERY Clerk of a county or other inferior court shall, at the time of his appointment and qualification as aforesaid, enter into bond, with security, to be approved of by the court, in the penalty of three thousand dollars, payable to the Governor and his successors, for the time being, with condition for the due and faithful execution of his office, and that he will not remove or carry, or suffer to be carried or removed out of the county or corporation, the records and papers of the court, whereof he is clerk, or any part thereof, except in cases allowed by law; which bond shall by such Clerk be transmitted within three months to the Clerk of the superior court of law having jurisdiction over the said county and corporation, to be by him registered and preserved among the papers of his office, and may be prosecuted upon against any such Clerk and his securities, in the name of the Governor or his successors, for the use of any person or persons who shall or may be injured, at his, her or their costs and charges, who shall and may recover all damages, which he, she or they may have sustained by reason of the breach of the condition of the said bond; and such bond shall not become void upon the first recovery, or if judgment shall be given against any plaintiff or plaintiffs who shall sue on such bond, but may be put in suit and prosecuted from time to time, for the benefit and at the proper costs and charges of any party injured, until the whole sum of three thousand dollars, the penalty expressed in such bond, shall be recovered; and such Clerk, failing to transmit such bond to the Clerk of the said superior court for the time being, within the term aforesaid, shall forfeit and pay three hundred dollars, or presuming to execute his office without entering into such bond, shall forfeit and pay six hundred dollars, and suffer three months' imprisonment.(c)

Bond and security to be given by such clerks.

Condition.

Such bond to be transmitted to clerks of the superior courts.

Mode of proceeding and recovery thereupon.

Penalty on clerks for failing to transmit such bonds.

4. It shall not be lawful for the court of any county or corporation, or the Clerk of any such court, to remove, or cause to be removed, the records and papers of the same, or any

Records of county or corporation court, not to be

(a) October, 1784, c. 60, § 2; edi. 1794, 1803 and 1814, c. 70, § 1.

(b) *Ibid.*, § 2.

(c) 1792, Edi. 1794, 1803 and 1814, c. 70, § 3, 4; altered from October, 1784, c. 60, § 3, 4.

A. D. 1818.
A. R. C. 42.

removed out of
county or corpora-
tion, except in
case of invasion
or insurrection, &c.

Clerks appointed
since June, 1776,
to reside in their
counties or corpo-
rations.
Where they shall
keep their offices.

Provided.

Penalties imposed
by this act, how
recoverable.

At what time,
clerks are to ac-
count for and pay
public monies re-
ceived by them.

Punishment for
fraud therein.

How court shall be
constituted to fill
vacancy in office of
clerk of a county
or corporation
court.

Clerk pro tempore
may be appointed.

part thereof, without the county or corporation, except in cases of actual invasion or insurrection, where, in the opinion of the court, the same will be endangered, or where, for want of such opinion, occasioned by the suddenness of the alarm or danger, the Clerk shall, at his own discretion, remove the same, returning them as soon as the alarm or danger ceases, or except also in other cases heretofore provided for by law. Any member of a court, or Clerk of the same, offending herein, shall forfeit and pay six hundred dollars.(c)

5. EVERY Clerk, appointed since the fourth day of June, one thousand seven hundred and seventy-six, shall reside within the county or corporation, in which he shall hold his office; and every Clerk of a county or corporation court shall keep his office at the court-house of the county in which he resides, or at such other convenient place, as the court of the county or corporation may direct, under penalty of being incapacitated therefrom by information in the general court: *Provided, always,* That the Clerks of county or corporation courts may keep their several offices at any place within their respective counties or corporations until otherwise directed by their courts as aforesaid, and until an office built with brick, and covered with tile, lead or slate, with so much land as the court shall judge necessary thereunto appurtenant, shall be provided for the use of the said Clerks and their successors, at the expense of their counties or corporations respectively, to be assessed in their levies.(d)

6. ALL the penalties by this act imposed shall be prosecuted for and recovered by bill, plaint or information, in any court of record, one moiety to the use of the informer, and the other to the use of the Commonwealth.(d)

7. THE Clerks of the several courts aforesaid shall respectively, on or before the fifteenth day of December in each year, account for on oath to the auditor of public accounts and pay into the public treasury, all the taxes which shall have been received by them, by virtue of their offices, previous to the first day of September in such year, after a deduction of five *per centum* therefrom, as a commission for their service in collecting the said taxes; and in case of fraud herein by any Clerk, he shall, on conviction thereof, be deprived of his office.(e)

8. WHENEVER a vacancy shall hereafter happen in the office of Clerk of a county or corporation court, it shall not be lawful for the said court to supply such vacancy, unless a majority of the members of such court shall be present, or unless the members of such court shall have been summoned by order of the said court to attend at the next court for the purpose aforesaid. And such court is hereby authorised to appoint a Clerk *pro tempore*, where it shall be necessary, for the special purpose of making such order and issuing such summons.(f)

(c) 1792, edi. 1794, 1803 and 1814, c. 70, § 3, 4; altered from October, 1784, c. 70, § 3, 4.

(d) October, 1784, c. 60, § 5, am. at rev. of 1792; *vid.* edi. 1794, 1803 and 1814, c. 70, § 5, 6.

(e) October, 1784, c. 47, § 4; edi-

tion 1794, 1803, and 1814, c. 70, § 7, altered as to the time of payment, by act of 1799, edition, 1803, § 4, c. 255, § 4.

(f) 1805, c. 57, § 2; edition, 1806, c. 68, § 2.

9. WHENSOEVER the court of any county or corporation, within this Commonwealth, shall be so divided in the appointment of a Clerk that neither of the candidates shall be elected, the high sheriff of such county, or the presiding magistrate of such corporation court, shall decide in favour of one of those candidates, between whom the court shall be divided. (g)

A. D. 1818.

A. R. C. 42.

How election of clerk shall be made when court is equally divided.

10. THE justices of the several county and corporation courts shall annually appoint two or more fit persons of their number, to inspect the clerk's office of their county or corporation, and to report to the next court the condition in which they find the papers and records. (h)

Persons to inspect the clerk's office, to be annually appointed.

11. THE Clerk of every county or corporation court shall enter, in a docket or book to be kept by him for that purpose, a list of all executions by him issued, the name of the person to whom delivered, and what return is made thereon, in case the same be returned, and shall constantly carry the said book to his court. (i)

Execution book to be kept, and constantly carried to court by the clerk.

12. THE several Clerks of courts of this Commonwealth, and their deputies, shall be, and they are hereby empowered to administer oaths in all cases, wherein an affidavit is necessary as the foundation of any official act to be performed by any such clerk; which affidavit shall be filed, and shall in every respect be as effectual as if the oath thereto had been administered by a justice of the peace. And if any person sworn by any clerk or his deputy, by virtue of this act, shall give any evidence, under such circumstances as would have constituted the same to be perjury, if done in presence of a court of record, the same shall be deemed perjury to all intents and purposes. (k)

Clerks of courts & their deputies, authorised to administer oaths in certain cases.

13. UPON the appointment of a Clerk of the court of appeals, of the general court, or of either of the chancery district courts, it shall be the duty of the Clerk so appointed to enter into bond, with sufficient surety, to be approved of by the court of which he is the Clerk, in the penalty of ten thousand dollars, payable to the Governor for the time being and his successors, and conditioned for the faithful performance of the duties of his office. The bond when so executed shall be acknowledged by the clerk, or proved by two witnesses, and shall be entered of record in the court of which he is the Clerk. And if any such Clerk so appointed shall fail herein, he shall for such failure forfeit his office. (l)

Clerks of the court of appeals, general court, and superior courts of chancery, required to give bond and security.

Penalty for failure.

14. THE bonds of the Clerk of the general court, and of the several Clerks of the chancery district courts aforesaid, shall, after being recorded in the said courts respectively, be certified within sixty days thereafter to the Clerk of the court of appeals, to be by him recorded and safely kept, which it shall be the duty of the said Clerk of the court of appeals to do. (l)

Such bonds to be recorded by the clerk of the court of appeals.

15. THE bonds hereby required may be put in suit from time to time, for the benefit and at the costs of any person or

Howuable.

(g) 1787, c. 23, § 1, 2, amended at revision of 1792, *vid.* edition 1794, 1803, and 1814, c. 70, § 8.

(h) 1745, edition 1769, c. 1, § 14; edition 1794, 1803, and 1814, c. 70, § 9.

(i) 1764, edition 1769, c. 6, § 11; edition 1794, 1803, and 1814, c. 70, § 10.

(k) 1800, c. 3; *edi.* 1803, and 1814, c. 256.

(l) 1815, c. 32, § 2, 3.

A. D. 1819.
A. R. C. 42.

Repealing clause.

persons, bodies politic or corporate, who shall be aggrieved by the non-feasance, mis-feasance or mal-feasance of the Clerks aforesaid, until the whole penalties shall be recovered. (l)

Commencement.

16. ALL and every act or acts, or parts of acts, within the purview of this act, shall be and the same are hereby repealed: *Provided always*, That nothing in this act contained shall be construed to repeal any act heretofore made, for so much thereof as may relate to any right, remedy, fines, penalties, or offences, accrued, incurred or committed before the commencement of this act.

17. THIS act shall commence and be in force from and after the first day of January next.

C. 78.

A. D. 1819.
A. R. C. 43.

*An act to reduce into one, all acts and parts of acts relating to the appointment and duties of Sheriffs.**

[Passed January 11, 1819.]

Nomination of three persons, one of whom to be commissioned as sheriff, when and how to be made by county court.

Sheriff how commissioned.

Penalty on court for failing to nominate.

Clerk to certify to Governor sheriff's failing to qualify, within two months after appointment. Penalty for neglect to certify.

Person first commissioned failing to qualify; or first nominated failing to apply; commission may issue to another in the nomination; and when.

1. *BE it enacted by the General Assembly*, That the court of every county within this Commonwealth, shall, in the month of June or July, annually, nominate to the Governor or Chief Magistrate, for the time being, three persons named in the commission of the peace for such county, one of which persons so nominated, being approved by the Governor, with the advice of the Privy Council, shall be commissioned by the Governor, to execute the office of Sheriff in such county. (a)

2. If the court of any county shall fail to nominate persons for the office of sheriff within the periods above prescribed, every justice so neglecting, shall forfeit and pay the sum of two hundred dollars. (b)

3. If any person hereafter appointed Sheriff of any county, shall not, within two months after the appointment, give bond and sufficient security, for the true and faithful performance of his duty as Sheriff, and also for the collection of taxes, the clerk of the court of such county shall, within one month thereafter, transmit to the Governor, for the time being, a certificate of such neglect or failure, under the penalty of three hundred dollars. (b)

4. If the person first commissioned to the said office of Sheriff, shall fail to give bond in two months after his appointment, and the clerk shall certify the same as above required, or if the person first nominated shall fail to make application, to the Governor or Chief Magistrate, for a commission, within one month after such nomination, the Governor, with the ad-

(l) 1815, c. 32, § 2, 3.

(a) From October 1782, c. 39; May 1783, c. 32; October 1783, c. 2; 1785, c. 40; 1792, edi. 1794, 1803, & 1814, c. 80, § 1.

* Former general laws on this subject; 1748, edi. 1752, c. 10; edi. 1769, c. 6; Revisal of 1792, edi. 1794, 1803, and 1814, c. 80.

(b) October 1784, c. 59; 1792, edi. 1794, 1803, and 1814, c. 80, § 2, 3.

Sheriffs.

vice of Council, is hereby authorised and required to issue a commission to some other person nominated by the court, unless good cause be shewn to the contrary; which commission, to all intents and purposes, shall supersede and annul the former commission; and if the person thereafter commissioned, or nominated as aforesaid, shall be guilty of the like neglect, the Governor, with the advice of the Council, is hereby authorised and required, in either case, to commission any other person or persons nominated by the court, unless good cause be shewn to the contrary; which last commission shall in like manner supersede the former. (c)

A. D. 1819.

A. R. C. 43.

Effect of second commission. Of person there- after commission- ed, &c. failing in like manner.

5. If any Sheriff shall die in the time of his sheriffalty, the Governor, with the advice of Council, may, and is hereby required to commission some other person nominated by the court to be sheriff in his room. (d)

Or sheriff's dying in time of sheriff- alty.

6. EVERY person hereafter commissioned and qualified as aforesaid, shall be continued in office for one year after his qualification, and may, with his own consent, and the approbation of the Executive, be continued for two years and no longer, unless, by some accident or impediment, a succeeding sheriff shall be prevented from qualifying: in which case, the preceding sheriff shall continue to act, until a successor shall be qualified according to the directions of this act. (e)

Sheriff how long to continue in office.

7. WHEN, from any cause, the whole number of the justices of the peace in commission, for any county in this Commonwealth, shall refuse to accept the office of High Sheriff in any county, it shall be the duty of the county court forthwith to recommend to the Executive, two honest and substantial freeholders residing in such county, willing to accept of the said office, one of whom shall be commissioned by the Governor, with the advice of Council, as High Sheriff for such county, to serve in the said capacity for the term of one year, from the date of the commission. (f)

Provision, if all the justices in any county refuse to accept office of sheriff. Court to recommend two freeholders, one of whom to be commissioned.

8. THE person so commissioned may be continued in office for the same length of time that other Sheriffs may be continued therein; and shall be subject to the same penalties and remedies, and be entitled to the same privileges and commissions as other sheriffs are subject or entitled to. (f)

Tenure of office of person so commissioned.

9. WHEN no person will accept the appointment of Sheriff in his county, the Governor, with advice of Council, may, on recommendation of the county court, appoint any person willing to accept the same, residing within, and being a citizen of this Commonwealth; who shall be commissioned, and be liable to the same fines and penalties, and entitled to the same privileges and commissions, as sheriffs are now subject and entitled to by law. (f)

When no citizen of the county will accept, any citizen of the State may be recommended and appointed.

10. AND whereas inconveniences and disputes may arise, in case of the death of a sheriff before his term of service may expire; and, in such case, the person appointed to succeed to the office of Sheriff, must serve one year from the time of such

(c) 1792, *edi.* 1794, 1803, and 1814, c. 80, § 4; 1806, c. 18, § 1; *edi.* 1808, c. 97, § 1.

(d) 1748, *edi.* 1769, c. 6, § 1; 1792, *edi.* 1794, 1803, and 1814, c. 80, § 5.

(e) 1785, c. 40, § 2; 1792, *edi.* 1794, 1803, and 1814, c. 80, § 6.

(f) 1795, c. 16, § 1, 2, 3; edition 1803, and 1814, c. 193, § 1, 2, 3.

A. D. 1819.
A. R. C. 43.

Where, on death of sheriff, another is appointed, not in June or July, successor how long to act.

Bond and security for collection of taxes.

Clerk to transmit attested copies to auditor ;
Which shall be legal evidence against sheriff.
Bond and security for collecting levies, fines, &c. and performing other official duties.
Form of condition.

appointment, if not continued for two years with his own consent, and with the approbation of the Executive, and in that case, for two years from such appointment, which may occasion the Sheriffs in different parts of the country to be appointed at different periods of the year: *Be it therefore enacted, That, when, by the death of any Sheriff, another shall be appointed at any other time than in the months of June or July, the Governor, with the advice of Council, may continue such successor in office, until the court to be held in the months of June or July next after his two years continuance therein shall expire, any thing in this act to the contrary notwithstanding.*(g)

11. EVERY person, accepting the commission of Sheriff, shall, before his being sworn into or executing his office, enter into one bond before the justices of his county court, payable to the Governor of this Commonwealth, for the time being, and his successors, for the use of the Commonwealth, with good and sufficient security, in the sum of thirty thousand dollars, for the true and faithful collecting, accounting for, and paying the taxes imposed by law and arrears of taxes due in his county; which bond every county court is hereby empowered and required to demand, take, and cause to be acknowledged before them, in open court, and recorded ; and an attested copy thereof shall be transmitted by the clerk to the auditor of public accounts, which shall be admitted as evidence in any suit, motion or proceeding founded thereon.(h)

12. EVERY person accepting the commission of Sheriff, shall likewise enter into another bond with two good and sufficient securities at the least, in the sum of 'thirty thousand dollars,' with condition in the following form, to wit :

THE condition of the above obligation is such, that, whereas the above bound A. B. is constituted and appointed sheriff of the county of _____, by a commission from the Governor, under the seal of the Commonwealth, dated the _____ day of _____, last past ; if therefore, the said A. B. shall well and truly collect all levies, and account for and pay the same in such manner, as is by law directed, and also all fines, forfeitures and amercements accruing, or becoming due to the Commonwealth in the said county, and shall duly account for and pay the same, to the treasurer of this Commonwealth for the time being, for the use of the Commonwealth, in like manner as is or shall be directed in case of public taxes, and shall, in all other things, truly and faithfully execute the said office of sheriff, during his continuance therein, then the above obligation to be void, otherwise, to remain in full force and virtue.(i)

Bond and security for collecting officer's fees, &c. duly executing process, &c.
Form of condition.

AND shall, also, enter into one other bond before such court, with the like securities, in the sum of 'thirty thousand dollars,' with a condition in the following form, to wit :

THE condition of the above obligation is such, that, whereas the above bound A. B. is constituted and appointed Sheriff of the county of _____, by commission from the Governor

(g) 1763, edi. 1769, c. 2, § 3 ; edi. 1794, 1803, and 1814, c. 80, § 7.

(h) Nov. 1781, c. 40, § 4 ; Oct. 1782, c. 39 ; Chan. Rev. p. 153, 181 ; 1792,

edi. 1794, 1803, and 1814, c. 80, § 8 ; 1816, c. 3, § 2.

(i) 1755, edi. 1769, c. 2, § 12 ; 1792, edition 1794, 1803, and 1814, c. 80, § 10.

under the seal of the Commonwealth, dated the day of last past; if, therefore, the said A. B. shall well and truly collect and receive all officers' fees and dues put into his hands to collect, and duly account for and pay the same to the officers to whom such fees are due respectively, at such times as are prescribed and limited by law, and shall well and truly execute, and due return make, of all process and precepts to him directed, and pay and satisfy all sums of money and tobacco, by him received by virtue of any such process, to the person or persons to whom the same are due, his or their executors, administrators or assigns; and in all other things shall truly and faithfully execute and perform the said office of Sheriff, during the time of his continuance therein; then, the above obligation to be void, otherwise to remain in full force and virtue.(i)

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13. THE said bonds shall be made payable to the Governor or Chief Magistrate for the time being, and his successors, and entered of record in the county court. And, in the name of the Governor or Chief Magistrate, or his successors, any person or persons injured may and shall, at his, her or their cost and charges, commence and prosecute suits on such last mentioned bond, against the parties therein bound, their executors or administrators, and shall and may recover all damages which he, she or they may have sustained by reason of the breach of the condition of his bond, and such bond shall not become void upon the first recovery, or if judgment shall be given against any plaintiff or plaintiffs, who shall sue upon such bond, but may be put in suit and prosecuted from time to time, for the benefit and at the proper costs and charges of any party injured, until the penalty expressed in such bond shall be recovered: *Provided, always,* That if any verdict or judgment shall pass for such Sheriff, or his security, the person, at whose instance such suit shall be brought or prosecuted, shall pay such sheriff or his security their costs.(k)

Such bonds to whom payable. To be recorded. How suable.

14. No person shall be capable to discharge any of the duties of Sheriff, who shall not have executed the bond or bonds required of him by law for the collection of the public taxes, county levies, and poor rates: and if any person knowingly and wilfully offend herein, by executing any duty of a Sheriff without having executed the bond or bonds aforesaid, he shall forfeit and pay to the Commonwealth for the benefit of the literary fund, a fine of one thousand dollars.(l)

Sheriff not to act without giving bonds, &c.

Penalty for acting without qualifying.

15. No person whatsoever shall be capable to serve in or execute the office of under Sheriff or deputy Sheriff of any county for any longer time than two years, in any period of four years, unless he shall produce to the court of the county satisfactory proof of his having collected and accounted for the taxes assigned to him by his former principal; (m) nor shall any person who shall be appointed to such office after the commencement of this act, execute any of the duties of under Sheriff or deputy Sheriff, in any county, unless the court of such county shall be of opinion, and shall enter of record, at

Deputy sheriff, how long to serve.

Qualification

(i) 1755, edition 1769, c. 2, § 12; 1792, edition 1794, 1803, and 1814, c. 80, § 10.

(k) *Ibid*, § 11.

(l) 1816, c. 3, § 3.

(m) 1772, c. 11, § 1; 1787, c. 40, § 14; 1792, edition 1794, 1803, and 1814, c. 80, § 12.

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Oath of office.

Penalty for acting
without qualify-
ing.

Account and re-
ceipt to be deliver-
ed by sheriff, &c.
receiving officer's
fees, taxes, &c.

Penalty for breach
of this regulation.

Right of action to
party grieved.

Sheriff's duty to
execute and re-
turn process.

Penalty for failure.

Right of action to
party grieved.

Penalty for false
return.

Right of action to
party grieved.

What should be
done, before re-
turn of *not found*.
Where return
should be *no inha-*
bitant.

Effect of such re-
turn.

' the time of his appointment, that he is a man of honesty, pro-
' bity and good demeanor; nor shall he execute any of the
' duties of said office, until he shall have taken, in open court,
' the oath of office, and the several other oaths prescribed by
' law for public officers. And if any such person shall presume
' to execute any of the duties of such office, before such entry
' of record shall have been made, or without having taken the
' oaths aforesaid, he shall forfeit and pay to the Commonwealth,
' for the use of the literary fund, a fine of one thousand dollars.'

16. EVERY Sheriff, deputy Sheriff or collector, who shall
hereafter receive from any person or persons, any officer's fees,
dues, taxes, county levies or poor rates, shall deliver, to the
person so paying, a fair and distinct account of the several
articles for which he shall receive the same, and also a receipt
for what shall be so paid him; and every Sheriff, deputy Sheriff
or collector, failing herein, shall forfeit and pay to the person,
by whom such payment shall be made, the sum of four dollars
for each offence, to be recovered with costs, before any justice
of the peace of the county where such Sheriff, deputy Sheriff
or collector shall reside; and such Sheriff or other officer shall
moreover be liable to the party grieved, for all damages he
may sustain by means of such officer's demanding and receiv-
ing a greater sum than shall be really due, to be recovered by
action of trespass on the case, before any court of record within
this Commonwealth; in which action, where the plaintiff shall
recover, he shall also recover full costs.(n)

17. EVERY Sheriff, himself, or by his lawful officers, or de-
puties, shall from time to time, execute all writs and other
process to him legally issued and directed, within his county,
or upon any bay, river or creek adjoining thereto, and shall
make due return thereof, under the penalty of forfeiting twenty
dollars for every failure, one moiety to the Commonwealth for
the use of the literary fund, and the other moiety to the party
grieved, to be recovered by warrant with costs; and such Sher-
riff shall be further liable to the action of the party grieved at
common law, for his or her damages; and for every false return,
the Sheriff shall forfeit and pay sixty dollars, to be recovered
by action of debt or information in any court of record, and
divided and applied in the same manner as last mentioned, and
shall also in like manner be liable to the party grieved for
damages.(o)

18. No Sheriff shall return upon any writ to him directed,
that the defendant is not found in his bailiwick, unless such
Sheriff or other officer, shall have actually been at the dwelling-
house or place of abode of such defendant, and, not finding
him, shall have there left an attested copy of the same writ or
process: and where any defendant shall be a known inhabitant
of any county, and not of the county of that Sheriff to whom
the process shall be directed, such Sheriff shall return the
truth of the case, but not that the person is not found in his
county; and, thereupon, such process issued from a court of
law, as to such defendant, shall abate and be dismissed.(p)

(n) 1772, c. 11, § 5; 1792, edition
1794, 1803, and 1814, c. 80, § 13.
(o) 1748, edition 1769, c. 6, § 5; 1792,
edi. 1794, 1803, and 1814, c. 80, § 14.

(p) 1748, edi. 1769, c. 6, § 5, 6, 7;
edi. 1794, 1803 and 1814, c. 80, § 15,
16, 17.

19. *Provided, always*, That it shall not be lawful for any Sheriff or other officer to execute any writ or process upon the Lord's day, commonly called Sunday, nor upon any person attending his duty at any muster of militia, or any election of members of the state legislature, or of that of the United States, or at any election for the appointment of electors to vote for a President of the United States; and that all process so executed shall be illegal and void; unless the same be issued against any person or persons, for treason, felony, riot, breach of the peace, or upon any escape out of prison or custody, or in cases specially provided for by law; in which cases, such process shall and may be executed at any time or place.^(p)

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Process not to be served on a Sunday; (29, Car. 2, c. 7, § 5.) Nor on militia-men at muster; Nor at elections. Exceptions, in cases of treason, felony, riot, breach of the peace, escapes, &c.

20. It shall not be lawful for any Sheriff, or his officer or deputy, to take any obligation of or for any person or persons in his custody, for or concerning any matter, relating to his office, otherwise payable than to himself as Sheriff, and dischargeable upon the prisoner's appearance and rendering himself at the day and place required in the writ, whereupon he was or shall be taken or arrested: and every obligation by any Sheriff, taken in other manner or form, by colour of his office, shall be null and void, except, in any special case, any other obligation is or shall be by law particularly and expressly directed.^(p)

What obligations, taken by sheriff of persons in custody, void.

21. No Sheriff of any county within this Commonwealth, shall demand or take any other or greater fee or reward whatsoever, nor shall have any allowance, reward or satisfaction from the public, for any service or business by him done, other than the allowance given and provided by law: all other services shall be by him done *ex officio*.^(q)

No fees to be taken but such as law provides. Other services to be *ex officio*.

22. EVERY Sheriff shall collect and receive the taxes due to the Commonwealth, and shall also collect all levies, fines, forfeitures and amercements, and all officers' fees and poor rates, (when appointed by the overseers of the poor to collect the same,) and shall account for and pay the same, in the manner directed by law.^(r)

Sheriff's duty to collect and account for taxes, levies, fines, &c.

23. It shall and may be lawful for all deputy Sheriffs to collect, and make distress for any taxes, levies, fines, forfeitures and amercements, which may be due at the time of the death of their high Sheriffs, and to collect and make distress for all officers' fees, which may have been received by such high Sheriff or any of his deputies to collect, and which may remain due at the time of the death of such high Sheriff; and such deputy shall be accountable for such taxes, levies, fines, forfeitures, amercements and fees, in like manner as if the Sheriff had lived.^(s)

Power of deputies to collect taxes &c. due at the death of sheriff.

24. It shall be lawful for the county courts within this Commonwealth, to qualify any person or persons, for the purpose of completing the collection of taxes, levies, fines, forfeitures, amercements and officers' fees, in any county, where the County courts to qualify collectors, in event of death of sheriff and deputy before collection completed.

^(p) 1748, edi. 1769, c. 6, § 5, 6, 7; edi. 1794, 1803, and 1814, c. 80, § 15, 16, 17.

^(q) 1705, edi. 1769, c. 2, § 7; 1748, edi. 1769, c. 6, § 7; edi. 1794, 1803 and 1814, c. 80, § 18.

^(r) 1748, edi. 1769, c. 6, § 8; edi. 1794, 1803, and 1814, c. 80, § 19.

^(s) 1789, c. 29; 1792, edi. 1794, 1803, and 1814, c. 83, § 29; 1806, c. 18, § 3; edi. 1808, c. 97, § 8.

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Bond and security
from such collec-
tor to sheriff's ex-
ecutors, &c.

Executors &c. to
be summoned to
shew cause against
such appointment.

Powers and liabili-
ties of such collec-
tors.

Slaves not to be
seized by sheriff
or collector, if
other sufficient dis-
tress can be had.

Right of action, for
unreasonable seiz-
ures or distresses.

Costs in such ac-
tions, though
damages do not
exceed seven dol-
lars.

Manner of turning
over prisoners,
from old to new
Sheriff.

General rule con-
cerning sheriff's
commissions.

Additional com-
pensation of 2 and
an half per centum
for prompt pay-
ments into the
treasury.

Sheriff and his deputy shall die before such collection shall be completed. And, the person or persons so appointed, after having given bond and security, to the executors or administrators of such Sheriff, to be approved of by the court, for the faithful performance of the duties of the office, shall have the same power, in all respects, for collecting such taxes, levies, fines, forfeitures, amercements and fees, as the high Sheriff would have had. But the acting executors or administrators of such high Sheriff, if any there be at the time of such appointment, shall be summoned by order of court, to shew cause, if any they can, against the person whom the court shall so nominate. The person or persons, so appointed, shall, in all respects, be subject to the same penalties for any neglect of duty, or failing to account for and pay to the person or persons authorised to receive the money by him or them so collected, and may be proceeded against by such executors or administrators, in the same manner as deputy Sheriffs are liable to, and may be proceeded against, by their principals.(t)

25. No Sheriff or other officer, nor any collector of taxes, levies, fines, forfeitures, amercements or poor rates, or officers' fees, shall at any time seize or distrain the slave or slaves of any person or persons, for the purpose of satisfying any such dues, if other sufficient distress can be had, nor shall make or take unreasonable seizures or distresses, upon penalty of being liable to the action of the party grieved, grounded upon this act, in which action the plaintiff shall recover his full costs, although the damages given may not exceed seven dollars.(v)

26. AND for removing all controversies, touching the manner of turning over prisoners upon a Sheriff's quitting his office; *Be it further enacted*, That the delivery of prisoners by indenture, between the old Sheriff and the new, or the entering upon record, in the county court, the names of the several prisoners, and causes of their commitment, delivered over to the new Sheriff, shall be sufficient to discharge the late Sheriff from all suits or actions for any escape that shall happen afterwards.(w)

27. EVERY Sheriff shall have and may retain upon all monies collected by him in virtue of his office, in cases where no other commission is provided by law, an allowance of five per centum for collecting and paying the same, and no more.(w)

28. AND all Sheriffs, who shall, on or before the time appointed by law, pay into the treasury, the full amount of the public revenue due from the counties in which they now act, or hereafter may act, as sheriffs, shall, at the time of making such payments respectively, be entitled to an additional compensation of two and an half per centum, on the amount of the taxes by them accounted for and paid into the treasury, over and above the said five per centum.(x)

(t) 1806, c. 18, § 3; edi. 1808; c. 97, § 3.

(v) 1748, edi. 1769, c. 6, § 11; 1792, edi. 1794, 1803 and 1814, c. 80. § 20.

(w) 1748, edi. 1769, c. 6, § 16, 17; 1792, edi. 1794, 1803, and 1814, c. 80, § 22, 23; the last section amended at Revisal of 1818.

(x) 1796, c. 23, § 2; edi. 1803 and 1814, c. 204, § 2.

29. No Sheriff shall be obliged to go out of his county, to pay money levied by execution, or to give notice to creditors, at whose suit any person may be in custody of such Sheriff.(y)

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30. THE high Sheriff of a county shall have the same remedy and judgment against his under Sheriff or deputy, or the securities of such under Sheriff or deputy, failing to pay the money by him received on any execution to the high Sheriff, or the party to whom the same is payable, his agent or attorney, or suffering any person in his custody to escape, as the creditor at whose suit the writ issued may have against the high Sheriff, or such under Sheriff or deputy, or the securities of such under Sheriff or deputy.(z)

Sheriff not compelled to go out of county to pay money levied on execution, or give notice to creditor, &c.

Remedy of sheriff against his deputy &c., failing to pay money received on execution, or permitting escape.

Endorsements to be made by deputy sheriffs on writs, executions, attachments or other process.

31. AND to prevent disputes between Sheriffs and their several deputies, which of them may have acted in serving of executions or process, *Be it further enacted*, That, when any under Sheriff hath served any writ, execution, attachment or other process whatsoever, he shall endorse, on the back of such writ, the day of the month, he or they shall have served the same, and subscribe his name, as well as that of his principal, to the return of such writ or other process; and every under Sheriff, failing herein, shall be liable to the same penalty as is by law inflicted on the Sheriff for a false return, and to be recovered and appropriated in the same manner.(z)

Penalty for neglect

32. WHERE the Sheriff of any county heretofore hath, or hereafter shall appoint any person to be his under Sheriff, to collect the taxes required by law in his county, and such under Sheriff shall neglect, or refuse to account for, and pay such taxes to the sheriff under whom he hath been or shall be appointed, or to the treasurer at the time appointed for paying the same, it shall and may be lawful for the superior or inferior court of the county, whereof he hath been, now is, or shall be Sheriff, upon motion to them made by such Sheriff, his executors or administrators, to give judgment against such under Sheriff, his securities, their heirs, executors or administrators, for all the money wherewith he shall be chargeable, and five *per centum* damages, and six *per centum* interest thereon, and to award execution for the same: *Provided*, such under Sheriff, and his securities have ten days previous notice of such motion: *Provided also*, That no execution shall be issued against an under Sheriff and his securities, for the five *per centum* damages and interest thereon, unless judgment shall have been obtained against the high Sheriff, for the same.(a)

Sheriff's remedy against deputy and sureties, for non-payment of taxes.

Proviso.

33. WHERE any fine, amercement, penalty or judgment, has been assessed or rendered, or which may be assessed or rendered, against any Sheriff heretofore or now in office, or who may hereafter come into office, his heirs, executors or administrators, for or on account of any default or misconduct of any deputy of such Sheriff, it shall and may be lawful for the court of the county whereof such Sheriff hath been, now is, or shall be Sheriff, or for the superior court of law for such county, upon motion to them made by such sheriff, his heirs, executors

Against deputy and sureties, for amount of fines &c., assessed against the high sheriff, for deputy's misconduct.

(y) 1769, c. 3, § 13; Chan. Rev. p. 5.

(z) 1763, cdl. 1769, c. 5; 1792, cdl. 1793, 1803 and 1814, c. 80, § 25, 26.

(a) May 1780, c. 11, Chan. Rev. p.

127; 1787, c. 11, § 4; 1792, cdl. 1794, 1803 and 1814, c. 80, § 27.

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A. R. C. 43.

or administrators, to give judgment against such deputy and his securities, their heirs, executors or administrators, jointly or severally, for the full amount of all such fines, amercements, penalties or judgments and to award execution for the same; provided such deputy and his securities, their heirs, executors or administrators, have ten days previous notice of such motion.(b)

Against deputy & sureties for money, tobacco or other thing received by him for which the high sheriff is responsible.

34. WHERE any deputy Sheriff, heretofore or now in office, or who may hereafter come into office, hath been or shall be found in arrears, for any money, tobacco, or other thing received or which ought to be received by such deputy, by virtue of his office, and for which the principal of such deputy, his heirs, executors or administrators, is or may be chargeable, and shall not immediately pay or deliver the same to the person or persons entitled thereto, it shall and may be lawful for either of the said courts, upon motion to them made, by such Sheriff, his heirs, executors or administrators, to give the same judgment against such deputy and his securities, their heirs, executors or administrators, as such Sheriff, his heirs, executors, or administrators, might by motion against him or them on account of such arrears, misconduct or default, be liable to, and to award execution for the same: *Provided*, that such deputy sheriff and his securities, their heirs, executors or administrators, have ten days previous notice of such motion: *Provided also*, That no deputy Sheriff, his heirs, executors or administrators, shall be subject to a motion made by the principal of such deputy Sheriff, his heirs, executors, or administrators, where a recovery has been had, or may be obtained against such deputy Sheriff, his heirs, executors or administrators, by any person or persons whatsoever, before such motion.(c)

Proviso.

Lands of deputies and sureties bound to high sheriff. Remedy against such lands.

35. THE lands of deputy Sheriffs, and their securities, shall be bound to the high Sheriffs, in like manner as the lands of the high Sheriffs are bound to the Commonwealth; and it shall be lawful for the general court, the circuit or county courts, to award a like execution against the said lands, on the motion of such high Sheriff, his executors or administrators, to that which would have been issued on behalf of the Commonwealth: *Provided*, That ten days previous notice shall be given to the said deputy and his securities, their heirs or devisees, as the case may be.(d)

Lands of deputy sheriffs bound to sureties paying debt for them to high sheriff. Their remedy.

36. WHERESOEVER the lands of any deputy Sheriff would have been bound for any debt due to the high Sheriff, they shall be bound in like manner to the security or securities, their executors or administrators, who may have paid the whole or a part of such debt; and it shall be lawful for the general court, or superior courts of law, to award a like execution against such lands, on the motion of such securities, to that which would have been issued on behalf of the high Sheriff: *Provided*, That ten days previous notice shall be given to the principal, his heirs or devisee, as the case may be.(d)

(b) 1793, c. 18, § 1; ed. 1794, 1803 and 1814, c. 161, § 1; 1811, c. 18, § 8.

(c) 1793, c. 18, § 2; ed. 1794, 1803 and 1814, c. 161, § 2.

(d) 1795, c. 16, § 6, 7; edition 1803, and 1814, c. 193, § 6, 7.

37. WHENSOEVER the lands of any Sheriff or collector would have been bound for any debt due to the Commonwealth, they shall be bound in like manner to the security or securities, their executors and administrators, who may have paid the whole or a part of such debt; and it shall be lawful for the general court or superior courts of law, to award a like execution against the said lands, on the motion of such securities, their executors or administrators, to that which would have been issued on behalf of the Commonwealth: *Provided*, That ten days previous notice shall be given to the principal, his heirs or devisee, as the case may be.^(e)

A. D. 1819.
A. R. C. 43.

Lands of deputy sheriffs bound to sureties paying debt for them to Commonwealth. Their remedy.

38. ALL and every act and acts, or parts of acts, within the purview of this act, shall be, and are hereby repealed: *Provided*, That all fines, forfeitures and penalties incurred before the commencement of this act, may be prosecuted and recovered, and all remedies which may have accrued before the commencement of this act, may be had and pursued in the same manner as if this act had not been made.

Repealing clause.

Proviso.

39. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty.

Commencement.

C. 79.

An act concerning the Serjeants of the several corporations within this Commonwealth.†

A. D. 1818.
A. R. C. 42.

[Passed February 5, 1818.]

WHEREAS doubts exist respecting the powers and duties of the Serjeants of the respective corporations in this Commonwealth: for the removal thereof,

1. *Be it enacted by the General Assembly*, That the Serjeants of the respective corporations in this Commonwealth shall, within the jurisdiction of their said corporations respectively, in all respects exercise the same powers, perform the same duties, and be subject to the same penalties, touching all manner of process issued by the courts, magistrates, or clerks of their said corporations, as well in cases of attachments, as in all others, as the sheriffs of the different counties exercise, perform and are subject to, in their respective counties; any law, custom, or usage to the contrary, or seeming to the contrary thereof, notwithstanding.

Powers and duties of serjeants of corporations in their respective corporations, made the same as those of sheriffs, in their counties.

2. THIS act shall be in force from the passage thereof.

Commencement.

(e) Compiled of 1788, c. 74, § 5; § 28; 1795, edition 1803, and 1814, 1792, edi. 1794, 1803, and 1814, c. 80, c. 193, § 8.

† 1817, c. 14.

C. 80.

A. D. 1813.
A. R. C. 36.

*An act providing for the elections of Serjeants of Corporations in certain cases.**

[Passed February 22, 1813.]

Vacancy in office of serjeant in corporate town, how to be filled.

1. *BE it enacted by the General Assembly, That*, whenever, by death, resignation, or other permanent disability, there shall be no acting Serjeant, or other officer by law authorised to discharge his duties, in any corporate town within this Commonwealth, it shall be lawful for the mayor of the said corporation, or, in case of his absence, the recorder, or senior alderman, to call a court, who shall meet at such time as he shall appoint, and proceed to the election of a serjeant or other officer, to supply the vacancy occasioned as aforesaid; which court shall have the same power to administer the oaths of office to, and take bond and security of, such officer, as such court would have at a regular session on a day appointed by law for that purpose: *Provided*, That there be present at such election a majority of the acting magistrates in said corporation.

Commencement

2. *THIS act shall commence and be in force from and after the passing thereof.*

C. 81.

A. D. 1819.
A. R. C. 43.

An act to reduce into one the several acts concerning Coroners.†

[Passed January 13, 1819.]

Vacancy in office of coroner, how to be filled and when.

Two persons nominated.

One commissioned.
3 Ed. 1, c. 10, St. Westm.
28 Ed. 3, c. 6.

Penalty on court failing to nominate.

1. *BE it enacted by the General Assembly, That*, from time to time hereafter, as often as there shall be a vacancy in the office of Coroner, in any county or corporation within this Commonwealth, the court of such county or corporation shall, at their next session thereafter, nominate two fit and discreet persons, residing within such county or corporation, to be Coroner thereof; one of which persons, being approved by the Governor, with the advice of the Council, shall be commissioned by the Governor to execute the office of Coroner, within such county or corporation, during good behavior.(a)

2. *If any Court shall fail to make such nomination at the time prescribed by this act, every justice of such court shall*

* 1812, c. 17.

† The amendments introduced at the late revision, are distinguished, as far as practicable, by being printed within single inverted commas. The act passed at the revision of 1792, was the first statute passed in Virginia, regulating the duties of coroners; but the British Statutes being prior to the 4th Jac. I. were in force in the colony. The next justice of the peace, whenever there was occasion for a coroner, was authorised and required to perform the coroner's duties, *ex officio*: their fees were regulated by act of assembly: see 2 *Hen. st. at lar.* p. 355; 4 *Id.* p. 503. The substitution of the coroner in place of the sheriff, when there is an exception to him, is a common law principle.

(a) 1792, cdt. 1793, 1803 and '14, c. 81, § 1, 2, 3, 4, 5.

forfeit and pay the sum of one hundred and fifty dollars, to be recovered by action of debt in any court of record within this Commonwealth, one half to the use of the informer, the other half to the Commonwealth, for the use of the literary fund; or by information at the suit of the auditor, in the general court, in which case the whole penalty shall be to the Commonwealth, for the use of the literary fund.(a)

A. D. 1819.
A. R. C. 43.

How recoverable and appropriated.

3. *PROVIDED always*, That nothing in this act contained shall be construed to restrain or prevent the county or corporation courts from nominating any person or persons to the Governor, to be Coroner within such county or corporation, whensoever, in their opinion, a necessity may arise of having more than one Coroner in such county or corporation.(a)

More than one coroner may be appointed, where necessary, in court's opinion.

4. *PROVIDED, also*, That no Coroner appointed for a county or corporate town, shall execute any of the duties of his office, except within such town or county, for which he shall have been so appointed.(a)

Limits within which coroner shall act.

5. EVERY Coroner, so commissioned, before he enters upon the duties of his office, shall, in open court, take the oath of fidelity to the Commonwealth, and the following oath of office, viz :

Oath of office.

I, A. B., do swear, that I will well and truly serve the Commonwealth, in the office of a Coroner, in the county (or corporation) of _____, and therein will diligently and truly do all things appertaining to my said office, according to the best of my knowledge and power, both for the common weal, and the good of the inhabitants within the said county (or corporation,) taking such fees only as are by law allowed. So help me God.(a)

6. AND, before he shall be at liberty to serve any writ of execution, 'or to collect any public dues or officers' fees,' shall moreover, in the court of his county or corporation, enter into bond, with good and sufficient security, payable to the Governor for the time being, and his successors, in the penalty of ten thousand dollars, with condition for the true and faithful execution of his office. And, if any Coroner shall presume to serve any such writ of execution, without first taking the said oaths, and entering into bond, as by this act is directed, he shall forfeit and pay the sum of fifteen hundred dollars, one half to the use of the informer, the other half to 'the Commonwealth, for' the use of the literary fund; and shall, moreover, be liable to the same damages, judgment and execution, at the suit of the party grieved, in case of any misdemeanor or breach of duty in the execution thereof, as he would have been subjected to in the like case, after having been duly qualified to execute his said office.(a) 'The bond hereby required, shall be recorded in the court of the county or corporation wherein it shall be taken, and may be sued upon, from time to time, in the name of the Governor, for the time being, for the benefit, and at the costs, of any injured by the default in office of the Coroner. Nor shall such bond be void by the first recovery, but it may be sued on, as often as occasion may require, till the whole penalty be recovered.'

Bond and security.

Penalty for serving any execution, without first taking oaths, and giving bond, &c.

Bond to be recorded.

How suable.

(a) 1792, edi. 1794, 1803 and '14, c. 81, § 1, 2, 3, 4, 5.

A. D. 1819.
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Coroner's duty,
when requested to
take inquest.
St. de. off. Coron.
4 Ed. 1 st. 2, § 1, 2.
Precept to sheriff,
&c.
Number of jury.

Objects of enquiry.
4 Ed. 2, st. 2, § 1.

Persons found
guilty, if present,
to be committed.
4 Ed. 1, st. 2, § 1.

Coroner to sum-
mon examining
court, &c. in like
manner as a justice
of peace.

Enquiries where a
person is found
slain.
4 Ed. 2, st. 2, § 1.

Coroner to take
possession of, and
keep estate of per-
son found guilty
of the murder, un-
til he be taken, &c.
4 Ed. 1, st. 2, § 1.

To render inven-
tory and appraise-
ment, and account
to court.

To stand in all
respects as admin-
istrator & trustee.

7. UPON request made to a Coroner to come and enquire, upon the view, of any person slain, drowned, or otherwise, by misadventure, or suddenly, dead or wounded, or where houses are broken, he shall forthwith go to the place where any be slain, drowned or otherwise, by misadventure, or suddenly, dead or wounded, or where any house is broken, and shall forthwith issue his precept to the sheriff, serjeant of a corporation, or constable of the county or corporation, directing him to summon at least twelve of the most intelligent and respectable freeholders of the vicinage or county or corporation, to appear before him at the same place, with all convenient speed.(b)

8. AND when the said freeholders come to such place, the Coroner, upon the oath of twelve of them, shall enquire in this manner, to wit: If they know where the person was slain 'or wounded;' whether it were in any house, field, bed, tavern, or company; and who were there: likewise, it is to be enquired, who were guilty either of the act or of the force; and who were present, either men or women; and of what age soever they be, if they can speak, or have any discretion.(b)

9. AND how many soever be found guilty by inquisition, in any of the manners aforesaid, 'if they be present,' they shall be taken and delivered to the sheriff or serjeant, and shall be committed to the jail, until the next court to be holden within the county or corporation for the examination of such offender; and the Coroner shall have the like power and authority to summon such court, and shall proceed in like manner as a justice of the peace, before whom such criminal might have been charged with such offence, could or ought to do by law.(b)

10. IF any person is found slain, first it is to be enquired whether such person were slain in the place where found or not; and, if such person were brought and laid there, they shall do so much as they can, to follow their steps, that brought the body thither, and ascertain in what manner such body was brought there. It shall be enquired also if the dead person were known, or else a stranger, and where such person lay the night before.(b)

11. AND if any person be found guilty of the murder, the Coroner shall immediately go into his house, and shall enquire what estate, both real and personal, he hath; and, after such enquiry, the Coroner shall cause all the estate to be valued, and keep the same in his hands until the person found guilty by the inquest, be taken, or surrender himself.(b)

12. WHENEVER any Coroner shall so take possession of the estate of any person, so found guilty of murder, he shall render to the court of his county an inventory and appraisement of such estate, as also a true account of all necessary disbursements and expenditures by him made out of such estate, and shall stand in every respect as an administrator of the personal estate, and trustee of the real estate, until the person so found guilty shall surrender himself or be taken: he shall be liable to the action or actions of each and all the creditors of the persons so found guilty of murder.

(b) 1792, edi. 1794, 1803 and '14, c. 81, § 6, 7, 8, 9, 10.

who may think proper to sue for debts due them, and shall have and possess the power to receive and recover by action, when necessary, any debt or debts which may be due such murderer.(c)

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13. Suits brought against any Coroner under this act, which may be depending and undetermined at the time the murderer shall be taken, or may surrender himself, shall not, in consequence of such taking or surrender, be dismissed or discontinued, but shall progress as if such taking or surrender had not happened; and it shall be lawful for such Coroner to retain in his hands so much of the estate of the person so found guilty of murder, as will be of value sufficient to pay and satisfy all judgments and costs which may be rendered against him, in favor of any creditor or creditors of such person.(c)

Suits against him as such, not to be dismissed or discontinued by the murderer's being taken, &c.

Estate to be retained, of value sufficient to satisfy judgments & costs.

14. PROVIDED, That, before any Coroner shall enter on any of the said duties, or exercise any of the said powers of administrator or trustee, he shall make oath, before the court of his county or corporation, that he will make a true and perfect inventory of all the goods, chattels, rights and credits of the accused, as also of his real estate, if any he hath, and return the same forthwith to the court of such county or corporation, and shall also enter into bond, with security, in such penalty as shall be prescribed by the same court, conditioned for his faithful performance of the said duties; which bond shall be payable to the justices sitting in court, and their successors, and shall not become void on the first recovery, but may be put in suit and prosecuted, from time to time, by and at the costs of any party injured by a breach thereof, until the whole penalty be recovered thereupon.(d)

Oath to be taken by coroner as administrator and trustee.

Bond and security.

Such bond, to whom payable, and how suable.

15. PROVIDED also, if the fugitive so found guilty of murder, shall have left behind him, a wife, child or children, it shall be the duty of the court, before which the coroner shall take the oath, and enter into the bond prescribed by this act, to allot to such wife, child or children, or the mother or guardian of such child or children, such portion of the estate, real and personal, of such fugitive, as to such court may seem meet, for his, her or their support and maintenance. And to that end, such court shall appoint two or more fit persons, as commissioners, to make such allotment, and render a report of their proceedings to the ensuing court.(d)

Allotment for wife and children of the fugitive.

Commissioners to make it.

16. NOTHING in this act contained shall be so construed, as to authorise the coroner of any county or corporation, to exercise the power or duties of an administrator, or trustee, after the death of such fugitive, without being taken, or surrendering himself in custody; but, immediately on his death, the power of the Coroner, as administrator and trustee, shall altogether cease, and he shall account to the administrator, who may be appointed under the general law of the land, or to the executor who may have been appointed by the last will and testament of such fugitive, for all the goods, chattels and credits, which may have come to his hands; and pay over and deliver to such administrator or executor, whatever balance may remain in his

Powers and duties of coroner, as administrator and trustee, to cease on death of such fugitive.

Account thereupon.

Payment and delivery over of personal and real estate.

(c) 1808, c. 22, § 1, 2; edi. 1812, c. 23, § 1, 2.

(d) 1808, c. 22, § 3; edition 1812, c. 23, § 3.

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Account of profits.

Suits not to abate.

Coroner to examine to writing effect of evidence given to the jury before him.

1 and 2 Ph. and Mar. c. 13, § 5.

To bind witnesses, by recognizance, to appear at examining court.

To certify evidence, &c. to such court.

Enquiry concerning persons drowned, or suddenly dead.

4 Ed. 1, st. 2, § 2. Dead bodies when to be buried.

4 Ed. 1, st. 2, § 1. In case of dangerous wound, person accused to be taken and kept; and how long.

4 Ed. 1, st. 2, § 1. When to be attached by pledges. Wounds to be viewed, &c.

Enquiries concerning persons who inflicted them.

4 Ed. 1, st. 2, § 2. Accessories to be attached, &c. 'till principal be attainted or delivered.

4 Ed. 1, st. 2, § 2. Persons suspected of homicide, to be taken, &c.

4 Ed. 1, st. 2, § 2. Hue and cry, when to be made.

4 Ed. 1, st. 2, § 2.

hands. In like manner he shall, on the event of such death, deliver to the legal representatives of the decedent, all such real estate as may have come to his possession, and account for the profits thereof, while he remained possessed of the same.(d)

'No suit, however, which shall be depending, in the name of such Coroner, at the death of such fugitive, shall abate or be dismissed or discontinued, by reason of such death, if the cause of action survive; but such suit shall proceed in the same manner as if such death had not happened.'

17. AND every Coroner, upon any inquisition found before him, whereby any person or persons shall be indicted for murder or manslaughter, or as accessory or accessories to the same before the murder or manslaughter committed, shall put in writing the effect of the evidence given to the jury before him, being material; and the said Coroner shall have authority by this act, to bind all such, by recognizance or obligation, as do declare any thing material to prove the said murder or manslaughter, offences or felonies, or to be accessory or accessories to the same, as is aforesaid, to appear at the court to be holden within the county, city or borough, for the examination of such offender or offenders, then and there to give evidence against the party so indicted, at the time of his trial, and shall certify as well the same evidence, as such bond or bonds in writing, as he shall take, together with the inquisition or indictment, before him taken and found, at or before the time of his said trial thereof to be had or made, to such court.(e)

18. IN like manner, it is to be enquired respecting them that be drowned, or suddenly dead, what marks of violence appear on their bodies; whereupon they shall proceed in the form aforesaid.(e)

19. AND immediately upon these things being enquired, the bodies of such persons being dead or slain shall be buried.(e)

20. IF any person be dangerously wounded, the party accused shall be taken immediately, and kept until it be known perfectly, whether he that is hurt shall recover or not; and if he die, the defendant shall be kept; and if he recover health, he shall be attached by pledges according to the danger of the wound.(e)

21. ALSO, all wounds ought to be viewed, the length, breadth and deepness, and with what weapons, and in what part of the body the wound or hurt is, and how many be guilty, and how many wounds there be, and who gave the wounds, all which things must be inrolled in the roll of the Coroners.(f)

22. MOREOVER, if any be accused of any act done, as principal, they that be accused as accessory shall be attached also, and safely kept in custody until the principal be attainted or delivered.(f)

23. IF any be suspected of the death of any man, he shall be taken and imprisoned, as before is said.(f)

24. IN like manner, hue shall be levied for all murders, burglaries, and for men slain, or in peril to be slain, and all shall

(d) 1808, c. 22, § 3; edition 1812, c. 23, § 3.

(e) 1792, edition 1794, 1803, and 1814, c. 81, § 11, 12, 13, 14.

(f) 1792, edition 1794, 1803, and 1814, c. 81, § 15, 16, 17, 18, 19, 20.

follow the hue and steps, as near as can be, and he that doth not shall be amerced at the discretion of a jury.(f)

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25. If any be found guilty by inquisition, taken in manner directed by this act, and be not present, nor in custody, the Coroner shall straight issue his warrant to apprehend the person so found guilty, and the accessaries, if any; and the person accused, if apprehended, shall straight way be carried before some justice of the county or corporation, where the offence was committed, to be dealt with as the laws direct.(f)

Coroner's warrant to apprehend person found guilty.

Such person, when taken, how dealt with.

26. If any Coroner be remiss, and make not inquisition upon the view of the body slain or murdered, or shall not endeavour to do his office upon any person dead by mis-adventure, or shall not certify the inquisition by him taken in the manner directed by this act, he shall for every such offence forfeit the sum of one hundred dollars, to be recovered by action of debt in any court of record of this Commonwealth, one half thereof to the use of the informer, the other half to the Commonwealth for the use of the literary fund.(f)

Penalty on coroner for neglect of duty.

How recoverable, and appropriated.

27. If hereafter there shall be a vacancy in the office of sheriff or serjeant, in any county or corporation within this Commonwealth, the Coroner or Coroners of such county or corporation, shall execute, do and perform, all the duties which appertain to the office of sheriff or serjeant, 'except such as relate to the collection of the public taxes and levies.' And, in case of any neglect or breach of his or their duty, such Coroner or Coroners shall be subject to the same pains, penalties, forfeitures and damages, and to the same proceedings, judgment and execution, as sheriffs or serjeants are subject to in like cases.(g)

When coroner shall act as sheriff or serjeant.

His duties, and liabilities, as such.

28. WHEN, from any cause, no person shall qualify as sheriff of any county, before the first day of June in any year, so that the other duties of sheriff for such county shall devolve on the Coroner; such Coroner shall have authority and be required to collect the public taxes and levies of such county, in like manner, in all respects, at the like times, and under the like responsibilities, as if the said Coroner were the sheriff of the county: and where there is, in any county, neither sheriff nor Coroner on the first day of July in any year, the sheriff or Coroner who may thereafter be appointed, shall have such additional period allowed him, to collect and pay the public taxes and levies of such county, as shall extend the time of payment until the expiration of six months, from the date of his qualification to office.(h)

When coroner shall collect public taxes and levies.

When sheriff or coroner shall be allowed additional time to collect and pay taxes and levies; and how long.

29. IF, when it shall become the duty of the Coroner of any county, to collect the public taxes and levies of such county, there shall be more than one Coroner therein, it shall be the duty of the county court, at their June term, or as soon thereafter as may be, to designate, and enter of record, which of the said Coroners shall perform the duty aforesaid; and thereupon, it shall be the duty of the Coroner so designated, to collect the public taxes and levies of said county, in the same manner as if he were the only Coroner in said county. And it

Where more than one coroner in the county, court to designate, which shall be the collector.

(f) 1792, edition 1794, 1803, and 1814, c. 81, § 15, 16, 17, 18, 19, 20.

(g) 1806, c. 18, § 2, edition 1808, c. 97, § 2.

(h) 1815, c. 3, § 8; 1817, c. 15, § 1.

A. D. 1819.
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Clerk to certify to auditor such designation.

Coroner to give bond and security for collection of taxes and levies.

Bond to be recorded.

Clerk to certify copy to auditor.
Copy, evidence.

Coroner failing to give such bond, &c. to forfeit his office.

Provision, where sheriffs, sergeants and coroners are parties, or interested in suits.

And where no coroner,
Process issuable to any justice of peace, &c.

Penalty on justice &c. for breach of duty in such case.

Endorsement on execution.

Court may appoint person to summon jury, where sheriff, serjeant, and coroner interested, &c., and where no Coroner.

' shall be the duty of the clerk of such court, forthwith to certify to the auditor of public accounts, a true copy of the order of court making the designation aforesaid. No Coroner shall collect the public taxes or levies of his county, for any year, or any part thereof, until he shall have executed, before the court of his county, bond with sufficient security, in the penalty of thirty thousand dollars, payable to the Governor or Chief Magistrate of the Commonwealth, and his successors in office, conditioned for the faithful collection and payment of all the public taxes and levies of that year, and of all the arrears of taxes, which it shall be his duty to collect. The bond so executed shall be recorded in the said court; and the clerk shall forthwith certify a true copy thereof to the auditor of public accounts, which shall be evidence in any suit or motion in the general court, founded on such bond. If any Coroner shall fail to execute such bond with security, at or before the next court of his county, after he shall have been informed, that a vacancy in the office of sheriff hath made it necessary that he should undertake the collection of the public taxes or levies, he shall forfeit his office of Coroner.'

30. In every case, where there shall be a just cause of exception to the sheriff and Coroner, if there be but one, or Coroners if there be more than one, of any county, or to the serjeant and Coroner, if there be but one, or Coroners if there be more than one, of any corporation, by reason of them, or either of them, being parties to or interested in any suit; or there be no Coroner qualified to act in any county or corporation; any writ or process, of what nature soever the same may be, may be directed to any justice of the county in the commission of the peace, or to the mayor, or to any alderman of the corporation, where such exception or vacancy may happen, at the option of the plaintiff, who shall be bound to execute the same, and to do and perform all things by virtue of such writ or process, which the sheriff, serjeant or Coroner, might or ought to have done, had there been no just cause of exception against him or them, or no such vacancy had occurred. And in case of any neglect, or breach of his duty, such justice, mayor, or alderman, shall be subject to the same pains, penalties, fines, forfeitures, and damages, and to the same proceedings, judgment and execution, as sheriffs, serjeants or Coroners are subject to in like cases; and upon every execution issued against such justice, mayor, or alderman, upon any judgment obtained against him for breach or neglect of such duty, the clerk shall endorse that *no security is to be taken.*(i)

31. WHENSOEVER the sheriff and Coroner, if there be but one, or Coroners if there be more than one, of any county, or the serjeant and Coroner, if there be but one, or Coroners, if there be more than one, of a corporation, shall be interested in a suit depending in any court of this Commonwealth, in which an issue of fact is to be tried; or, if it shall happen in any county or corporation of this Commonwealth, that there is no Coroner qualified to act; and the sheriff of such county or serjeant of such corporation, shall be so interested; the

court before whom such suit shall be depending, shall appoint some fit person to summon a jury, who shall take an oath impartially to perform that duty.^(k)

32. If, upon a murder, or other accidental or untimely death, there be no Coroner within the county or corporation, where such case shall happen, or if, from sickness or other just cause, a Coroner, where there is one or more, cannot be had to hold an inquest upon the body of any person, so coming to an untimely death, it shall be lawful for any justice of the peace in such county, or for the mayor or any alderman of such corporation, to do and perform all the duties, appertaining to the office of Coroner in such case; and the inquest so taken and returned, shall be as effectual in law, as if taken and returned by a Coroner duly appointed and qualified.^(l)

33. In every case, when, by reason of a just exception to the sheriff of any county, or serjeant of a corporation, any writ, of what nature soever the same may be, shall be delivered to the Coroner of such county or corporation to execute, such Coroner shall do and perform all things by virtue of such writ, which the sheriff or serjeant himself might or ought to have done, had there been no just exception against him, according to the nature of the case; and, in case of any neglect or breach of his duty, such Coroner shall be subject to the same pains, penalties, fines, forfeitures and damages, and to the same proceedings, judgment and execution, as sheriffs or serjeants are subject to in like cases.^(m)

34. AND, upon every execution issued against a Coroner, upon any judgment against him obtained for breach or neglect of his duty, the clerk shall endorse, that "no security is to be taken."⁽ⁿ⁾

35. *BE it further enacted*, That, in all cases wherein a summary remedy is given against any Coroner, the like remedy may be had against such Coroner and his securities, jointly or severally, and against the executors and administrators of such Coroner and his securities.⁽ⁿ⁾

36. *BE it further enacted*, That, for the performance of any of the duties of a Coroner (except only the taking of an inquest) such Coroner may appoint one or more deputies, who, being approved by the court of the county or corporation to which such Coroner belongs, and having taken the proper oaths of office in such court, and having given such bond and security as the Coroner shall require of him, shall be duly qualified to discharge the duties of his office. And if any person shall presume to execute any of the duties of a deputy Coroner, without having given such bond and security, if any shall be required of him, or without having taken the oaths of office as aforesaid, and having it entered of record in such court, that such oaths have been taken by him, and that his appointment is approved, he shall forfeit and pay, for every such offence, a fine of one hundred dollars to the Commonwealth for the benefit of the literary fund.^(o)

A. D. 1819.
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Oath of such appointee.

When justice of peace, &c. may take inquest of murder or other death, there being no Coroner, &c.

When Coroner, shall execute writs

Penalty for breach of duty.

No security to be taken, on execution for such breach.

Summary remedy against Coroner's sureties, &c.

Coroners may appoint deputies, with court's approbation.

How to qualify.

Penalty for acting without qualifying.

(k) 1809, c. 15, § 2; *edi.* 1812, c. 45, § 2.

edi. 1794, 1803, and 1811, c. 81, § 21, 22.

(l) *Ibid.* § 3.

(n) 1817, c. 15, § 2.

(m) 1764, *edi.* 1769, c. 6, § 2; 1792,

(o) *Ibid.* § 5. L

A. D. 1819.
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Liability of Coroner for acts of deputy.

Remedy against such deputy, his sureties, &c.

Repealing clause.

Proviso.

Commencement.

37. THE official acts of every deputy appointed and qualified as aforesaid shall be considered as the acts of his principal; and, for every failure, neglect, or breach of duty, his principal shall have the same remedy against him and his securities, and against the executors and administrators of such deputy and his securities, as is given by law to a sheriff against his deputy and securities; and against their executors and administrators.(o)

38. ALL and every act, clause and clauses of acts, coming within the purview of this act, shall be, and the same are hereby repealed: *Provided*, That all rights and remedies, fines, penalties and forfeitures, which shall have accrued before the commencement of this act, shall remain, and be recovered, or prosecuted and punished in the same manner as if this act had not been made.

39. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty.

C. 82.

A. D. 1819.
A. R. C. 43.

*An act to reduce into one act, the several acts concerning Escheators.**

[Passed January 6, 1819.]

Escheator in each county or corporation, how appointed.

14 Ed. 3, st. 1, c. 8.

Not to act by deputy.

42 Ed. 3, c. 5.

To give bond and security.

Jurisdiction in towns.

1. *BE it enacted by the General Assembly*, That there shall be one Escheator commissioned in every county 'and corporate town,' by the Governor, on recommendation from the court of the same county 'or corporation,' who shall execute his office in proper person, and not by deputy, and shall, before the court of the county 'or corporation,' be bound in the penalty of not less than three thousand dollars, with surety, to be approved by the same court, duly to perform the duties of his said office.(a) 'The jurisdiction of an Escheator for any corporate town, shall be confined to the actual boundary of the town; and, within that limit, shall be exclusive of the jurisdiction of the county Escheator.'

Where and how to take inquests.

Jury how returned and impannelled.

34 Ed. 3, c. 13.

8 Hen. 6, c. 16.

18 Hen. 6, c. 7.

1 Hen. 8, c. 8, § 1, 3, 4.

Inquisition to be by indenture, and how made.

2. THE said Escheator shall sit in convenient and open places at the court-house of his county 'or corporation,' and shall take his inquest of sixteen freeholders, who shall be returned and impannelled by the sheriff of the county, 'or serjeant of the corporation,' to meet at the said court-house, and shall suffer every person to give evidence openly in the presence of the said jurors: and the said inquisition so taken,

(o) 1817, c. 15, § 3, 4.

(a) 1785, c. 63, § 1; 1792, edition 1794, 1803, and 1814, c. 82, § 1.

* The amendments introduced at the late revision are distinguished, by being printed within single inverted commas. By an act passed February 8, 1815, (acts of 1812, c. 25, § 2,) it was enacted, "that until two years after the conclusion of the then war between the United States and the United Kingdom of Great Britain and Ireland, no inquest should be taken, whereby to escheat to the Commonwealth, any land, the title whereof was claimed by a subject of the said United Kingdom, residing within the United States."

shall be by indentures to be made between the Escheator and any twelve or more of the inquest, whereof the counterpart shall remain in the possession of the first person that shall be sworn on the said jury, and by him shall be returned to the court of the same county 'or corporation,' there to be recorded; and the other part, sealed by the jurors agreeing in their verdict, shall by the Escheator be sent into the superior court of law for the county in which the land lieth, within one month after the inquest taken. (b)

A. D. 1819.

A. R. C. 43.

Counterpart, with whom to remain. To be recorded, and where. Other part, how disposed of.

3. WHEN a jury of inquisition for escheat shall be convened, and shall not be able to complete the same in one day, the Escheator shall have power to adjourn the proceedings from day to day, until the same be tried and finished; and any juror failing to attend the inquest according to the first summons, or according to the adjournment, shall be returned to the next superior court of law for the county where the inquest shall be holden, and shall be liable to a fine not exceeding fifty dollars. (c)

Jury may be adjourned from day to day.

Penalty on juror failing to attend.

4. It shall be the duty of the commissioners of the revenue, on or before the first day of January, annually, to furnish a list to the Escheators of their counties 'or corporations,' of all lands within their respective precincts, of which any person hath died seized of an estate of inheritance, intestate, and without any heir known to the said commissioner, or to which no person is entitled, to their knowledge. Any commissioner failing herein, shall forfeit and pay the sum of fifty dollars, to be recovered by action of debt in any court of record, one half of which shall be to the use of the Commonwealth, for the benefit of the literary fund, and the other half to the informer. (d)

Duty of commissioners of revenue to furnish lists of escheatable lands.

Penalty for neglect.

How recoverable, and appropriated.

5. It shall be the duty of the Escheator, upon receiving such information from a commissioner of the revenue, or from any other person, to proceed to hold his inquest, to determine whether any such tract of land hath escheated to the Commonwealth, under the penalty of fifty dollars, for failing to hold any such inquest, to be recovered and appropriated as aforesaid. (d)

Escheator's duty on receiving such information.

Penalty for neglect.

6. PROVIDED, however, That it shall not be the duty of the Escheator to proceed in manner aforesaid, upon the information of any person, other than a commissioner of the public revenue, unless the same be reduced to writing, and oath or affirmation be made thereto. (e)

Information from any other, than a commissioner, to be in writing, and sworn to.

7. AND, if the inquisition be found for the Commonwealth, and there shall be any man that will make claim to the lands, he shall be heard without delay, on a traverse to the office, *monstrans de droit*, or petition of right; and the said lands or tenements shall be committed to him, if he shew good evidence of his right and title to hold, until the right shall be found and discussed for the Commonwealth, or for the party, finding suffi-

Traverse to the office, *monstrans de droit*, or petition of right, in behalf of claimant of the land.

To whom possession shall be delivered 'till right be discussed; he giving surety.

(b) Compiled of 1785, c. 62, § 2; 1792, ed. 1794, 1803, and 1814, c. 82, § 2; and 1794, edition 1803, and 1814, c. 180, § 2.

(c) 1810, c. 7, § 2; edition 1812, c. 61, § 2.

(d) 1803, c. 77, § 12; edition 1808, c. 30, § 1, 2.

(e) From 1810, c. 7, § 1; ed. 1812, c. 61, § 1.

36 Ed. 3, c. 18.

8 Hen. 6, c. 16.

1 Hen. 8, c. 10, § 5.

A. D. 1819.
A. R. C. 43.

Lands found escheated, when to remain in escheator's possession; and how long.
8 Hen. 6, c. 16.

Escheator responsible for profits, in such case.

Certificate of escheat, when to be transmitted to register of land office.

What to be expressed therein.

Publication by register.

Copy laid before Executive.
Sales of escheated lands, how, when and where.

Clerks to certify to Executive, whether claim has been made; and when.

To certify, also, decisions on claims; and when.

Escheator's duty to sell; and, when for cash, to certify to register purchaser and price.

Grant to purchaser.

cient surety to prosecute his suit with effect, and to render and pay to the Commonwealth the yearly value of the lands, if the right be discussed for the Commonwealth.(f)

8. No lands nor tenements seized into the hands of this Commonwealth, upon such inquest taken before Escheators, shall be in any wise granted, nor to farm let to any, if it be not to him or them which claim as is aforesaid, till the same inquests and verdicts be fully returned into the circuit court, nor until the expiration of twelve months after the publication herein-after directed to be made, but shall entirely and continually remain in the hands of the Escheator, who shall answer to the Commonwealth the issues and profits yearly coming of the said lands and tenements, without doing waste or destruction.(f)

9. THE Escheator of each county 'and corporation,' in the State, shall, within sixty days after inquisition found on behalf of the Commonwealth, transmit to the register of the land office a certificate of the number of tracts of land or lots escheated by any such inquisition, and office found; the reputed area, or quantity of such land; the county 'or corporation,' where situated; and the name or names of the person or persons found to have died seized, or the name or names of the person or persons from whom the said land escheated: and thereupon, it shall be the duty of the register, to cause the contents of any such certificate to be published six weeks in some newspaper in the city of Richmond, and in the city of Washington: and it shall be the duty of the register to lay before the Executive a copy of the said certificates, who shall direct the sale of the said escheated lands, at such times and places within the county 'or corporation,' and upon such terms as to them shall seem proper: *Provided*, That a sale of any escheated land shall not be directed by the Executive, until the expiration of twelve months from the time of the publication before required; and no sale shall hereafter be made of any escheated lands, but by order of the Executive.(g)

10. AND it shall be the duty of the clerks of the county, corporation and circuit courts, within the jurisdiction of which the escheated lands lie, within two months after the expiration of twelve months from the finding of any inquisition of escheat, to certify to the Executive whether any claim has been made or not: and where claim is made, it shall be the duty of the clerk of the court in which such claim is made, to certify whether there has been a decision in favor of the Commonwealth, or not, within two months after such decision has been made.(g)

11. ON receipt of such order of the Executive, the Escheator shall proceed to sell according thereto; and, when the sale shall be made for cash, he shall certify the purchaser and price to the register of the land office, who, on receiving a certificate that such price hath been paid into the treasury, shall have a grant executed to such purchaser, in such manner as is by law directed in the case of unappropriated lands.(h)

(f) 1785, c. 63, § 2, 3; 1792, ed. 1794, 1803, and 1814, c. 82, § 3, 4.
(g) 1810, c. 7, § 3, 4; edition 1812, c. 61, § 3, 4.

(h) Altered from 1785, c. 63, § 4; ed. 1792, 1803, and 1814, c. 82, § 5.

12. *PROVIDED, however,* That, where such sale shall be for cash, if the purchaser doth not pay the Escheator the whole sum of money by him agreed to be given for the land, on the day agreed upon, the Commonwealth shall not be bound by the contract; but the Executive may, in its discretion, at any time thereafter, before such money shall be paid and received, direct the Escheator to make a new sale of such land.(i)

A. D. 1819.

A. R. C. 43.

On sale for cash, if purchaser fail to pay, Commonwealth not bound, but new sale may be directed.

13. WHEN the Executive shall direct a sale to be made upon credit, and the purchase money to be secured by bond, mortgage, deed of trust, or otherwise, when the purchaser shall have complied with his contract, the Escheator shall immediately certify to the register the name of the purchaser, the price by him agreed to be given for the land; and that he hath secured the same in the manner directed by the Executive: whereupon the register shall proceed to have a grant executed to such purchaser in manner herein-before directed. And, in case a mortgage or deed of trust be taken for securing payment of the purchase money, it shall be the duty of the Escheator to have such deed recorded in the court of the county or corporation wherein the lands lie, that the auditor may proceed thereon according to law, in case it be necessary to enforce payment.(i)

Certificate by Escheator, where sale is on credit, and bond or mortgage &c. taken.

Grant to purchaser.

Escheator's duty to have mortgage &c. recorded.

14. WHEN any person shall die indebted, seized of lands which shall become escheated to the Commonwealth, not having personal property sufficient to pay such debts, the creditor may exhibit his petition before the court of the county 'or corporation,' in which such escheat shall take place, or in the superior court of law for such county, making the Escheator of such county or corporation a party defendant, who shall defend such claim; and the said court shall proceed to judgment according to the right of the case, and render the same for such sum as shall appear to be due to such petitioner, if any thing; and it shall be the duty of such Escheator, on such judgment being rendered, to satisfy and pay the amount thereof, if the proceeds of the sale be sufficient, and yet in his hands; and if the same shall be paid into the treasury, the auditor shall, and is hereby required, on a copy of such judgment, properly authenticated, being filed, to issue a warrant; and the treasurer shall pay the amount, or so much as has been received on account of such sale: *Provided*, That the slaves and other personal estate shall be previously applied in the payment of the debts of the said decedent, and that every such creditor shall annex an affidavit to the said petition, stating that the amount of his or her demand is *bona fide* due and owing at the time of preferring the petition.(k)

Remedy, in favor of creditors of persons dying seized of escheatable lands, not having personal property sufficient to pay debts.

Judgment.

How payable.

15. If the Escheator shall fail to pay the money into the treasury, which he shall receive, upon making sale of any tract or lot of land, which hath or shall escheat to the Commonwealth, within one month after he shall receive the same, it shall be lawful for the auditor to obtain judgment in like manner, and for the like forfeitures, penalties and fines as is allowed in the case of coroners and sheriffs failing to pay public

Proviso; personal estate first to be resorted to. Affidavit required of creditor.

Proceeding against Escheator failing to pay into the treasury, proceeds of sales of escheated lands.

(i) From 1797, c. 6; ed. 1803, and 1814, c. 22, § 2, 3.

(k) 1803, c. 77, § 3; edition 1808, c. 30, § 3.

A. D. 1819.

A. R. C. 43.

Escheator's fee on taking inquest.

How payable.

Ten per cent. commission on monies received and paid.

Attorney for Commonwealth to prosecute inquests of escheat.

His fee.

Rents, &c. not found in such inquests, to be enjoyed by persons entitled.

2 and 3 Ed. 6, c. 8, § 3.

Remedy where one is found heir in one county, &c. and another in another county, &c. or any are untruly found lunatic, idiot or dead.

2 and 3 Ed. 6, c. 8, § 6, 7.

Traverse to office, &c. to be before sale of land; and not after.

1 Hen. 8, c. 10, § 3.

No sale to be, 'till such traverse, &c. hath been discussed.

Remedy by bill in equity, after sale.

Escheator to answer such bill.

taxes. For each inquest taken by any Escheator for the Commonwealth, he shall be allowed the sum of ten dollars, to be paid out of the fund charged with the payment of the civil list; and he shall be also allowed a commission of ten per cent. upon all sums received by him in virtue of his office, and which shall be paid by him into the public treasury. (l)

16. It shall be the duty of the attorney prosecuting for the Commonwealth, in any and every county or corporation therein, to prosecute such inquest: and such attorney, for his trouble and expense, shall be allowed the sum of ten dollars for every inquest and office found he shall attend, to be paid out of the aggregate fund. (m)

17. WHERE any person holds lands or tenements for term of years, or hath any rent, common, office, fee, or other profit apprender, of any estate of freehold, or for years, or otherwise, out of such lands or tenements, which shall not be found in such office or inquisition, such person shall hold and enjoy his lease, interest, rent, common, office, fee, and profit apprender, in manner as if no such office or inquisition had been found, or as if such lease, interest, rent, common, office or profit apprender had been found in such inquisition. (n)

18. Also, if one person or more be found heir by office or inquisition in one county or corporation, and another person be found heir to the same person in another county or corporation, or if any person be untruly found lunatic, idiot, or dead, the person grieved by such office or inquisition, may have his traverse or *monstrans de droit* to the same, without being driven to any petition of right, and proceed to trial therein, and have like remedy and restitution, upon his title found or adjudged for him therein, as in other cases of traverse upon untrue inquisition found. (n)

19. 'ANY person, claiming a freehold title to any land escheated to the Commonwealth, may have his traverse to the office, or inquisition, or his *monstrans de droit*, or his petition of right, at any time before such land shall have been sold pursuant to the directions of this act, but not after: and, until such traverse, *monstrans de droit*, or petition of right shall have been discussed, and decided in favor of the Commonwealth, no such sale shall be made. After sale shall have been made, any person claiming a freehold title to the land so sold, or to any part thereof, and not having asserted such claim before the sale, in manner above-mentioned, may exhibit his bill in the superior court of chancery for that district, in which such land, or the greater part thereof, may lie, setting forth his title thereto, making the Escheator for the county or corporation a party defendant, and praying that the purchase money, or so much thereof as he may be entitled to, shall be paid to him. It shall be the duty of such Escheator to answer the bill and defend it, on behalf of the Commonwealth. If, upon the hearing of the cause, it shall appear

(l) Compiled of 1797, c. 6, § 5; edi. 1803, & 1814, c. 324, § 5; 1815, c. 19, § 1; and 1794, edition 1803, and 1814, c. 180, § 5.

(m) 1794, edi. 1803, & 1814, c. 130, § 6: the fee encreased at the late revisional.

(n) 1785, c. 63, § 5; 1792, edi. 1794, 1803, and 1814, c. 82, § 6, 7.

that the plaintiff hath such right to a freehold estate in the land sold, or any part thereof, as would have entitled him to a recovery of the same, if it had not been sold, the court shall decree to him the nett proceeds of the purchase money, or such part thereof as he may be equitably entitled to, but without interest or costs. The money so decreed shall be paid by the Escheator, if the purchase money remain in his hands, or, if it shall have been received into the treasury, then the money so decreed shall be paid out of any money in the treasury for the use of the literary fund. The suit in equity, hereby authorised, may be instituted at any time within ten years next after the sale of the land shall have been made, but not afterwards; saving, however, to all persons *non compos mentis*, infants, *femes covert*, persons imprisoned, and out of this Commonwealth, the right of bringing such suit within ten years after their respective disabilities removed.' A. D. 1819.
A. R. C. 43.

20. 'ALL costs incurred by the Escheator, in defending any petition or bill in equity, authorised by this act, shall be certified by the court, in which such bill or petition may be, to the auditor of public accounts, and shall be thereupon refunded to the Escheator out of any money in the treasury for the use of the literary fund.' Decree.
Money decreed,
how payable.
Limitation of time
for suit in equity.
Saving rights of
infants, &c.
Costs of Escheator
in defending suits,
how certified, and
payable.

21. ALL and every act and acts, clauses and parts of acts containing any thing within the purview of this act, shall be, and the same are hereby repealed. Repealing clause.

22. THIS act shall commence and be in force, from and after the first day of January, eighteen hundred and twenty. Commencement.

C. 83.

*An act to reduce into one act the acts concerning Public Notaries.**

A. D. 1818.
A. R. C. 42.

[Passed January 16, 1818.]

WHEREAS it will be for the ease and convenience of the inhabitants of this Commonwealth, and all others trading hither, that public notaries should be appointed; Preamble.

1. *BE it therefore enacted*, That the Governor, with advice of council, is hereby empowered and required to nominate and appoint so many notaries public as to him shall seem necessary, and, upon the death, resignation or removal of any such notaries public, to appoint others in his or their room, which said notaries public shall hold their respective offices during good behaviour, and shall use and exercise such office of notary public, for such places, and within such limits and precincts as the Governor and Council shall direct; to whose protestations, attestations and other instruments of publication, due credence is hereby given: *Provided nevertheless*, Governor with advice of council empowered to appoint notaries public.
Their tenure of office.

* By act of 1807, c. 94, § 5, Notaries Public in the City of Richmond are authorised to examine and take the affidavits or depositions of witnesses, in the same manner, and with like effect, as the magistrates of the said City.

A. D. 1818.
A. R. C. 42.

Bond to be given,
and oath to be
taken, by every
person so appoint-
ed.

That every notary public shall, previous to his executing the said office, give bond to the Governor for the time being, in the penalty of fifteen hundred dollars, conditioned for the due discharge of his said office, and shall, in the chancery court for the district wherein he resides, the general court or the county court of his precinct, take the oath of fidelity to this Commonwealth, and also an oath that he will, without favor or partiality, honestly, diligently and faithfully discharge the duties of a notary public.(a)

Notaries public
authorised to ad-
minister oaths in
certain cases.

2. IN all cases where it be necessary to the due and legal execution of any writing or document whatever, to be attested, protested or published, under the seal of his office, any notary public may administer an oath, and make certificate thereof, which shall have the same effect as if administered and certified by a justice of the peace; and any person making a false oath before a notary public shall be guilty of perjury, in like manner as if the same was made before any justice of the peace of this Commonwealth, and be subject to the like penalties, forfeitures and disabilities, as are prescribed by law in the case of wilful and corrupt perjury.(b)

Repealing clause.

3. ALL acts and parts of acts coming within the purview of this act, shall be, and the same are hereby repealed; but nothing herein contained shall affect any rights, fines or penalties heretofore accrued or incurred.

Commencement.

4. THIS act shall commence and be in force from and after the first day of January next.†

C. 84.

A. D. 1818.
A. R. C. 42.

An act to reduce into one act the several acts concerning Constables.

[Passed January 19, 1818.]

Appointments of
constables how and
by whom made.

1. *Be it enacted by the General Assembly*, That, the justices in the several counties and corporations within this Commonwealth shall, as heretofore, biennially in the month of June, or so soon thereafter as shall be convenient, appoint so many fit and proper persons as they may think necessary, to serve as constables within the same for the term of two years; and every person so appointed shall, at the next court to be held for his county or corporation, take the oaths prescribed by law, and enter into bond with two approved securities, in such penalty, not being less than five hundred dollars, nor more than fifteen hundred dollars, as such court in their discretion shall direct, payable to the Governor and his successors, with condition that he will well and truly discharge the duties of the office of constable, in the county or corporation for which

Official oath and
bond.

(a) May 1784, c. 36; 1792, edi.
1794, 1803, and 1814. c. 144, § 2.

(b) 1802, c. 14, § 3; edi. 1803, c.
7, § 3.

† Suspended until January 1, 1920; *vid. ante*, c. 45.

he has been so appointed; that, at the end of every two years, the justices in each county and corporation, as aforesaid, shall make a like appointment; and the person so appointed a constable, whether he has before served or not, shall in like manner take the oaths prescribed by law, and enter into bond with security, as aforesaid; that, in case of the death, resignation or removal of any constable, the justices shall in like manner make a new appointment for the purpose of supplying the vacancy; and the person so appointed a constable shall take the oaths prescribed by law, and enter into bond with security as aforesaid; that every such bond shall be recorded in the court wherein it shall be executed, and may be sued in the same manner as sheriffs' bonds; that if any person so appointed shall perform any of the duties of his office, before he takes the oath, and enters into bond, as aforesaid, he shall forfeit fifty dollars for the use of the county or corporation in which he resides, to be recovered by action of debt in the name of the Governor for the time being, with costs: *Provided nevertheless*, That nothing herein contained shall be construed to prevent any justice of the peace from appointing any person to act as constable in criminal cases, as heretofore. (a)

A. D. 1818.

A. R. C. 42.

Appointments to be biennial.

New appointments to be made to supply vacancies.

Constables' bonds to be recorded.

Penalty for acting without qualifying.

Constables to act in criminal cases may be appointed as heretofore.

2. The several county courts within this Commonwealth shall, from time to time, when they appoint constables, lay off their respective counties into so many districts as they may deem convenient, and assign one or more constables to each. And it shall be the duty of every constable to confine himself in the service of warrants and executions to the limits of his district, and return all warrants to some place within his district. And every constable who shall execute any warrant, or levy any execution contrary to the provisions of this act, shall forfeit and pay the sum of five dollars, for every offence, to be recovered against such constable and his security or securities, his, her or their executors or administrators, before the court of the county wherein such constable was appointed, by motion on ten days previous notice. (b)

Counties to be laid off into districts, and one or more constables assigned to each district.

Warrants and executions to be levied by each constable within his district only.

Penalty for not observing this regulation.

3. It shall not be lawful for any sheriff or deputy sheriff to serve any warrant issued by any justice of the peace, requiring any person or persons to appear before any justice of the peace, to answer in any suit for debt, detainue or trover, which may be cognizable and determinable by any one justice of the peace; but such warrant shall be directed to and served by some constable, agreeably to this act. (c)

Warrants, in debt, detainue or trover, issued by any justice of the peace to be executed only by constables.

4. On the death, resignation, removal, or refusal to act, of any constable, assigned by the court of any county to any particular district thereof, it shall be lawful for any other constable of such county to perform the duties of a constable within that district where such death, resignation, removal or refusal may have happened. (c)

In case of death &c. of a constable, any other constable may act in his district.

5. ALL executions awarded on judgments rendered by any justice of the peace, for debt, detainue or trover, shall be directed to and served by some constable.

All executions on judgments by justices of the peace to be directed to some constable.

(a) From 1802, c. 3, § 1; and 1806, c. 19, § 1; edi. 1808, c. 8, § 1, and c. 98, § 1.

(b) 1806, c. 19, § 2; edi. 1808, c. 98, § 2.
(c) 1808, c. 11, § 1, 2, 3; edi. 1812, c. 12, § 1, 2, 3.

A. D. 1818.

A. R. C. 42.

rected to some constable of the county or corporation, who shall levy and return the same agreeably to the provisions of this act.(c)

Attachments

against absconding debtors, and for rent due, may be executed by constables.

6. ANY process of attachment against absconding debtors, or against a tenant or tenants for rent under any lease or other contract, may hereafter be executed and returned by a constable, in the same manner as by law sheriffs are directed to execute and return the same.(d)

Collection of their fees.

7. THE fees allowed by law to constables, and due for services rendered to persons residing out of the county or district, in which such constable hath been appointed, shall be hereafter delivered by them to the sheriff or other officer of the county or corporation, by whom the same shall be collected and accounted for, in the same manner as is provided in the case of sheriffs' fees; and, in case of failure on the part of such sheriff or other officer to collect and account for the same, they shall be liable to motion for the same, in the same manner as is provided in the case of other fees put into their hands for collection: *Provided however*, That nothing herein contained shall be construed to prevent a constable from collecting or distraining for any fees due him within the precinct of the county for which he is appointed.(e)

Proviso.

Penalty on constable for demanding fees not allowed by law;

8. EVERY constable who shall demand and receive any fee or compensation, when by law he is not entitled to any, or shall demand and receive more than is allowed by law, shall forfeit and pay to the party injured three dollars for every offence; and shall moreover be liable to double the sum so improperly received; to be recovered on motion in the court of the county where such constable has been appointed, against him and his security or securities, his, her or their executors or administrators, by motion on ten days previous notice.(f)

How recoverable.

Constable to advertise property taken in execution.

9. IT shall be the duty of every constable, levying an execution, to advertise the property taken by him, at some public place in the neighbourhood, at least ten days previous to the sale thereof.(g)

Repealing clause.

10. ALL acts and parts of acts, coming within the purview of this act, shall be and the same are hereby repealed: *Provided however*, That nothing herein contained shall be construed in any wise to affect any rights, remedies, proceedings, fines, penalties, or amercements already accrued, commenced or incurred; but the same shall remain in the same condition, as if this act had never passed.

Commencement.

11. THIS act shall commence and be in force from and after the first day of January eighteen hundred and nineteen.*

(c) 1808, c. 11, § 1, 2, 3; edi. 1812, c. 12, § 1, 2, 3.

(f) 1806, c. 19, § 3; edi. 1808, c. 98, § 3.

(d) 1802, c. 3, § 2; edi. 1808, c. 8, § 2.

(g) 1802, c. 3, § 5; edi. 1808, c. 8, § 5.

(e) 1802, c. 3, § 4; edi. 1808, c. 8 § 4.

* Suspended until January 1, 1820, *vid. ante*. c. 45.

C. 85.

An act reducing into one the several acts concerning the Fees of certain Officers, and declaring the mode of discharging the said Fees.*

A. D. 1819.
A. R. C. 43.

[Passed March 2, 1819.]

1. BE it declared and enacted by the General Assembly, That Fees allowed. it shall and may be lawful for the clerk of the council, the clerk of the house of delegates, the register, the clerks of the general court, superior courts of chancery, court of appeals, superior courts of law, county and corporation courts, sheriffs, coroners, constables, surveyors and notaries public, respectively, to demand, receive and take the several fees herein-after mentioned and allowed, for any business by them respectively done by virtue of their several offices; and no other fees whatsoever; that is to say:

<i>To the Clerk of the Council.(a)</i>		To the clerk of the council.
For every Testimonial,	§ 1 67	
<i>To the Clerk of the House of Delegates.(a)</i>		Clerk of the house of delegates.
For a copy of an act of assembly, if contained in one sheet,	1 00	
And for every sheet after the first,	0 75	
<i>To the Register of the Land-Office, to be paid by him into the Public Treasury.(b)</i>		Register of the land office.
For issuing a warrant of survey, and keeping a register thereof, where it does not exceed one hundred acres,	0 75	
For every fifty acres exceeding that quantity,	0 25	
For every warrant issued in exchange for another warrant; or where the lands claimed under a former warrant shall be recovered under a caveat, and keeping a register thereof,	1 00	
For receiving a plat and certificate, and giving a receipt for the same,	0 25	
For issuing and recording a grant thereon, if the quantity therein contained exceed not one hundred acres,	1 78	
For every fifty acres exceeding that quantity, if there are not more than ten courses,	0 10	
For every course above ten,	0 06	
For recording a plat and certificate of survey, if the quantity does not exceed one hundred acres, and there be no assignment thereon, and which has not more than ten courses,	0 50	
For every course above ten,	0 03	
For every assignment thereon, or accompanying the same,	0 10	
For entering a caveat, or for a copy thereof,	0 75	

(a) 1792, edi. 1794, 1803, and 1814, § 4; May, 1790, c. 7, § 1, chan. rev. c. 115, § 1. p. 121; 1792, edi. 1794, 1803 and '14,

(b) 1804, c. 17, § 1; edi. 1808, c. 62, c. 115, § 1. § 1; 1808, c. 9, § 4; edi. 1812, c. 10,

* The amendments made at the late revisal are distinguished, as far as practicable, by being printed within single inverted commas.

A. D. 1819.
A. R. C. 43.

For a search for any thing, and reading the same, if within the time of ten years, (to be mentioned by the applicant,)	\$ 0 12½
For every ten years more than the first,	0 12½
For every title paper recited in any inclusive survey,	0 10
For a copy of a grant or patent of land, where the same doth not exceed four hundred words,	0 63
For every thirty words thereafter,	0 03
For a copy of a plat and certificate of survey, where the same doth not exceed ten courses,	0 63
And for every course thereafter,	0 02
And for every other copy or certificate, where the fee is not already fixed by law, and which doth not exceed two hundred words,	0 25
And for every thirty words thereafter,	0 03
For keeping a regular account of warrants examined and cancelled, (to be paid by the treasurer on the auditor's warrant,) for each warrant,	0 06

Surveyors.

<i>To the Surveyor.(c)</i>	
For all surveying actually done, for the first one hundred poles, or any less distance, long measure, per pole,	0 01
All after the first one hundred poles, long measure, per pole,	0 0½
For calculating the quantity of less than six courses or lines,	0 50
When land is divided, for calculating each division of less than six courses,	0 50
For every course or line more than six,	0 03
For making a plat of six courses or less,	0 50
For every course more than six,	0 03
For recording a plat and certificate, if not more than six courses,	0 50
For every course above six,	0 03
For a copy of a plat and certificate, where there are not more than six courses,	0 50
For every course above six,	0 03
For making an entry	0 50
For a copy of an entry,	0 17
For every search, where no copy is required,	0 12½
For giving a receipt for a warrant or any other paper,	0 17
For travelling to the place of surveying, and returning, per mile,	0 05

BUT, if surveying is done at different places, on the same tour, the mileage is to be proportioned among the different surveys, according to their distance from the residence of the surveyor, or deputy, and each other, so that the surveyor shall not receive more than five cents per mile for going and returning for any one trip: *Provided, always,* That, when any person shall employ a surveyor, and shall have received a plat of land surveyed, and afterwards shall assign the plat of land to any

Remedy of surveyors against assignees of plats of land, whose assignees have not paid

(c) Altered from 1792, edi. 1794, 1803 and 1814, c. 115, § 1; October, 1783, c. 52, § 3.

other, either before or after obtaining a patent for the same, if such person for whom the land was first surveyed, shall not have paid for the said survey, it shall and may be lawful for the sheriff or other officer of the county or corporation, where such assignee shall reside, at the instance of such surveyor, to make distress upon the slaves, goods and chattels of such assignee, in like manner as is herein-after provided for surveyors' or other officers' fees, refused or delayed to be paid.(d)

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To the Clerk of the Court of Appeals.(e)

The same fees with those of the clerks of the superior courts of chancery, and general court, for similar services.

To the clerk of the court of appeals.

To the Clerks of the Superior Courts of Chancery.(f)

For filing a bill, answer, replication, or other pleadings, each, \$ 0 26

Clerks of superior courts of chancery.

For a copy thereof, for every twenty words, 0 02

For entering every decree, 0 18

For drawing up every decree at large, entering the substance of the bill, answer and other pleadings, the substance of the evidence, and the decree thereupon, for every twenty words, 0 02

For filing the depositions in every cause, in behalf of each party, 0 26

For a copy of the depositions, for every twenty words, 0 02

For every writ of *supersedeas* or *scire facias*, 0 43

For taking bond on issuing a writ of *supersedeas*, *certiorari*, or for an appeal, or any other bond, 0 43

For every other writ whatever, 0 35

For entering the sheriff's return in the rule-book, 0 35

For entering the personal appearance of the plaintiff or defendant, or the appearance of an attorney for either of them, 0 18

For entering security for costs for persons out of the State, 0 35

For every rule entered in the rule-book, 0 35

For a copy of every rule, 0 18

For every order in court, 0 18

For a copy of the same, 0 18

For filing papers for each party, 0 26

For docketing every cause on the docket, (to be charged but once,) 0 18

For filing a declaration, and every plea or demurrer, in any cause, to the making up an issue, directed to be tried at the bar of any of the said courts, 0 35

For every trial, swearing the jury and witnesses, and recording a general verdict, 0 87

For administering an oath or affirmation in court, except witnesses to a jury, 0 18

For services rendered the Commonwealth, the same fees as are by law allowed for similar services in contro-

(d) 1745, edi. 1769, c. 1, § 8; 1792,

edi. 1794, 1803 and '14, c. 115, § 1.

(e) 1792, edi. 1794, 1803 and '14, c. 115, § 2.

(f) 1792, edi. 1803, c. 84, § 1;

edi. 1808, c. 28, § 1; 1806, c. 23,

§ 8; edi. 1808, c. 103, § 8.

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versies between individuals, and no other compensation whatever; their fee bills against the Commonwealth, having been first examined and certified by their respective courts, shall be paid, on a warrant from the auditor, out of any money in the treasury.

For issuing executions, and taxing damages and costs, or for taxing damages and costs where no execution is issued, on decrees entered on appeals, the same fees as are allowed to the clerks of the superior courts of law for the same services.

Clerk of the general court.

To the Clerk of the General Court. (g)

For a copy of a warrant and inquisition of escheat,	3	1	92
Or of an inquisition of escheat,	0	83	
For the probation of any testament and recording the same, for entering the orders for appraising the estate, recording the inventory, writing and sealing the probat, or any other matter concerning the same; or for a commission of administration of the goods of any person dying intestate, for entering the order or orders for appraising the estate, recording the inventory, or for any other matter concerning the same, where the appraisement doth not amount to above three hundred dollars,	3	50	
Or, where the appraisement exceeds three hundred dollars, and is under fifteen hundred dollars,	5	00	
Or, where the appraisement exceeds fifteen hundred dollars, or there is no appraisement,	7	00	
For a copy of a probat, or a commission of administration,	0	70	
For recording the memorial of each bargain, sale, mortgage or other conveyance, marriage-settlement, or deed of trust, there shall be paid by the person to whom the same shall be made,	0	18	
For recording the certificate of a probat, or administration,	0	18	
For a copy of a will, or inventory,	0	70	
And if the original is contained in more sheets than one, for a copy of every such sheet,	0	52	
For a copy of an account,	0	35	
For recording of a deed or deeds for the conveying or settling any lands or tenements only, or together with slaves or personal estate, or any way concerning the same, acknowledged or proved in the general court,	2	62	
For a copy of such deed or deeds, with the endorsements thereon, and for a certificate of the acknowledgment or proof, and recording,	1	57	
For issuing a commission to take the acknowledgment and privy examination of a <i>feme covert</i> , and recording it with the return of the commissioners,	0	87	
For a copy thereof,	0	52	
For recording a deed concerning slaves, or any personal matter only,	1	22	

(g) 1792, edi. 1794, 1803, and 1814, c. 115, § 2, altered from 1745, edi. 1769, c. 1; 1758, edi. 1769, c. 1, § 6.

For a copy thereof, with a certificate of the acknowledgment or proof, and recording,	§ 0 70
<i>Provided, however, that, for a deed of gift for slaves only, or for a copy thereof, there shall be allowed, only,</i>	0 35
For recording a letter of attorney, acknowledged and proved in the general court, and every thing relating thereto,	1 22
For a copy thereof,	0 70
For recording a bond with condition other than for performance of covenants in deeds of conveyance or settlement of lands,	0 70
For a copy of a bond with condition,	0 35

In Actions and other Suits.

For every writ of error, <i>supersedeas</i> or <i>scire facias</i> ,	0 43
For taking bond on issuing a writ of error or <i>supersedeas</i> ,	0 43
For every other writ in any action or suit whatsoever,	0 35
For entering the sheriff's return, and entering the bail by him returned, in the rule-book,	0 35
For entering special bail,	0 35
For entering the personal appearance of the plaintiff or defendant, or the appearance of an attorney for either party,	0 18
For entering security for costs for persons out of the country,	0 35
For filing a declaration, and every plea or demurrer in any cause, to the making up of the issue, and for filing errors upon appeals, writs of error or <i>supersedeas</i> ,	0 35
For a copy of every declaration, plea or demurrer, or of errors,	0 35
For every rule entered in the rule-book,	0 35
For a copy of every rule,	0 18
For every order in court before trial,	0 18
For a copy of the same,	0 18
For filing papers for each party in any action or suit,	0 26
For docketing every cause on the docket, (to be charged but once,)	0 18
For every trial, swearing the jury and witnesses, and recording a general verdict,	0 87
For administering an oath or affirmation in court, except witnesses to a jury,	0 18
For every trial, where there is a special verdict, swearing the witnesses and jury, and recording such verdict,	1 30
And where there is no jury, but a case agreed,	0 43
For swearing witnesses for each party, in every cause, where there is no jury,	0 26
For a copy of a case agreed, or notes of a special verdict,	0 43
For entering every order made in court, after verdict, or demurrer joined,	0 18
For entering every continuance on the court-docket,	0 18
For entering every judgment,	0 18
For making a complete record of every cause, inserting a case agreed or special verdict, at large, from the	

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	For a copy thereof, or any part thereof, the same.	
	For a recognizance in court,	0 35
	For filing a return of a <i>habeas corpus</i> ,	0 26
	For filing the record on a writ of error,	0 26
	For a copy of such record, for every twenty words,	0 02
To clerk of general court or clerks of superior courts of chancery.	<i>To the Clerk of the General Court, or to the Clerks of the Superior Courts of Chancery, (as the case may be.)</i>	
	For taking a bond upon issuing injunctions,	0 43
	For every <i>dedimus potestatem</i> ,	0 35
	For recording the report of auditors, when it is desired,	0 70
	For making a complete record of every cause, for every twenty words,	0 02
	For filing the return of a <i>certiorari</i> ,	0 26
	For taxing the costs in any action or suit, and a copy thereof,	0 35
	For recording any thing not herein particularly mentioned, or for a copy thereof, for every twenty words,	0 02
	For a search for any thing, if above a year's standing, or reading the same, or any part thereof, if required, if a copy be not taken,	0 81
	For every order to a witness for attendance, (to be charged to the party against whom the order goes,)	0 18
Clerks of superior courts of law.	<i>To the Clerks of the Superior Courts of Law.(h)</i>	
	For issuing a summons on a petition for lapsed lands,	0 87
	For every order thereon,	0 26
	And, instead of the fees which would otherwise be allowed by law, for issuing executions on the following judgments, and taxing damages and costs thereon, they shall be allowed the fees herein-after mentioned, to be taxed in the bill of costs, as in other cases: (i)	
	Upon an affirmance by a superior court of law, of a judgment of a county or corporation court, where no appeal is granted to the court of appeals,	1 20
	Upon an affirmance in the court of appeals, of a judgment in a suit, or on a motion which originated in a superior court of law,	1 20
	Upon a like affirmance of a judgment, in a suit or on a motion which originated in a county or corporation court,	2 40
	And for taxing the damages and costs on the said judgments, if no execution be issued thereon, half the fees above-mentioned shall be allowed.	
	In all other cases, the same fees with those of the county courts, for similar services; and for all other services, the same as those of the clerk of the general court.	
Clerks of superior courts of law, or of superior courts of chancery.	<i>To the Clerk of a Superior Court of Law, or of a Superior Court of Chancery, (as the case may be.)</i>	
	For filing the record upon an appeal, or <i>supersedeas</i> from a county court, or any inferior court,	0 26

(h) 1792, edi. 1794, 1803 and 1814, c. 115, § 2; from 1745, edi. 1769, c. 1.

(i) 1798, c. 13, § 9; edi. 1803 and 1814, c. 240, § 9.

For a copy of such record, for every twenty words,	\$ 0 02
<i>To the Clerks of the County and Corporation Courts. (k)</i>	
For every writ in the nature of an <i>ad quod damnum</i> , (to be paid upon issuing such writ,)	0 83
For recording the same with the inquisition thereupon, (to be paid before inquisition recorded,)	1 92
For a copy of such writ and inquisition, (to be paid down,)	0 83
For taking a bond upon issuing injunctions in chan- cery,	0 35
For recording deeds of lease and release, for conveying or settling* of lands only, or together with slaves and personal estate, bond to perform covenants, certificate of the proof or acknowledgment, as the case is, and all matters relating thereto,	2 62
For a copy thereof,	0 95
For recording every deed of feoffment, or bargain and sale, or other single deed for conveying or settling lands and tenements only, or together with slaves and personal estate, bond to perform covenants, cer- tificate of the proof or acknowledgment, as the case is, and all matters relating thereto,	1 75
For a copy thereof,	0 70
For issuing and recording a commission to take the acknowledgment and privy examination of a <i>feme covert</i> , with the certificate of the commissioners, if such commission be required,	0 70
For a copy thereof,	0 35
For the recording any deed for conveying or settling lands and tenements only, or together with slaves and personal estate, for every separate and distinct tract, piece or parcel of land, other than the first therein contained, (l)	0 25
For recording a patent,	0 87
For a copy thereof,	0 43
For recording a deed concerning slaves, or any personal matter or thing only, with certificate of its proof or acknowledgment,	0 70
For a copy thereof,	0 52
<i>Provided, however, That for a deed of gift for slaves only, or for a copy thereof, there shall be allowed only,</i>	0 35
For recording a letter of attorney,	0 52
For a certificate of the proof, or acknowledgment thereof,	0 18
For a copy of a letter of attorney, with such certifi- cate,	0 43
For recording a bond, with condition, other than for performance of covenants in deeds of conveyance or settlement of lands,	0 35
For a copy of a bond, with condition, other than an ap- peal bond, the same.	
For a copy of any other obligation or promissory note,	0 18

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Clerks of county
and corporation
courts.

(k) 1792, *edi.* 1794, 1803 and '14, (l) 1796, c. 5, § 1; *edi.* 1803 and
c. 115, § 2 1814, c. 201, § 1.

* *Selling*, in the roll.

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For the probation of any will or testament, and recording the same, entering the order or orders for appraising the estate, and for any other matter concerning the same, where the will shall be contained in one sheet,	\$ 0 70
And if the will is contained in more than one sheet, for every such sheet,	0 35
For a commission of administration of the goods of any person dying intestate, for entering the order or orders for appraisement, and for any other matters concerning the same,	0 70
For recording an inventory, where the appraisement doth not amount to more than thirty dollars,	0 18
Where the appraisement exceeds that value, and is under one hundred and fifty dollars,	0 87
And where it shall exceed one hundred and fifty dollars, and is under three hundred dollars,	1 75
And where it shall exceed three hundred dollars, or there is no appraisement,	4 37
For a copy of a will or inventory, if the original is contained in one sheet,	0 52
If the original is contained in more sheets than one, for a copy of every such sheet besides the first,	0 35
For recording the age of a servant or slave, adjudged in court,	0 18
For a certificate thereof, if required,	0 14
For attending a court for examination of criminals, and trial of slaves, if the court is held for that purpose, (to be paid by the public,)	3 50
For a copy of a list of titheables in his precinct,	0 35
For the whole fee for an ordinary license and bond,	0 87
For a copy of the rates of liquors,	0 26
For a marriage license, certificate and bond,	0 87
For every search for any thing above a year's standing, if a copy be not taken,	0 08
For reading any thing, if a copy be not required,	0 08
For recording a pedlar's license, (m)	0 25
For services performed under the act, entitled, "An act giving powers to the county courts to establish ferries, and to regulate the rates of ferriage," the sheriffs and clerks shall receive the same fees as are allowed in similar cases, to be paid by the person for whom the services shall be rendered, (n)	
They shall enter of record the recommendation of officers to fill vacancies in the militia, and qualify them, without any fee.	

In Actions and other Suits.

For every writ, other than such as are herein particularly mentioned,	0 18
For a copy of such writ,	0 08
For every writ of execution, or <i>scire facias</i> ,	0 26
For a copy thereof,	0 14

(m) 1805, c. 3, § 3; edition 1803, c. 85, § 3.

(n) 1806, c. 25, § 11; edition 1805, c. 105, § 11.

For recording the return thereof,	8 0 14
For a writ of attachment in any action,	0 26
For recording the return thereof,	0 26
For an attachment granted by a justice of the peace, returnable to the court, and recording the return, and putting the same on the docket,	0 35
For every summons to summon a garnishee on such attachment,	0 18
For filing every bail bond, or entering the bail returned,	0 18
For docketing every cause, (to be charged but once,)	0 08
For a copy of the return of any writ,	0 05
For entering special bail,	0 18
For entering security for costs for persons out of the country,	0 18
For entering the appearance of the defendant or defendants, where there is no attorney, in any suit,	0 08
For entering one or more attorneys for each party,	0 08
For every petition, declaration or other pleadings,	0 18
For a copy of any declaration, special plea or demurrer,	0 18
For a copy of a plea, if the general issue,	0 05
For every trial, swearing the jury and witnesses, filing all papers, and recording a general verdict,	0 70
For every trial, where there is a special verdict, or case agreed, and recording the same,	1 13
For swearing the witnesses in every other cause, where there is no jury or case agreed,	0 18
For filing the papers of each party in every cause, and where there is a jury or case agreed,	0 18
For a copy of a special verdict, or case agreed, and every thing therein set forth, or for making up a full and complete record, for every thirty words,	0 02
For entering every judgment, or for a copy thereof,	0 18
For filing a bill, answer, replication, and other pleadings in chancery, for each,	0 18
For a copy thereof, for every thirty words,	0 02
For a commission to examine witnesses,	0 43
For attending and writing depositions taken against inspectors before justices of the peace,	1 75
For entering every decree in chancery,	0 26
For filing the depositions in any suit, for each party,	0 08
For every deposition taken in court,	0 18
For a copy of a deposition,	0 18
For administering an oath in court, not relating to the trial of any cause there depending, and certifying the same,	0 18
For every recognizance in court,	0 18
For entering the order or orders in any cause in one court,	0 26
For entering every order for attendance of witnesses,	0 18
For a copy of any order,	0 18
For recording the report of a jury in the country, surveyor, auditor or viewers,	0 35
For a copy thereof,	0 35
For taxing costs to any judgment or decree, where costs	

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are recovered, or for a copy of a bill of costs, if required,	\$ 0 20
For a copy of an account,	0 18
For entering an appeal, and taking bond to prosecute it,	0 35
For a copy of the bond,	0 18
For returning an appeal and security to the office of the court of chancery, or a circuit court (as the case may be,)	0 52
For returning a writ of error, <i>supersedeas</i> , <i>certiorari</i> , or <i>habeas corpus</i> ,	0 35
For a copy of the proceedings of the cause, wherein the appeal is granted, for every thirty words,	0 02
For recording the acknowledgment of satisfaction of a judgment,	0 18
For entering each order for a witness's attendance, (to be charged to the party in whose behalf the witness is summoned, and taxed in the bill of costs, if such party recover,)	0 18
For a copy thereof, to be taxed and charged in like manner,	0 18
For an attachment thereon, to be charged to the party against whom the attachment shall be issued,	0 18
For a summons for several witnesses living in one county, if summonses for all be taken out at one time,	0 18
For recording any thing not herein particularly mentioned, or for a copy thereof, for every thirty words,	0 02
On appeals from the decision of a justice of the peace, the same fees as clerks of the superior courts are entitled to for similar services.(o)	
To the clerks of the several superior and inferior courts of this Commonwealth, for continuing any cause monthly on the rule-book, so long as it remains at rules, for every quarter of a year, 25 cents, and no more.(p)	

Clerks' fees to whom chargeable.

Which said several fees shall be charged to the party at whose instance the business shall be performed, except where it is otherwise directed.

Fees of commissioners in chancery, how collectable.

2. THE commissioner or commissioners of the superior courts of chancery, and of the county and corporation courts, may issue their tickets for the sums allowed by the said courts for services performed by them under the orders of the said courts, and deliver them to the respective sheriffs and sergeants, at the same time the clerks of the said courts are directed by law to deliver their tickets; and the several sheriffs and sergeants shall collect and account for them in the same manner, and under the like penalties, and shall have the same allowance for collecting and for insolvencies, as are prescribed in the case of the clerks of the said courts respectively.(q)

3. If any plaintiff or defendant, or his or her attorney, shall take out copies of his or her own declaration or pleadings, or of his or her own papers in any cause, or of any common order

(o) 1806, c. 7, § 7; edition 1808, c. 88, § 7.

(p) 1804, c. 14, § 1; edition 1808, c. 61, § 1.

(q) 1789, c. 35; 1792, edition 1794, 1803, & 1814, c. 115, § 3; 1805, c. 30, § 1; edition 1808, c. 67, § 1.

made in such cause, the charge of such copies shall not be allowed in the bill of costs, although such party recover; and where more attorneys than one shall be employed in any cause on one side, if such attorneys take out more than one copy of any thing necessarily relating to the suit, yet no more than one copy shall be allowed in the bill of costs; neither shall the clerk tax any fee in the bill of costs for entering more than one attorney, although costs shall be adjudged against the adverse party.(r)

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4. For all public services of the clerk, viz: entering and issuing copies of orders for appointing surveyors of highways, appointing constables, grand juries, taking a list of titheables, entering guardians' accounts, and all matters relating thereto, binding out poor orphans, and appointing guardians, entering the levy and copies thereof, and of the list of titheables for the collector, and for entering and issuing the orders, except against guardians where they shall stand out in contempt, (to be charged to such guardian,) and issuing orders for recommending sheriffs and justices, and for processioning, and all other public services for which no particular fee is allowed, to be levied annually by the justices of the county,(s) 'such sum as they may think reasonable, not exceeding one hundred dollars.'*

Annual allowance for clerks' public services.

5. AND where a motion shall be made, or suit shall be instituted against any person or persons for money due to the public, by or in the name of the person authorised by law so to do, and judgment shall be recovered against him, her or them, the clerk of the court wherein such motion shall be made or suit instituted, shall and is hereby authorised to charge to the Commonwealth the fees accruing thereon for services rendered the public: *Provided, however,* That the said fees shall not be demanded or exacted until the same shall be received of the person or persons against whom such judgment shall be obtained.(t)

Where clerk may charge fees to Commonwealth.

Proviso.

6. No county court clerk shall charge any fee for making up a complete record, unless it be in causes where the title or bounds of lands are determined, or where he is to transmit the transcript of the record of any cause, to the office of a superior court upon appeals, writs of error, *supersedeas*, *habeas corpus* or *certiorari*.(v)

In what cases county court clerks may charge fees for making up a complete record.

7. AND to the end, all persons chargeable with any of the fees aforesaid, may certainly know for what the same are charged; *Be it further enacted,* That none of the fees hereinbefore mentioned shall be payable by any person whatsoever, until there shall be produced, or ready to be produced unto the person owing or chargeable with the same, a bill or account in writing, containing the particulars of such fees, signed by the clerk or officer to whom such fees shall be due, or by whom the same shall be chargeable respectively; in which said bill or account shall be expressed, in words at length, and in the

Fee-bills to be furnished by clerks, &c.

(r) 1745, edi. 1769, c. 1, § 3; 1792, edi. 1794, 1803 and '14, c. 115, § 4.
(s) 1792, edi. 1794, 1803 and '14, c. 115, § 4.

(t) 1797, c. 24, § 3; edi. 1803 and '14, c. 235, § 3.
(v) 1792, edi. 1794, 1803 and '14, c. 115, § 6.

* Altered, at the late revisal, from a fixed sum of 25 dollars.

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Fees to sheriffs or
serjeants.

same manner as the fees aforesaid are allowed by this Act, every fee for which any money or tobacco is or shall be demanded. (w)

8. To the Sheriff or Serjeant, (as the case may be.) (x)

For an arrest, bond and return,	£ 0 63
For returning a <i>capias non est inventus</i> ,	0 21
For serving a <i>scire facias</i> ,	0 30
For serving any person with an order of court, and making return thereof,	0 30
For pillorying any person,	0 42
For putting into the stocks,	0 21
For ducking any person,	0 42
For putting in prison and release,ment,	0 42
For serving a <i>subpœna</i> in chancery,	0 30
For serving a <i>subpœna</i> for a witness in any cause in court, except summoned in court,	0 21
For summoning an appraiser, auditor, viewer or witness to any deed, will or writing, if required to be summoned, but not else,	0 21
For summoning and impannelling a jury, in every cause wherein a jury shall be sworn,	1 05
For coming to and attending the superior court of law, with the <i>venire</i> , and return of the <i>venire facias</i> , (to be paid by the public,) and for attending the superior court of law with stolen goods, where there is no <i>venire</i> , for each day,	1 00
For summoning the justices of the county and attending a court for the examination of a criminal, (to be paid by the public.)	4 20
For removing every criminal from the county or corporation jail to a circuit jail, for every mile,	0 10
For removing a debtor by <i>habeas corpus</i> , from the county jail to a circuit jail, for every mile,	0 04
For executing every condemned person, and all fees incident, (to be paid as aforesaid,)	5 25
For summoning a jury upon any inquisition, survey, writ of dower or partition, if the jury appear,	3 15
And if the jury do not appear,	1 57
For making a return of a writ of dower, partition, or in the nature of an <i>ad quod damnum</i> ,	1 05
For every day's attendance upon a jury, in the country, after they are sworn, or attendance upon a surveyor, when ordered by the court,	1 05
For serving a writ of <i>habere facias seisinam</i> , or <i>habere facias possessionem</i> ,	1 05
For serving an attachment upon the body,	0 53
For serving a writ of <i>distringas</i> , issuing from a judgment in detinue, when the specific thing shall be taken,	1 05
For serving a declaration in ejectment, if against one tenant,	0 63
And, if against more tenants than one, for serving the declaration on every other tenant,	0 50

(w) 1792, ed. 1794, 1803 and '14,
c. 115, § 7.

(x) 1792, ed. 1794, 1803 and '14,
c. 115, § 7.

For whipping a servant, to be paid by the owner, and repaid by the servant,	\$ 0 42	A. D. 1819. A. R. C. 43.
For whipping a free person by order of court, (to be paid by such person,) the same.		
For whipping a slave by order of court, to be paid by the county, and repaid by the public,	0 42	
For taking a bond or bonds to the creditor, under the act, intituled, " <i>An act for reducing into one the several acts concerning executions, and for the relief of insolvent debtors.</i> "(y)	0 63	
For proceeding to sell on any execution on behalf of the Commonwealth, or of any individual, if the property be actually sold, or the debt paid, the commission of five per centum on the first three hundred dollars, or ten thousand pounds of tobacco, and two <i>per centum</i> on all sums above that, and no other commission, fee or reward shall be allowed upon any execution, except for the expense of removing and keeping the property taken.(y)		Commissions on executions.
9. SHERIFFS, sergeants and coroners may include the like commissions in any forthcoming bond taken on a writ of execution, but shall not demand or receive the same, unless such bond be forfeited.(a)		On forthcoming bonds.
For serving an attachment, or for making distress upon the goods exceeding ten dollars, if sold, the same fee as for serving an execution, where the goods do not exceed that value, or are not sold,	0 63	On an attachment or distress.
For every garnishee summoned on such attachment,	0 21	
For executing any writ of <i>distringas</i> or attachment on a decree in chancery, the same fee or commission upon the amount of the value of the goods and chattels recovered, or money mentioned in such decree, as is by law allowed for serving any other execution.		On a <i>distringas</i> .
For serving and returning a general or superior court of law writ, summons or order, where the same is not comprehended in any of the foregoing articles,	0 63	
For making a proclamation as the law directs, in proving of wills or proceeding to outlawry,	0 42	
For selling a servant at public out-cry by order of court, and all fees incident,	0 42	
For keeping and providing for a debtor in jail, each day, the same which shall be allowed by the superior court of law for the same county, for keeping those persons with whose support the Commonwealth is by law chargeable, not exceeding.(b)	0 40	For keeping debtors.
For conveying a prisoner or prisoners to the Jail and Penitentiary-house, to the sheriff and each guard, for each day employed,(c)	1 04	For carrying prisoners to the Penitentiary.
For travelling thereto, for each mile,	0 04	
For returning, the same.		

(y) 1788, c. 77, § 4; 1791, c. 3, § 7; 1792, 1803 and '14, c. 115, § 7.

(a) 1794, c. 3, § 11; edi. 1803 and 1814, c. 176, § 11.

(b) 34 cents by act of 1796, c. 20, § 1, 2; edi. 1803, and 1814, c. 213, § 1, 2, altered at late revival.

(c) 1800, c. 58, § 2, 3; edi. 1808 and '14, c. 279, § 2, 3.

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And such sheriff shall also be allowed for necessary expenses for horses, boats, and support of prisoner or prisoners during the time of their removal.

If the sheriff should impress any horse or horses for himself or any of the guard, all charges on account thereof shall be deducted out of the pay of the persons using such horse or horses.

The Auditor is required to issue his warrant to the treasurer for the aforesaid allowances.

For each notice on a replevy bond, and on all legal occasions wherein no other fee is provided by law, ^(d) \$0 50

Annual allowance
to sheriffs, for
public services.

For all public services of the sheriff, to wit, attending the courts of claims, impannelling grand juries, publishing writs for electing delegates or senators, and attendance, serving all public orders of court, (except against guardians where they shall stand out in contempt, to be charged to such guardian,) and all other public and county services, to be levied annually, by the justices, on the county, ^(e) 'such sum as they may think reasonable, not exceeding seventy-five dollars.*

No fees charge-
able on present-
ments or certain
prosecutions, if
party acquitted.

10. And when any person or persons presented by the grand jury, or prosecuted by the overseers of the poor, shall be discharged of such presentment or prosecution, the clerk, attorney for the Commonwealth, and sheriff, shall be entitled to no fees for the same, but it shall be deemed to be included in the public services; but if the party or parties so presented or prosecuted shall be convict, then in such case the clerk shall tax all such fees against such party or parties. ^(f)

Otherwise, if con-
victed.

11. To the Coroner. ^(g)

Fees to coroners.

For taking an inquisition on a dead body, (to be paid out of the estate of the deceased,) if the same be sufficient; if not, by the county, . . . \$ 5 00
For serving any original or mesne process issued from any court, . . . 1 00
For summoning a witness in any cause, . . . 0 50
For all other business done by him, the same fees as are allowed the sheriff for the same services. . .

12. To the Constable. ^(h)

To constables.

For serving a warrant, ⁽ⁱ⁾ . . . 0 50
For summoning a witness, . . . 0 21
For summoning a coroner's jury and witnesses, . . . 3 15
For putting in the stocks, . . . 0 21
For whipping a slave, to be paid by the owner, . . . 0 42
For whipping a servant, to be paid by the owner and re-
paid by the servant, . . . 0 21
For serving an attachment returnable before a justice, 0 63
For summoning every garnishee on an attachment, . . . 0 21

^(d) 1800, c. 12; edi. 1803, and 1814, c. 270; 1804, c. 8, § 3; edi. 1808, c. 57, § 3.

^(e) 1792, edi. 1794, 1803, and 1814, c. 116, § 7.

^(f) *Ibid.*, § 8; from 1745, edi. 1769, c. 1, § 4, 7.

^(g) 1809, c. 15, § 4.

^(h) 1802, c. 3, § 2; edi. 1808, c. 8.

⁽ⁱ⁾ Altered at late Revisal, from 30 cents, as in act of 1802, c. 3.

* Altered, at the late Revisal from a fixed sum of 25 dollars.

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Penalty for neglect.

Clerks not to issue fee-bills for copies not made,

Nor for complete records, 'till made up.

Exceptions.

Penalty for demanding more than legal fees.

Or fees for business not done.

Penalty, how recoverable and appropriated. Limitation.

Punishment of clerk for extortion.

and there constantly kept, a fair table of their fees herein-before mentioned, on pain of forfeiting forty dollars for every court-day the same shall be missing through their neglect ; and the clerk of every county and corporation court shall in like manner set up a fair table of all other fees herein-before mentioned, in the court-house of his county or corporation, to be there constantly kept, on pain of forfeiting twenty dollars for every court-day the same shall be missing through his neglect ; and the surveyor of every county shall also cause to be set up, in some public place, in his office, and there constantly kept, a fair table of his fees herein-before mentioned, on pain of forfeiting three hundred dollars. All which penalties shall be to the person or persons who shall inform or sue for the same, and shall and may be recovered in any court of record within this Commonwealth, by action of debt or information, or by warrant before a justice of the peace, as the case may be.(p)

16. It shall not be lawful for any clerk to place any fee-bill in the hands of any sheriff, or demand or receive any fee for a copy of any writ, declaration, bill, or other pleading, or proceeding, or for a copy of any judgment or decree, or of costs in any cause, unless such copy hath actually been made out at the request of the party, or of his agent or attorney. Nor shall any clerk place any fee-bill in the hands of any sheriff, or demand or receive any fee for making up a complete record in any cause, wherein it shall be necessary, until he shall actually have made up such record : *Provided*, That nothing herein contained shall be so construed as to prevent witnesses from obtaining copies of orders for their attendance, or to prevent clerks from taxing in the bill of costs, or executions, to be recovered by the successful party, the fee for *making up records*, as heretofore, nor shall this act extend to copies of records necessary in cases of appeal, writ of error, or *supersedes*.(q)

17. If any officer hereafter shall claim, charge, demand, exact, or take any more or greater fees for any writing, or other business by him done, within the purview of this act, than herein before set down and ascertained ; or if any officer whatever shall charge, or demand, and take any of the fees herein-before mentioned, where the business for which such fees are chargeable shall not have been actually done and performed, (to be proved by the fee-book of such officer, upon his corporal oath,) such officer, for every such offence, shall forfeit and pay to the party injured, besides such fee or fees, six dollars for every particular article or fee so unjustly charged, or demanded, or taken ; to be recovered with costs, in any court of record in this Commonwealth, by action of debt or information : *Provided*, the same be sued for within twelve months after the offence shall be committed.(r)

18. If any clerk of a court shall knowingly and fraudulently charge, demand, exact, or take more, for any business by him done, than is allowed by law, or shall knowingly and fraudulently charge, demand, exact, or take any fee for business not

(p) 1745, edi. 1769, c. 1, § 9 ; Oct. 1783, c. 52, § 5 ; 1792, edi. 1794, 1803, and 1814, c. 115, § 9.

(q) 1804, c. 14, § 3 ; edition 1808, c. 61, § 3.

(r) 1745, edi. 1769, c. 1, § 10 ; 1792, edi. 1794, 1803, and 1814, c. 115, § 10.

actually done, every clerk so offending shall be guilty of extortion; and, on conviction thereof in the general court, by indictment or information, shall be amerced and imprisoned at the discretion of a jury, and shall be discharged from his office forever.(s)

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19. THE lawyers practising in any court, shall be allowed at all times freely to inspect the papers and records of such court, without being constrained to take copies thereof.(t) Privileges of lawyers.

20. IN future it shall not be the duty of the clerk of any court within this Commonwealth to make up a complete record in any cause therein decided, except in those cases where the title or bounds of land shall be determined, and in cases of appeal, writ of error, or *supersedeas*.(t) Complete records.

21. AND, for the better collecting the said fees, *Be it enacted*, That the surveyor of every county shall, annually, before the twentieth day of January, and the clerks of the several courts within this Commonwealth, shall, annually, before the first day of June,* deliver, or cause to be delivered, to the sheriff of every county in this State, and to the serjeant of every corporation, respectively, their accounts of fees due from any person or persons residing therein, which shall be signed by the clerks or surveyors respectively:(v) *Provided, however*, That the clerks of the superior courts of chancery may, at their election, put their fees for collection into the hands of the sheriff or serjeant, or of the marshal of the chancery court in the manner herein-after provided. Fee-bills of surveyors & clerks, when to be delivered to sheriffs, serjeants, or marshals.

22. AND the said sheriffs and serjeants are hereby required and empowered to receive such accounts, and to collect, levy and receive the several sums of money therein charged of the persons chargeable therewith; and, if such person or persons, after the said fees shall be demanded, shall refuse or delay to pay the same, the sheriff of that county, or serjeant of that corporation wherein such person resides, or of the county in which such fees became due, shall have full power, and are hereby required to make distress of the slaves, or goods and chattels of the party so refusing or delaying payment, either in that county or corporation where such person inhabits, or where the same fees became due. And, the sheriff of any county, or serjeant of a corporation, for all fees which shall remain due and unpaid after the tenth day of April in any year, either to themselves, or to the sheriffs, coroners, or serjeants of another county or corporation, which shall be put into his hands to collect as aforesaid, is hereby authorised and empowered to make distress of the goods and chattels of the party refusing or delaying payment, in the same manner as for other fees due to any of the officers herein-before mentioned; and if any sheriff or serjeant shall refuse to account for, or pay the whole amount of the sheriffs', serjeants' or coroners' fees, put into his hands for collection, after the deduction of six per cent. for collection, together with an allowance of what is charged to persons not dwelling or having no visible estate in Powers of officers in collecting them.

And fees of sheriffs, serjeants or coroners.

When to account for sheriffs', serjeants', or coroners' fees.

(s) 1804, c. 14, § 4; edition 1808, c. 61, § 4.

(t) *Ibid*, § 5.

(v) Altered from Oct. 1778, c. 14; 1787, c. 52; 1792, ed. 1794, 1803, and 1814, c. 115, § 11; 1807, c. 5, § 6.

* Altered from *May*, as in act of 1807, c. 5, § 6.

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Remedy for default.

Damages.

Action &c. for clerks' or surveyors' fees, where maintainable; and where not.

Sheriff sued, may plead general issue and give this act in evidence.

When sheriffs and serjeants shall account for and pay clerks' and surveyors' fees.

Remedy against them for default.

Damages.

his county or corporation, on or before the first day of November in every year, it shall and may be lawful for the sheriffs, serjeants, and coroners, their executors or administrators, in the superior court of law, or in the court of the county of such sheriff, or in the court of the corporation of such serjeant, to demand judgment against such sheriff or serjeant, his executors or administrators, for all fees wherewith he shall be chargeable; together with damages thereon not exceeding fifteen per centum per annum, from the time when they ought to have been paid till the judgment shall be discharged; and such court is hereby authorised and required to give judgment accordingly, and to award execution thereupon: *Provided*, the sheriff or serjeant, his executors or administrators, have ten days previous notice of such motion.(w)

23. BUT no action, suit or warrant from a justice, shall be had or maintained for clerks' or surveyors' fees, unless the sheriff or serjeant shall return, that the person owing or chargeable with such fees, hath not sufficient within his bailiwick whereon to make distress, except where the clerk or other officer as aforesaid, shall have lost his fee-book, by fire or other misfortune, so that he be hindered from putting his fees into the sheriff's hands to collect; and in that case any suit or warrant may be had and maintained for the recovery thereof. And if any sheriff shall be sued for any thing by him done in pursuance of this act, he may plead the general issue, and give this act in evidence.(x)

24. EVERY sheriff of every county, and every serjeant of every corporation, shall, on or before the first day of November in every year, account with the clerks of the several courts within this Commonwealth, and the respective surveyors, for all fees put into his hands pursuant to this act, and pay the same, abating six per centum for collecting, except in the case of the clerks of the court of appeals and general court; and if any sheriff or serjeant shall refuse to account or pay the whole amount of fees put into his hands, after the deductions aforesaid made, together with an allowance of what is charged to persons not dwelling, or having no visible estate in his county, it shall and may be lawful for the clerks, or surveyors, their executors or administrators, upon a motion made in the next succeeding superior court of law, or in the court of the county of such sheriff, or in the court of the corporation of such serjeant, to demand judgment against such sheriff or serjeant, for all fees wherewith he shall be chargeable by virtue of this act 'with damages thereon not exceeding fifteen per centum per annum as aforesaid;' and such court is hereby authorised and required to give judgment accordingly, and to award execution thereupon; *Provided*, The sheriff or serjeant have ten days previous notice of such motion.(y)

(w) From 1792, ed. 1794, 1803, & 1814, c. 115, § 11; 1802, c. 30, § 1; amended at late revision, by altering the time of payment, and giving damages for non-payment.

(x) 1745, edition 1769, c. 1, § 12; 1792, edition 1794, 1803, and 1814, c. 115, § 12.

(y) From 1745, edition 1769, c. 1, § 13; 1792, edition 1794, 1803, and 1814, c. 115, § 13; 1796, c. 22, § 4; edition 1803, and 1814, c. 217, § 4; 1807, c. 5, § 6; the time of payment altered by the acts of 1792, 1796, and 1807; and the damages inflicted at the late revision.

25. AND, if the said sheriffs or serjeants shall fail to pay the said fees to the clerk of the court of appeals and general court, at their offices in Richmond or such town or place as the treasury may be kept at, by the first day of November annually, abating ten per centum for collecting, and making an allowance for insolvencies and non-residents having no estates within their counties, which shall be accounted for on oath, the said clerks, or either of them, their executors or administrators, upon motion made in the superior court of law, or in the county or corporation, in which the sheriff or serjeant failing to make payment as aforesaid, may be found, may demand judgment against him for all fees wherewith he shall be chargeable by this act, 'with damages as aforesaid;' and such courts respectively shall enter judgment accordingly; *provided*, The sheriff or serjeant have ten days notice of such motion; and judgment may be obtained as aforesaid against any under sheriff who may fail to add the name of his principal to the receipt for such fees. (z)

26. THE executors or administrators of any such sheriff, under sheriff or serjeant, shall be liable to judgment as aforesaid, for the fees received to be collected by their testator or intestate and accounted for; 'and in like manner the securities of such sheriff or serjeant, their executors and administrators, or any of them, shall be liable for the fees received by him for collection.' Every receipt for fees produced in evidence, on any such motion, shall be deemed to be the act of the person subscribing it, unless he shall deny the same upon oath. (a)

27. THE clerks of the said courts, their executors or administrators, may obtain judgments as aforesaid, for all balances now due to them from any sheriff, under sheriff, or serjeant, on account of fees heretofore put into their hands to be collected. (b)

28. THE judges of the court of appeals and superior courts of chancery, shall make such allowances from time to time to their respective officers as they shall think reasonable; taking into account the time past, for which no allowance hath been made by the Assembly; which allowances when made and audited shall be paid by the treasurer out of any public money in his hands. (b)

29. 'It shall be lawful for the clerks of the superior courts of chancery to put all fees due them, within any chancery district, into the hands of the marshal of that district for collection. It shall be the duty of the marshal, within his district, to receive, collect and account for such fees, in all respects, in the same manner as a sheriff, within his bailiwick, is bound to receive, collect and account for similar fees. The marshal shall have the same power to distrain for such fees, shall be allowed the same commission for collecting them; and he, his securities, his executors and administrators, and the executors and administrators of his securities, shall be subject to the same summary recovery, and the same damages, in case of

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Fees collected for clerks of court of appeals and general court, where and when payable. Allowance for collection.

Remedy for default.

Damages.

Where judgment may be against the under sheriff.

Remedy against executors &c. and sureties &c. of sheriffs and serjeants.

Receipts for fee bills to be evidence, unless denied on oath.

Clerks may obtain judgments in like manner, for fees heretofore collected, remaining unpaid.

Allowances to be made by court of appeals and superior courts of chancery to their respective officers.

Clerks of superior courts of chancery may put their fees into marshal's hands for collection.

High-tories and liabilities.

(z) 1792, edition 1794, 1803, and 1814, c. 115, § 14.

(a) *Ibid.*, § 15; amended at the late revision, by subjecting the securities of a sheriff or serjeant, their exe-

cutors and administrators to a judgment.

(b) 1792, edition 1794, 1803, and 1814, c. 115, § 16.

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Repealing clause.
Proviso.

'failure to account for the fees so put into his hands for collection.'

30. ALL acts or parts of acts, coming within the purview of this act, shall be and are hereby repealed: *Provided, always*, That nothing in this act shall be construed to affect any rights, remedies, fines, forfeitures, penalties or amercements, which have accrued, been vested or incurred, prior to the commencement of this act.

Commencement.

31. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty.

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*An act to reduce into one act, the several acts concerning the Land Office, ascertaining the terms and manners of granting waste and unappropriated lands, directing the mode of processioning, and prescribing the duty of surveyors.**

[Passed March 1, 1819.]

Grants of land, to
issue from land
office.

Register, when
and how appointed.
To give bond and
security.

To appoint two
clerks.

To reside where
his office is kept.

Vacancy occurring
in recess of legis-
lature, how to be
filled.

Person filling such
vacancy, how long
to serve.

Copies of records
&c. attested by
register, good evi-
dence as originals.

1. *Be it enacted*, That all grants of land shall issue from the land office, in manner and form herein-after mentioned.(a)

2. A REGISTER of the land office shall be appointed, annually, by joint ballot of both Houses of Assembly, who shall give bond with sufficient security to the Governor or Chief Magistrate of this Commonwealth, in the penalty of ten thousand dollars; and shall have power to appoint two clerks, to assist in executing the business of the said office, but shall, nevertheless, reside there himself.(a)

3. If any vacancy shall happen by the death, resignation, removal or other legal disability of a register, during the recess of the General Assembly, the Governor or first magistrate of the Commonwealth, by and with the advice of the council, may appoint some other person, giving bond and security in like manner, to act as a register of the said office until the end of the next session of Assembly.(a)

4. ALL copies of the records, and other papers now being, or which shall hereafter be, in the said office, including those which have been removed from the office of the late proprietor

(a) May 1779, c. 13, § 1. Chan. 1814, c. 86, § 1, 2, 3; 1804, c. 17, Rev. p. 94; 1792, edi. 1794, 1803 and § 2, 3.

* The amendments made at the late Revision, are distinguished by being printed within single inverted commas.—Former general laws on this subject: revised acts of 1705, c. 21, 22. 3 *Hen. St. lar. p.* 504, 329; edi. 1733, of acts of 1705, c. 22. 3 *Hen. St. at lar. p.* 516; edi. 1733, acts 1710, c. 13. 5 *Hen. St. at lar. p.* 408; edi. 1752, and 1769, acts 1748, c. 1. Acts of May 1779, c. 12, 13. *Chan. Rev. p.* 90, 97. Revised act of 1792, edi. 1794, 1803, and 1814, c. 86. The whole series of land laws passed since the establishment of the Commonwealth's land office in 1779, will be published (according to the directions of the act concerning the present edition of the laws, ante, c. 1.) in an appendix, to which will be prefixed a brief account of the colonial laws touching this subject, with references to them all.

of the northern neck, duly attested by such register, shall be as good evidence as the originals would be.^(b)

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5. Any person may acquire title to so much waste and unappropriated land, lying within this Commonwealth, as he shall desire to purchase, on paying the consideration of two dollars for every hundred acres, which consideration may be paid in specie, or in auditor's warrants, or audited certificates; and so in proportion for a greater or smaller quantity, and obtaining certificate from the auditor of public accounts, in the following manner: The consideration money shall be paid into the hands of the treasurer, who shall give to the purchaser, a receipt for the payment, specifying the purpose it was made for; which being delivered to the auditor, he shall give to such person, a certificate thereof, with the quantity of land, he or she is entitled to, and, upon lodging the same in the land office, the register thereof shall grant to such person or persons, his, her or their heirs or assigns, a printed warrant, under his hand and the seal of his office, specifying the quantity of land and the rights upon which it is due, authorising any surveyor, duly qualified according to law, to lay off and survey the same, and shall carefully file and preserve in his office, all such vouchers and certificates, and shall keep a register of all warrants issued thereon, shewing the number and date of each warrant, the number of acres for which each warrant shall issue, the consideration upon which the same shall be founded, and the name or names of the person or persons, to whom each warrant shall issue; and shall, moreover, regularly enter and record in the books of his office, the executive certificates upon which military land warrants shall issue, which warrants shall be always good and valid, until executed by actual survey, or exchanged in the manner therein after directed: *Provided, always,* That no warrant shall issue to be located on any lands which may vest in the Commonwealth on account of the non-payment of the taxes thereon.^(c)

How title to unappropriated land may be acquired.

Consideration money, how much; how payable, and to whom.

Certificate of Auditor.

Warrant from register.

His duty to file such certificates, and keep a register of warrants issued thereon.

To record Executive certificates for military land warrants.

Land warrants always good, till executed by survey, or exchanged. Not to be located on lands forfeited for taxes.

6. *Provided, also,* That all unappropriated lands on the Bay of Chesapeake, on the sea shore, or on the shores of any river or creek, and the bed of any river or creek in this Commonwealth, which have remained ungranted by the former government, and which have been used as a common to all the good people thereof, shall be and the same are hereby excepted out of this act; and no grant issued by the register of the land office for the same, either in consequence of any survey already made, or which may hereafter be made, shall be valid or effectual in law, to pass any estate or interest therein.^(d)

Ungranted lands on Chesapeake, the sea shore, and shores and beds of rivers and creeks, excepted, and not grantable.

7. EVERY land warrant granted in pursuance of this act, and every part of such warrant, not located on waste and unappropriated land, shall be taken and held as personal

Land warrants, where personal, and when real, estate.

(b) Altered from May 1779, c. 13, § 1, at Rev. of 1792; edi. 1794, 1803, and 1814, c. 86, § 4.

(c) May 1779, c. 13, § 2; 1792, edi. 1794, 1803, and 1814, c. 86, § 5; 1814, c. 18, § 2.

† This proviso was amended at the late Revisal; lands forfeited for taxes being grantable by the act of 1792, for the consideration of an hundred dollars per hundred acres.

(d) Compiled of May 1780, c. 2, and 1801, c. 7; *Vid.* Chan. Rev. p. 120; edi. 1794, 1803, and 1814, c. 86, § 6; edi. 1803, and 1814, c. 290.

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'estate; and from the time of such entry, until the same shall be regularly withdrawn or vacated, such warrant, or so much thereof as shall be so entered, shall be taken and held as real estate.'

Original grants, to whom to be delivered.

8. THE register of the land office shall be, and he is hereby authorised, to deliver any original grant out of his office, to the bearer of the receipt given by him for the survey upon which such grant shall be founded.(c)

Surveyors, how nominated, examined and commissioned.

9. EVERY person, who shall hereafter desire to become a surveyor, shall be nominated by the court of his county, examined and certified able, by the county-surveyors of two adjacent counties, and, if of good character, commissioned by the Governor. He shall hold his office during good behaviour, and, before he shall be capable of entering upon the execution of his office, shall, before the court of the same county, take an oath, and give bond with two sufficient securities, to the Governor and his successors, in such sum as he, with advice of council, shall have directed, for the faithful execution of his office.*

Their tenure of office.

Oath.

Bond and security.

Where no county surveyor, court may appoint surveyor, to make necessary surveys.

10. IN all cases, where a survey may be necessary, and there shall be no county surveyor, in the county where it is to be made, it shall be the duty of the court of such county, to appoint a surveyor to make such survey, which, when made and returned pursuant to said order of appointment, shall be as effectual as if made by a county surveyor.(g)

Deputy surveyors, how recommended, examined and appointed.

11. ALL deputy surveyors shall be recommended by their principals to the court of the county, of which such principal may be surveyor; the court shall thereupon appoint and direct one or more fit persons, to examine into the capacity, ability and fitness of the person or persons so recommended; and, upon certificate of such examination, and report of the capacity, ability and fitness of the person or persons so recommended, the said court is hereby empowered and directed, to appoint him or them, to act as deputy or deputies, for whose conduct, in every respect, touching his office, the principal surveyor shall be answerable; and all deputies so appointed, shall have power and authority to act and do, in all things, and to every intent and purpose, as the principal surveyor, except in cases otherwise provided by this act; and shall

Principal responsible for their conduct.

Their powers,

and compensation.

Court may direct surveyor to nominate deputies; and in case of failure, do it for him.

Penalty on deputy bribing principal, to obtain recommendation.

thereupon be entitled to one half the fees received for services performed by them respectively. If any principal surveyor shall fail to nominate a sufficient number of deputies, to perform the services of his office in due time, the court of the county shall direct what number he shall nominate; and in case of failure, shall nominate for him. And if any deputy surveyor, or any other, on his behalf, and with his privity, shall pay or agree to pay any greater part of the profits of his

(c) 1814, c. 18, § 3.

(g) 1812, c. 12, § 3.

* Surveyors were formerly required to be examined by the president and professors of William and Mary College, and commissioned by the Governor, with a reservation of one sixth of their fees to the College; *Vid.* Acts Oct. 1783, c. 32, § 1, 1792, *edi.* 1794, 1803 and 1814, c. 86, § 7. By act of 1812, c. 12, § 1, 2, surveyors of certain counties were to be examined by the president and trustees of Randolph Academy; but, by act of 1815, c. 45, they were to be examined as by this act directed, and commissioned by the Governor; with the former reservation as to part of their fees; which reservation was struck out at the late Revision, as well as that of certain counties in favor of Randolph Academy. *Vid.* Act 1787, c. 95, § 14; 1792, *edi.* 1794, 1803, and 1814, c. 86, § 12.

office, sum of money in gross, or other valuable consideration, to his principal, for his recommendation or interest in procuring the deputation, such deputy and principal shall be thereby rendered for ever incapable of serving in such office: *Provided*, always, that any deputy surveyor shall be removable from office, at the discretion of his principal.(h)

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Deputy how removable from office.

12. EVERY surveyor of lands shall hereafter be resident in the county whereof he is surveyor, during the time he shall continue in office, under the penalty of forfeiting six hundred dollars for every month he shall reside out of the same, unless detained by such business, as the court of the county shall judge reasonable; one moiety shall be to the Commonwealth for the use of the literary fund, and the other moiety to the informer.(h)

Surveyor where to reside.

Penalty for non-residence.

How appropriated.

13. WHERE any person shall hold a warrant from the land office, or be desirous to make an entry, in any county within this Commonwealth, for vacant and unappropriated land, and there shall be no surveyor qualified to act in such county, then it shall and may be lawful for such person, to make such entry with the clerk of the county court, who shall make and record the same in the entry book belonging to his county; and the same surveyed by any legal surveyor of the next neighbouring county shall be good and sufficient, to enable such person to obtain a patent or grant for the same.(i)

Where no county surveyor, entries for lands may be made with the clerk.

His duty thereupon.

Survey, in such case, how to be made.

14. WHENEVER any such vacancy shall occur in the office of county surveyor, the clerks of the said county courts shall grant certified copies, from the records of the surveyor's books of their counties; which, when granted, being regularly attested by the said clerks, and accompanied with an order of the county court, certifying that there is no qualified surveyor within the county, such copies, so attested, shall be receivable in evidence, in all actions at common law, or suits in chancery, in any court of this Commonwealth, and entitled to the same degree of credit therein, as if the same had been certified by a surveyor regularly commissioned and qualified.(k)

Clerks also to grant copies from surveyor's books.

Such copies, with court's certificate of vacancy in office of surveyor, to be evidence, as if certified by surveyor.

15. WHENEVER any clerk shall perform the duties so as aforesaid required of him, he shall be subject to the same laws, and conform to the same regulations, which govern surveyors in the performance thereof; and be subject, also, to the same penalties, and damages, for negligence or misbehavior.(k)

Liabilities of clerks performing such duties.

16. THE said clerks, for the performance of the duties hereinafter required, may demand and receive the same fees, as surveyors are entitled to receive for like services; and may issue their tickets therefor in the same manner as for other fees.(k)

Fees allowed as sur- them.

17. EVERY person having a land warrant, and being desirous of locating the same on any particular waste and unappropriated lands, shall lodge such warrant with the chief surveyor of the county, wherein the said lands or the greater part of them lie, who shall give a receipt for it, if required. The party shall direct the location thereof so specially and precisely, as that others may be enabled, with certainty, to locate other warrants, Entry how special

Locations of land warrants how made.

Surveyor to give receipt for warrant.

Entry how special

(h) Oct. 1782, c. 33, § 1, 6. Chan. Rev. p. 219; 1792, ed. 1794, 1803, and 1814, c. 86, § 8, 9.

(i) Oct. 1782, c. 33, § 1; Chan. Rev. p. 179; 1792, ed. 1794, 1803, and 1814, c. 86, § 10; 1815, c. 26, § 1.
(k) 1815, c. 26, § 2, 3, 4.

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When to bear date.
Surveyor to leave
no blanks between
entries.

Where several ap-
ply together, pri-
or warrant to have
preference.

If warrants have
same date, lots to
decide.

Limitation of time
for surveys on en-
tries.

Several locations
on one warrant, to
be in same county.
Exchange warrant
for unappropriated
part.

Surveyor to certi-
fy, how much.

Warrant wholly
appropriated, to
accompany last
survey.

Locations prohib-
ited on warrants
dated on or before
Feb. 2, 1804.

Such warrants ex-
changeable.

Surveyor's duty
on making entries
for non-residents,
to appoint time
for surveying, and
give written no-
tice.

Applicants may
demand view of
originals of prior
entries; and also
attested copies.

How Surveyors
may make loca-
tions for their own
benefit.

Surveys on such
locations, when, &
by whom.

on the adjacent *residuum*; which location shall bear date the day on which it shall be made, and shall be entered by the surveyor in a book to be kept for that purpose, in which there shall be left no blank leaves or spaces between the different entries.^(l)

18. AND, if several persons shall apply with their warrants, at the office of any surveyor, at the same time, to make entries, they shall be preferred according to the priority of the dates of their warrants; but if such warrants be dated on the same day, the surveyor shall settle the right of priority between such persons by lot.^(l)

19. *PROVIDED*, That all entries shall be void, unless surveyed within two years after their date, and the lands subject to another location.^(m)

20. *PROVIDED*, That no location shall be made on any warrant, in any other county than that in which the first location on such warrant is made; and if any person hath part of such warrant unappropriated, it shall be lawful for such person, to obtain an exchange warrant for such unappropriated part: And *provided also*, That the surveyor of any county, where any location or locations is or are made, shall certify, on the back of such warrant, how much remains unappropriated; and if the whole of the warrant be appropriated, the same shall accompany the last survey made by virtue thereof.⁽ⁿ⁾

21. It shall not be lawful to make an entry or location of any waste land, upon, or by virtue of any warrant, issued for surveying of waste and unappropriated lands within this Commonwealth, which bears date on or before the second day of February one thousand eight hundred and four. But the holder or holders of any such warrant, may return the same to the Register of the land office, and obtain from him an exchange warrant therefor, or for such balance as shall appear to remain due upon the same, in the mode herein prescribed.^(o)

22. AND every surveyor shall, at the time of making entries for persons not being inhabitants of his county, appoint a time for surveying their land, and give notice thereof in writing to the persons making the same; and if, on such application at his office, the surveyor shall refuse to enter such location, under pretence of a prior entry for the same lands, made by some other persons, he shall have a right to demand of the said surveyor, a view of the original of such prior entry in his book, and also, an attested copy of it.^(p)

23. ANY chief surveyor having a warrant for lands, and desirous to locate the same in his own county, shall enter such location with the clerk of the county, who shall return the same to his next court, to be there recorded; and the said surveyor shall proceed to have the survey made as soon as may be, or within six months at farthest, by some one of his depu-

(l) May 1779, c. 13, § 3; October 1783, c. 32, § 1; Chan. Rev. p. 95, 219; 1792, ed. 1794, 1803, and 1814, c. 86, § 13, 14.

(m) 1796, c. 47, § 3; ed. 1808, app. No. IX, p. 129.

(n) 1803, c. 110, § 1; edition 1806, c. 44, § 1.

(o) 1815, c. 30, § 2.

(p) May 1779, c. 13, § 3; October 1783, c. 32, § 1; Chan. Rev. p. 96, 219; 1792, ed. 1794, 1803, and 1814, c. 86, § 15, 16.

ties, or, if he hath no deputy, then by any surveyor or deputy surveyor of an adjacent county; and in case of failure, his entry shall be void, and the land liable to the entry of any other person.(p)

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24. EVERY chief surveyor shall proceed, with all practicable dispatch, to survey all lands entered for in his office, and shall, if the party live within his county, either give him personal notice of the time at which he will attend to make such survey, or shall publish such notice, by fixing an advertisement thereof on the door of the court-house of the county, on two several court days, which time, so appointed, shall be at least one month after personal notice given, or after the last advertisement so published; and if the surveyor shall accordingly attend, and the party, or some one for him, shall fail to appear at the time, with proper chain-carriers, and a person to mark the lines, if necessary, his entry shall become void, and the land thereafter subject to the entry of any other person; and the surveyor shall return him the warrant; which may, notwithstanding, be located anew, upon any other waste or unappropriated lands, or again upon the same land, where it hath not in the mean time been entered for by any person; 'but the party so failing, shall not be permitted to re-enter such land more than once.'(q)

Surveyor's duty to survey as soon as practicable.

To give notice; and how.

By what neglect an entry shall become void.

Surveyor to return the warrant.

New location, may be made; or former renewed;

Such renewal, once only.

25. AND, whereas many inconveniences have arisen, from the inattention of surveyors to the variation of the magnetic needle, in surveying lands, which were formerly surveyed when the variation was very different from what it is now, and many mistakes, and much confusion may arise, in comparing future surveys with the present; for remedy whereof, *Be it enacted*, That every surveyor shall, under the penalty of fifteen dollars, express and declare, in or on the plat and return of each survey, by him or them taken or made, the true quantity or degree of variation aforesaid, and whether it be east or west.(r)

Variation of magnet, to be expressed in plats, under a penalty.

26. *PROVIDED, always*, That, when any surveyor shall be called upon, or ordered to re-survey any lands that may have been surveyed before, such surveyor shall or may re-survey such lands, according to the mode of surveying by the magnetic meridian; but shall, nevertheless, under the penalty aforesaid, return and certify in his plat, the quantity or degree of the variation of the magnetic needle from the true meridian, at the time of making such re-survey, and shall also, in the said plat and return, certify (where the same can be done,) the quantity or degree of variation between the original lines of such former survey from the true meridian aforesaid.(r)

Re-surveys to be made according to magnetic meridian; but plats to state degree of variation from true meridian;

Also, (if possible,) the variation of lines of former survey from true meridian.

27. THE penalty of fifteen dollars afore-mentioned, may be recovered by any person or persons who shall sustain any damage by the surveyor's failing to comply with the directions aforesaid, who will inform or sue for the same, by warrant before any justice of the peace.(r)

Penalty, how recoverable.

(p) May 1779, c. 13, § 3; October 1783, c. 32, § 1; Chan. Rev. p. 96, 219; 1792, edi. 1794, 1803, and 1814, c. 86, § 15, 16.

(q) May, 1779, c. 13, § 3; October,

1783, c. 32, § 1; 1792, edi. 1794, 1803, and 1814, c. 86, § 17.

(r) 1772, c. 12, § 1, 2; Chan. Rev. p. 23; 1792, edition 1794, 1803, and 1814, c. 86, § 18, 19, 20.

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When surveyor shall direct deputy to make survey.
Chain-carriers to be sworn.

Their compensation.

Surveys how made and bounded.

Breadth to be at least one-third of length.
Exceptions to this rule.

Plat and certificate of survey, when to be delivered; and what to express.
Quantity;
Situation;

Boundaries;

Owners of lands;
And nature of warrant and right on which survey is made.

Plats and certificates to be examined and tried by chief surveyor, and entered in a book.

Surveyor to make returns to clerk's office annually, of lists of surveys of vacant lands.

Names of persons, And quantities in each.

Clerks, or their deputies, not to be surveyors, &c.

Surveyors indictable for breach of duty.

How punishable.

Right of action to party injured.

28. WHERE the chief surveyor doth not mean to survey himself, he shall, immediately after the entry made, direct a deputy surveyor to perform the duty, who shall proceed as is before directed in the case of the chief surveyor.(s)

29. THE persons employed to carry the chains on any survey, shall be sworn by the surveyor, whether principal or deputy, to measure justly and exactly, to the best of their abilities, and to deliver a true account thereof to such surveyor, and shall be paid for their trouble by the party for whom the survey is made.(s)

30. THE surveyor, at the time of making the survey, shall not leave any open lines, but shall see the same plainly bounded by marked trees, (except where a water-course, or ancient marked line shall be the boundary,) and shall make the breadth of each survey at least one-third of it's length, in every part, unless where such breadth shall be restrained on both sides by mountains unfit for cultivation, by water-courses, or the bounds of lands before appropriated.(s)

31. THE surveyor, as soon as it can conveniently be done, and within three months at farthest after making the survey, shall, on application, deliver to his employer, or his order, a fair and true plat and certificate of such survey, the quantity contained, the hundred, (where hundreds are established in the county,) wherein it lies, the courses and descriptions of the several boundaries, natural and artificial, antient and new, expressing the proper names of such natural boundaries, where they have any, and the name of every person whose former lines made a boundary, and also the nature of the warrant and rights on which such survey was made.(t)

32. THE said plats and certificates shall be examined and tried by the said principal surveyor, whether truly made, and legally proportioned, as to length and breadth, and shall be entered, within three months at farthest after the survey is made, in a book well bound, to be provided by the court of his county, at the county charge; and he shall, in the month of January, in every year, return to the clerk's office of his county court a true list of all surveys of vacant lands, made by him or his deputies in the preceding twelve months, with the names of the persons for whom they were respectively made, and the quantities contained in each, there to be recorded by such clerk. And no person shall hereafter hold the offices of clerk of a county court and surveyor of a county; nor shall a deputy in either office act as deputy or chief in the other.(t)

33. ANY surveyor, whether principal or deputy, failing in any of the duties aforesaid, shall be liable to be indicted in the superior court of law of the county in which he shall reside, and punished by amercement or deprivation of his office, and incapacitated to take it again, at the discretion of a jury; and shall, moreover, be liable to any party injured, for all damages he may sustain by such failure.(t)

(s) May 1779, c. 13, § 3; October 1783, c. 32, § 1; Chan. Rev. p. 96, 220; 1792, ed. 1794, 1803, and 1814, c. 86, § 21, 22, 23.

(t) May 1779, c. 13, § 3; October 1783, c. 32, § 1; Chan. Rev. p. 96, 220; 1792, ed. 1794, 1803, and 1814, c. 86, § 24, 25, 26, 27.

34. EVERY county court shall, once in every year, and oftener if they see cause, appoint two or more capable persons to examine the books of entries and surveys in possession of their chief surveyor, and to report in what order and condition the same are kept; and on his death, or removal, shall have power to take the same into their possession, and deliver them to the succeeding chief surveyor.(t)

35. If any surveyor, or other person who may be in possession of any such book of entries or surveys, shall refuse or neglect to produce such book to the persons who by any court may be appointed to examine the same, or to deliver up the same agreeably to the order of such court, to any chief surveyor, who has succeeded, or may succeed any surveyor dead or removed from office, such surveyor, or other person, shall, for every such refusal or neglect, forfeit and pay the sum of thirty dollars; one half to the use of the Commonwealth for the benefit of the literary fund, and the other to the use of the person suing for the same, to be recovered by action of debt, plaint or information.(v)

36. AND, for preventing hasty and surreptitious grants, and avoiding controversies and expensive law suits; *Be it enacted*, That no surveyor shall, at any time within twelve months after the survey made, issue or deliver any certificate, copy or plat of land by him surveyed, except only to the person or persons for whom the same was surveyed, or to his, her or their order, unless a *caveat* shall have been entered against a grant to the person claiming under such survey, to be proved by an authentic certificate of such *caveat*, from the clerk of the court where such *caveat* shall be entered, produced to the surveyor; and, if any surveyor shall presume to issue any certificate, copy or plat as aforesaid, to any other than the person or persons entitled thereto, every surveyor, so offending, shall forfeit and pay to the party injured, his or her legal representatives or assigns, one hundred dollars for every hundred acres of land contained in the survey, whereof a certificate, copy or plat shall be so issued, or shall be liable to the action of the party injured at common law, for his or her damages, at the election of the party.(w)

37. It shall not be lawful for any surveyor to admit an entry for any land, without a warrant from the register of the land office.(x)

38. EVERY person, for whom any waste or unappropriated lands shall be so located and laid off, shall, within twelve months at farthest, after the survey made, return the plat and certificate of the said survey into the land office, and may demand of the register a receipt for the same; and on failing to make such return within twelve months, as aforesaid, or if the breadth of his plat be not one-third of its length, as before directed, it shall be lawful for any other person to enter a

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County court to appoint examiners of surveyor's books.

To take and deliver over, on his death or removal.

Penalty for not producing books to examiners, or not delivering to successor.

How appropriated.

Surveyors not to deliver certificates, copies or plats, within 12 months, to any but owner of survey, or his order.

Exception, in case of caveat.

Penalty for breach of this regulation.

Recoverable by party injured,

Or action at common law, for damages, at his election.

No entry lawful without warrant.

Plat and certificate when to be returned to land office.

Register to give receipt.

Caveat may be entered, for want of such return in due time; for defect of breadth of plat;

(t) May 1779, c. 13, § 3; October 1783, c. 32, § 1; Chan. Rev. p. 96, 220; 1792, ed. 1794, 1803, and 1814, c. 86, § 24, 25, 26, 27.

(v) 1787, c. 52, § 5; 1792, edition 1794, 1803, and 1814, c. 86, § 28.

(w) October 1783, c. 32, § 2; Chan. Rev. p. 220; 1792, ed. 1794, 1803, and 1814, c. 86, § 29.

(x) May 1779, c. 13, § 3; Chan. Rev. p. 95, 96; 1792, ed. 1794, 1803, and 1814, c. 86, § 30, 31. Both sections were amended at the late revision.

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or by person hav-
ing better right.

Omission to *caveat*
no bar to other re-
medy, in law or
equity.

Plats, &c. evident-
ly comprehending
rights of others,
and dated since
January 1, 1796,
not receivable at
land office.
Such surveys ille-
gal and void.
Saving party's
right to any waste
land, by location
prior to January 1,
1796.

No entry valid, of
lands settled thirty
years, and taxes
paid within that
time.

Commonwealth's
title to such lands
released.

Person holding,
may have land sur-
veyed, plat, &c.,
and evidence of
settlement, &c. re-
corded.

Effect thereof.

This provision not
to affect entries
prior to January
24, 1798, nor Com-
monwealth's right
to lands forfeited
for taxes ;
Nor affect act of
limitations.

Mode of proceed-
ing on *caveat*.
Copy thereof when
to be delivered to
clerk of court.
Also copy of sur-
vey and plat.

caveat in the land office, against the issuing any grant to him, expressing therein for what cause the grant should not issue ; or, if any person shall obtain a survey of land, to which another hath by law a better right, the person having such better right, may, in like manner, enter a *caveat* to prevent his obtaining a grant, until the title can be determined ; such *caveat* also expressing the nature of the right on which the plaintiff therein claims the said land. ' The omission, however, of any person claiming such better right to avail himself of the remedy by ' *caveat* hereby given, shall in no wise be construed to bar or ' hinder such person from asserting such better right in any ' court of law or equity, in the same manner as if no such ' remedy by *caveat* had been given him.'

39. But the register of the land office is hereby restrained from receiving in future into his office, any plat and certificate of survey, which evidently comprehends the rights of others, and bears date subsequent to the first day of January in the year seventeen hundred and ninety-six, notwithstanding any deductions or reservations. And all such surveys thereafter made, shall henceforth be deemed illegal and void. But, the party shall nevertheless retain all such right as he may have derived previous to the said first day of January, by means of any location theretofore made, upon any waste and unappropriated land within this Commonwealth.(y)

40. No entry or location, on any lands within this Commonwealth, which have been settled thirty years prior to the date of such entry or location, and upon which quit rents or taxes can be proved to have been paid at any time within the said thirty years, shall be deemed valid ; and any title which the Commonwealth may be supposed to have thereto, is hereby relinquished ; ' and any person in possession of such land, and ' claiming the same under such settlement and payment, may ' have said land surveyed, and, on producing before the court ' of the county where the land, or the greater part thereof may ' lie, satisfactory evidence of such settlement and payment, ' may have the plat and certificate of survey, together with ' such evidence, entered of record ; and such record shall be ' *prima facie* evidence in any subsequent controversy, which ' may arise, with any person claiming under a location made ' after such admission to record.' *Provided*, That this provision shall not extend to the case of any entry or location regularly made according to law, previous to the twenty-fourth day of January, in the year seventeen hundred and ninety-eight ; nor shall it be so construed as to affect the right of this Commonwealth, in or to any lands or tenements, forfeited by non-payment of the Commonwealth's taxes, or to alter or change the construction of the act of limitations of real actions.(z)

41. THE person entering any *caveat*, shall take from the register of the land office a certified copy thereof, which, within thirty days thereafter, he shall deliver to the clerk of the superior court of law, or county court of that county, in which the land lies ; and shall, moreover, take from the surveyor of the

(y) 1795, c. 9 ; edi. 1803, and 1814,
o. 187, § 1.

(z) 1797, c. 10, § 1, 2 ; edi. 1803,
and 1814, c. 228, § 1, 2.

county, or from the register's office, a certified copy of the survey and plat, which, within thirty days from the entering such caveat, he shall, in like manner, deliver to the clerk of the court where the suit shall be instituted; and in case of failure in either instance, the *caveat* shall be void. (a)

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Effect of failure.

42. THE clerk of such court, on receiving the same, shall enter such copy of the *caveat* in a book to be kept by him for that purpose, and shall, thereupon, issue a summons, reciting the cause for which such *caveat* is entered, and requiring the defendant to appear on the first day of the next succeeding superior court of law, or quarterly session, if the suit be instituted in a county court, and defend his right; and, on such process being returned executed, the court shall proceed to determine the right of the cause in a summary way, without pleadings in writing, impannelling and swearing a jury for the finding of such facts, as are material to the cause, and are not agreed by the parties; and shall, thereupon, give judgment: a copy of such judgment, if in favor of the defendant, being delivered into the land office, shall vacate the said *caveat*; and if not delivered within three months, a new *caveat* may be entered against the grant; and if the said judgment be in favor of the plaintiff, upon delivering the same into the land office, together with a plat and certificate of the survey, and also producing a legal certificate of new rights on his own account, he shall be entitled to a grant thereof; but, on failing to make such return, and produce such certificates, within six months after judgment so rendered, it shall be lawful for any other person to enter a *caveat* for that cause against issuing the grant; upon which subsequent *caveats*, such proceedings shall be had, as are before directed in the case of an original *caveat*; and, in any *caveat*, where judgment shall be given for the defendant, the court shall award him his costs, and may compel the plaintiff, in any *caveat*, if they think fit, to give security for costs, or, on failure thereof, may dismiss the suit; and, in case the plaintiff in any such *caveat* shall recover, the court may, if they think it reasonable, award costs against the defendant: *Provided*, That where any lands surveyed upon a land warrant as aforesaid, shall, in consequence of any judgment upon a *caveat*, be granted to any other person than the party claiming under such warrant, such party shall be entitled to a new warrant from the register, for the quantity of land so granted to another, reciting the original warrant and rights, and the particular cause of granting the new warrant. (a)

Clerk to enter copy of *caveat* in a book.

Summons reciting cause of *caveat*.

Right to be determined in summary way, without pleadings in writing.

Jury to find material facts, not agreed by parties. Effect of judgment for *caveatee*.

New *caveat*, if copy be not delivered at land office within 3 months.

Effect of judgment for *caveator*. For what neglect, he may be liable to a *caveat*.

Proceedings on subsequent *caveats*.

Costs on judgment for *caveatee*.

Caveator compellable to give security for costs.

Costs discretionary on judgment for *caveator*.

In such case, *caveatee* entitled to new warrant from register.

Recital therein.

43. *PROVIDED*, always, That no *caveat* shall be entered, unless the person, at the time of entering such *caveat*, shall file with the register or his deputy, an *affidavit* that such *caveat* is really and *bona fide* made with an intention of procuring the lands for the person in whose name such *caveat* is entered; and not in trust for the benefit of the person against whom such *caveat* is entered; and all *caveats* entered contrary to the directions of this act, shall be absolutely null and void. (b)

Affidavit required on entering *caveat*.

(a) May 1779, c. 13, § 3; Chan. Rev. p. 96; 1787, c. 10, § 2; 1792, edition 1794, 1803, and 1814, c. 86, § 32, 33.

(b) May 1783, c. 39, § 4; Chan. Rev. p. 207; 1792, edition 1794, 1803, and 1814, c. 86, § 34, 35.

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Effect of a summons upon a *caveat*, not returned, or returned not executed.

Of plats, &c. not being recorded in surveyor's office, or not returned to land office, in due time.

Clerks to return to register lists of *caveats* dismissed or determined; and when.

Register's duty thereupon.

Grants to issue.

Register's fees, paid by *caveator* obtaining judgment, to be paid by register to him who paid in first instance.

Regulations to prevent confusion and mistake, in application, exchange or renewal of warrants.

Aliens, as well as citizens, may assign or transfer land warrants, or certificates of survey. Time allowed alien to become citizen, or make transfer.

44. AND, whenever a summons upon a *caveat* shall either not be returned at all, or be returned *not executed*, the *caveat* upon which such summons shall have issued, shall be dismissed with costs, unless the court, before whom such *caveat* shall be depending, shall be satisfied that the said summons not having been executed did not proceed from the neglect of the party who entered such *caveat*.(b)

45. AND, whereas in some cases, plats and certificates of survey have not been recorded in the surveyor's office, nor returned to the register's office, within the times respectively limited by law, and it is doubtful, whether the lands held under such surveys, are not still liable to be *caveated*; *Be it therefore enacted*, That, where no *caveat* shall be entered before the said duties respectively shall be performed, such land shall not thereafter be liable to forfeiture on account of such failure.(c)

46. THE clerks of the several superior courts of law and county courts, within one month after the end of every session of the said courts, shall return to the register of the land office an attested list of all *caveats*, that were dismissed or determined at the said preceding court, which the register shall compare with the *caveat* book; and, in all cases where he shall find that the *caveats* have been dismissed, or determined in favor of the defendant, he shall make out grants for such lands, as if no such *caveat* had been entered in his office.(d)

47. WHENSOEVER, upon a *caveat*, the court shall determine in favor of a *caveator*, all the fees he shall pay into the register's office, in consequence of such determination, in order to obtain his patent, shall be, by the register, paid to the person who, in the first instance, upon the return of the survey, hath been compelled to pay the fees.(e)

48. AND, to prevent confusion and mistake in the application, exchange or renewal of warrants, the register of the land office is hereby directed and required to leave a sufficient margin in the record books of his office; and whenever any warrant shall be exchanged, renewed or finally carried into execution by a grant, to note the same in the margin opposite to such warrant, with *folio* references to the grant, or other mode of application; and also, to note in the margin opposite to each grant, the warrant or warrants and survey, on which such grant is founded, with proper *folio* references to the books in which the same are recorded.(f)

49. ALL persons, as well foreigners as others, shall have right to assign or transfer warrants or certificates of survey for lands: And any foreigner, purchasing warrants for lands, may locate and have the same surveyed, and, after returning a certificate of survey to the land office, shall be allowed the term of two years, either to become a citizen, or to transfer

(b) May, 1783, c. 39, § 4; Cham. Rev. p. 207; 1792, edi. 1794, 1803 and '14, c. 86, § 34, 35.

(c) May, 1782, c. 49, § 4; Cham. Rev. p. 169; 1792, edi. 1794, 1803 and '14, c. 86, § 36.

(d) May, 1783, c. 39, § 5; Cham.

Rev. p. 207; 1792, edi. 1794, 1803 and '14, c. 86, § 37.

(e) October, 1784, c. 51, § 5; 1792, edi. 1794, 1803 and '14, c. 86, § 38.

(f) May, 1779, c. 13, § 3; Cham. Rev. p. 97; 1792, edi. 1794, 1803 and '14, c. 86, § 39, 40.

his right in such certificate of survey to some citizen of this or any other of the United States of America.(f)

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50. But, no treasury land warrant, issued after the first day of February, eighteen hundred and nine, shall be assignable, but by written assignment on the back of such warrant, attested by two or more witnesses; and no new warrant shall be granted, in exchange for such warrant, unless it shall be assigned in the manner required by this section.(g)

Treasury land warrants issued since February 1, 1809, how assignable; And how exchangeable.

51. *PROVIDED, however*, That the register of the land office may, and he is hereby authorised and required, on the application of any person or persons, who was or were the holder or holders of any land warrant on the said first day of February, eighteen hundred and nine, to receive any such land warrant theretofore issued, although such warrant may have been transferred by the mere endorsement of the name, or unattested assignment, of the original purchaser, or any subsequent holder, and to grant other warrants in exchange therefor, in the mode theretofore prescribed by law: *Provided, always*, That no such exchange shall be made, unless the applicant therefor shall have previously annexed to such warrant, his own *affidavit*, stating that, so far as he knows or believes, the endorsement or assignments, appearing on such warrant, have been made fairly and *bona fide*, and that he or those in whose name or names such exchange is sought, is or are the true and rightful proprietor or proprietors of such warrant.(h)

Such warrants issued before that day, exchangeable at land office, though transferred by mere endorsement of name, &c.

Proviso, that person applying shall make *affidavit*, and to what effect.

52. Such original warrant, with the *affidavit* thereto annexed, shall be carefully filed away by the register of the land office: And it shall be his duty to publish, quarter-yearly, in some news-paper published in the city of Richmond, a list of all original warrants, for which exchange warrants have been granted; noting therein the date of such original, the right on which it issued, the quantity of land, the name of the original holder, of every endorser, assignor and assignee, and the name and residence of the person or persons to whom exchange warrants have been granted therefor; *Provided*, That nothing herein contained shall be construed as impairing, or in any manner affecting the rights of individuals to such original warrant, other than those to whom exchange warrants may have been granted; but such individuals may be at liberty to contest the rights growing out of such warrant, in the same manner as if this provision had never been made.(i)

Original warrants and *affidavits* to be filed by register.

Publication, quarter-yearly, of lists of original, for which exchange warrants have been granted.

What to be stated therein.

Rights of other persons to such original warrants, saved.

53. WHEN any grant shall have been finally completed, the register shall cause the plat and certificate of survey, on which such grant is founded, to be exactly entered and recorded in well bound books, to be provided for that purpose, at the public charge.(k)

Plats, &c. to be recorded on issuing grants.

54. DUE returns of the several articles herein-before required, being made into the land office, the register, within not less than six, nor more than nine months, shall make out a

Grant when issuable.

(f) May, 1779, c. 13, § 3; Chan. Rev. p. 97; 1792, ed. 1794, 1803 and '14, c. 86, § 39, 40.

(g) 1808, c. 9, § 3; edition 1812, c. 10, § 3.

(h) *Ibid*, § 1.

(i) 1808, c. 9, § 2; edition 1812, c. 10, § 2.

(k) May, 1779, c. 13, § 3; Chan. Rev. p. 97; 1792, ed. 1794, 1803 and '14, c. 86, § 41.

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And in what form.

grant, by way of deed poll, to the party having right, in the following form :

A. B. Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting: Know ye, that, in consideration of military service performed by C. D. to this Commonwealth, &c. (or in consideration of military service performed by C. D. to the United American States, or in consideration of the sum of _____, paid by C. D. into the treasury of this Commonwealth, &c.) there is granted by the said Commonwealth unto the said C. D. a certain tract or parcel of land, containing _____ acres, lying in the county of _____, and hundred of _____, &c. (describing the particular bounds of the land, and the date of the survey, upon which the grant issues,) with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said C. D. and his heirs forever. In witness whereof, the said A. B., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the seal of the said Commonwealth to be affixed, at _____, on the _____ day of _____, in the year of our Lord _____, and of the Commonwealth _____.

A. B. (l)

Endorsement.

55. UPON which grant the said register shall endorse that the party hath title to the same; whereupon, it shall be signed by the Governor, sealed with the seal of the Commonwealth, and then entered of record at full length, in good and well bound books, to be provided for that purpose at the public expense, and kept by the register; and, being so entered, shall be certified to have been registered, and then be delivered to the party or his order. (l)

Grants to be recorded,

And delivered to patentee, or his order.

Provision where the grant issues to heirs or assignee.

56. WHERE a grant shall be made to the heirs or assignee of a person claiming under any of the before-mentioned rights, the material circumstances of the title shall be recited in such grant. (l)

Index of grants to be kept by register.

57. It shall be the duty of the register of the land-office to cause to be made, and in future to keep, a separate index, for all patents that have issued, or may hereafter issue, for lands lying in each county within this Commonwealth, ascertaining the county in which each tract of land may lie, from a reference to the patent. (m)

Pre-emption right of infants, &c. to enter for and complete titles to swamps, &c. contiguous to their lands.

58. THE proprietor of any highlands, to which any swamps, marshes, or sunken grounds are contiguous, if an infant, *feme covert*, beyond sea, or under any other legal disability, shall have a right of pre-emption to enter for, and complete his or her title thereto, at any time within three years after such disability shall be removed. (n)

59. AND whereas, through the ignorance or fraud of surveyors, it may happen, that divers persons now do or may hereafter hold, within the bounds expressed in their patents or grants, greater quantities of land than are therein mentioned; for quieting such possessions, preventing controversies, and doing equal justice to the Commonwealth and it's

(l) May, 1779, c. 13, § 3; Chan. Rev. p. 97; 1792, ed. 1794, 1803 and '14, c. 86, § 42, 43, 44.

(m) 1817, c. 9, § 1.

(n) May, 1784, c. 10, § 4; 1792, ed. 1794, 1803 and '14, c. 86, § 45.

citizens: *Be it enacted*, That it shall not be lawful for any person to enter for, survey or take up any parcel of land held as surplus in any patent or grant, except during the lifetime of the patentee or grantee, and before any transference, conveyance, or other alienation shall have been made, of the lands contained in such patent or grant, and until the party intending to enter and take up the same shall have given one year's full notice to such patentee or grantee of such his intention; and, in case such patentee or grantee shall not, within the year, obtain rights, and sue forth a patent for the surplus land by him held, it shall be lawful for the person who gave notice as aforesaid, upon producing a certificate from the clerk, of due proof of such notice before the court of the county wherein such patentee or grantee resides, to demand from the register of the land office, a warrant to the surveyor of the county wherein such lands lie, to re-survey, at the proper charge of the person obtaining such warrant, the whole tract within the bounds of the patent or grant; and, upon such person's returning, into the land office, a plat and certificate of such re-survey, together with the warrant on which it is founded, and obtaining and producing new rights for all the surplus land found within the said bounds, he may sue for and obtain a new grant for such surplus, which shall be granted to him, in the same manner as waste and unappropriated land; but the former patentee or grantee may assign such surplus land in any part of his tract, as he shall think fit, in one entire piece, the breadth of which shall be at least one-third of the length; and, in such new grant there shall be a recital of the original patent or grant, the re-survey by which the surplus was ascertained, and other material circumstances.(o)

60. *PROVIDED, always*, That, if, upon notice given as aforesaid, the original patentee or grantee shall, within the year, re-survey his tract, and it be thereupon found that he hath no more than the quantity of land expressed in his patent or grant, with the allowance herein-after mentioned, the party giving such notice shall be liable to pay all charges of such re-survey, for which he shall give sufficient security to the said patentee or grantee at the time of the notice; otherwise such notice shall be void and of no effect; and, moreover, for his unjust vexation, shall also be liable to an action upon the case, at the suit of the party grieved: and that, in all such new surveys, the patentee or grantee shall have an allowance, at the rate of five acres in every hundred, for the variation of instruments.(o)

61. WHERE any person shall find any mistake or uncertainty in the courses or description of the bounds of his lands, and desires to rectify the same, or shall hold two or more tracts of land adjoining to each other, or shall own any locations or entries adjoining such tracts, or any of them, and is desirous to include them in one grant; he may, in either case, having previously advertised his intentions, and the time of application, at the door of the court-house, on two several court

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Restrictions on right to enter for, &c. surplus lands in patents or grants.

Year's notice to patentee.

Proceeding after year has elapsed.

Warrant to re-survey.

Return of plat, &c. to land office.

Grant for surplus.

Former patentee may assign surplus in such part of his tract as he shall think fit; and how laid off.

Recital in such new grant.

Provision if original patentee re-survey and find no surplus.

Party giving notice to pay all charges.

Security for charges, to be given.

Right of action to party grieved. Allowance, in new surveys, for variation of instruments.

How owner may proceed to rectify mistakes or uncertainties in courses, &c., or to obtain inclusive grants.

Advertisement.

(o) May, 1779, c. 13, § 4, 5, 6; Chan. Rev. p. 97; 1792, ed. 1794, 1803 and 1814, c. 86, § 46, 47, 48, 49.

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Notice to owners
of adjoining lands.
Petition to county
court.

Order for re-sur-
vey.

Plat, &c. to be re-
turned to, and
examined by
court.

Certificate by
court.

Return to land
office.

Register's receipt.

Proceeding in
case of *caveat*.

days, and also having given notice to the owners of the adjoining lands, present a petition to the court of the county, in which the land lies, reciting the nature and truth of the case; and such court may, and is hereby empowered, to order the surveyor of their county to re-survey such lands, at the charge of the party, according to his directions, and the original or authentic title papers, taking care not to intrude upon the possessions of any other persons, and to return a fair plat and certificate of such re-survey into the said court, to be examined and compared with the title papers; and if such court shall certify, that, in their opinion, such re-survey is just and reasonable, the party may return the same, together with his material title papers, into the land office, and demand the register's receipt for them; and, in case any *caveat* shall be entered against his obtaining a new grant upon such re-survey, the same proceedings shall be had therein as is directed in the case of other *caveats*; and the court, upon hearing the same, may either prohibit such new grant, or vacate the *caveat*, as to them shall seem just; but if no *caveat* shall be entered within six months after such return, or if a *caveat* shall be entered and vacated as aforesaid, the party, upon producing new rights, for whatever surplus land appears to be within the bounds, more than the before-mentioned allowance of five acres for every hundred, may sue out and obtain a new grant for such lands thereupon, in which shall be recited the dates and other material circumstances of the former title; and the title papers shall be delivered by the register to the new owner.^(o)

Grant to be issued.

Recital therein.

Inclusive surveys
and grants, em-
bracing, with pat-
ented lands, other
lands claimed by
entry only, con-
firmed.

Saving.

62. AND all inclusive surveys heretofore made as aforesaid, embracing, together with patented lands, other lands claimed by entry only, and all grants which have been, or may be, issued upon such surveys, shall be deemed good and valid in law, if such surveys and grants were in other respects pursuant to law, notwithstanding that the lands so claimed by entry were never separately surveyed; saving, however, to all persons, bodies politic and corporate, other than the Commonwealth, the full benefit of all right and title which may have been acquired by them, to any such lands, before the passing of this act.⁽ⁿⁿ⁾

Judges of general
court to appoint
examiners of land
office; and when.

Their duty.

Warrants execut-
ed or exchanged,
to be cancelled;
but not destroyed.

63. THE judges of the general court shall, once in every year, and oftener, if they see cause, appoint two or more capable persons, to examine the record books and papers in the land office, and report in what condition and order they are kept; who shall compare all warrants of surveys returned to the said office executed, with the list of those issued therefrom, and cancel all such as shall appear to have been properly executed or exchanged, an account of which shall be kept by the register, charging therein those issued, and giving credit for those cancelled as aforesaid; ^(o) but no original warrant shall be burnt or otherwise destroyed, but shall be regularly filed in the land-office with the title papers.^(p)

(o) May, 1779, c. 13, § 4, 5, 6;
Chan. Rev. p. 97; 1792, edi. 1794,
1803 and '14, c. 86, § 46, 47, 48, 49.

(nn) From 1817, c. 16.

(p) 1789, c. 43, § 1; 1792, edition
1794, 1803 and '14, c. 86, § 49.

64. No original plat and certificate of survey, once received and carried into grant, shall thereafter be delivered out of the land office, but shall remain among the other evidences of the title.(q)

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Original plats, &c. to remain in land office.

65. *PROVIDED, however,* That the register of the land office be, and he is hereby authorised and directed to deliver to any person or persons authorised to receive the same, the original plats and certificates of survey, returned to his office, for lands situated between the *Scioto* and *Little Miami* rivers, and for which grants may have been issued in consideration of military services.(r)

Exception to this rule, as to plats, &c. of military lands, between Scioto and Little Miami.

66. THE register of the land office shall account for with the auditor, and pay regularly into the treasury, at the end of every six months, all fees by him received from time to time, making oath that the whole fees so accounted for are the whole profits accruing from the said office, so far as he knows or believes, up to the date of such account; and, moreover, his accounts of fees received shall be fairly stated, and compared by the auditor, with the books of his office, before the account shall be passed. If the register of the land office, at any time, fail to account according to the directions of this act, for the space of six months, he shall forfeit and pay the sum of ten thousand dollars, for the benefit of the literary fund, to be recovered in the name of the Governor or Chief Magistrate for the time being, in any court of record, by the auditor, on thirty days previous notice; and the *onus probandi* shall be on the defendant.(s)

Register when to account for and pay fees into treasury. Account to be on oath.

Penalty for default.

How appropriated and recoverable.

67. On receiving each survey into the register's office, the fees established by law, that will accrue on the same, including the issuing of the grant thereupon, shall be paid; and if the register shall credit any person, he shall account for the fees so credited, in the same manner as if they had been received.(s)

Fees payable on receiving surveys into the office. Register allowing credit, bound as for cash.

68. WHENSOEVER any county court shall be so divided in the recommendation of a surveyor, that neither of the candidates shall be recommended, it shall be lawful for the high sheriff of such county, and he is hereby required to vote in favor of one of those candidates, between whom the court shall be divided.(t)

When court divided in recommending surveyor, high sheriff to give casting vote.

69. IT shall not be lawful for any county surveyor hereafter to withhold from any person entitled to demand the same, a plat by him demanded; and every surveyor out of office, shall have the same remedy for fees due to him, as is given to the acting surveyors: *Provided,* That no surveyor shall be obliged to deliver a plat of land to any person or persons, not resident within the State, before the fees for the same shall be paid, or such security be given for the payment thereof, as he shall deem sufficient.(v)

Surveyors not to withhold plats from persons entitled to demand them.

But non-residents not so entitled, without paying or securing fees.

(q) 1789, c. 43, § 2; 1792, edition 1794, 1803, and 1814, c. 86, § 50.

(r) 1797, c. 44; edition 1803, and 1814, c. 237.

(s) From October 1784, c. 51, § 2; 1792, edi. 1794, 1803, and 1814, c. 86, § 51, 52.

(t) 1787, c. 23, § 2; 1792, edi. 1794, 1803, and 1814, c. 86, § 53.

(v) 1787, c. 52, § 3; 1792, edi. 1794, 1803, and 1814, c. 86, § 54.

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Surveyors of counties from which new counties are taken, to deliver warrants, and copies of entries unsurveyed, to new surveyors.
Compensation.
Penalty for refusal or neglect.

How recoverable and appropriated.

Courts to divide counties into precincts for processioning, and when.

Processioning when.

Processioners.
Their duty.

Form of return.

70. THE surveyor or surveyors of any county or counties, from which a new county hath been taken, or hereafter shall be taken, shall, within one month after such division takes place, make out, and, on application, deliver to the surveyor of the new county, attested copies of all entries made upon lands within such new county, on his books, and not surveyed, together with the warrants upon which they were founded; for which service, he shall receive five cents for every such attested copy, to be paid by the surveyor of the new county, upon receipt of the said attested copies. And, in case any surveyor shall refuse or neglect to make out, or deliver such attested copies, within the time aforesaid, or at the expiration of the said time, upon the application of the surveyor of the new county, he shall forfeit and pay the sum of one hundred and fifty dollars, to be recovered by action of debt or information, in any court of record, by any person who will sue for the same, any law to the contrary, notwithstanding. (w)

71. THE court of every county, at some court between the first day of June, and the first day of September, in every fourth year, successively, as heretofore they have or ought to have done, shall divide their counties into so many precincts as to them shall seem most convenient, for processioning every person's land in their respective counties, and shall appoint the particular times, between the last day of September, and the last day of March, then next coming, when such processioning shall be made in every precinct, and shall also appoint two or more intelligent, honest freeholders, of every precinct, to see such processioning performed, and to take and return to the said court an account of every person's land they shall procession, and of the persons present at the same, and what lands in their precinct they shall fail to procession, and the particular reasons of such failure: 'which return shall be in the following form :

Date of processioning.	Owners of land.	Description and marks of corners, &c.	Persons present.	Lands not processioned, and reasons thereof.

Clerk when to deliver copy of court's order to processioners.

Notice of processioning.

Returns to be recorded.

Processioners' compensation.

Vacancies among them, how supplied.

A copy of which order shall be delivered by the clerk of every court respectively, to the freeholders so appointed, within fifteen days after the making thereof; and the said freeholders shall cause the same to be obeyed in every particular, and shall cause notice to be given at the most public places in their county, at least three weeks before the same is to be performed, of the time appointed by them for processioning in each precinct; and the said courts shall also cause the accounts returned by the freeholders, to be registered in particular books to be kept for that purpose by their clerk. Each processioner shall be allowed, by the court of his county, one dollar for every day he shall be employed; and, in case of the death.

(w) 1788, c. 51; 1792, edi. 1794, 1803, and 1814, c. 86, § 55:

resignation, or removal from office of any such processioneer, the court of the county where such vacancy shall happen, shall have power to appoint a successor; and every county court shall make a reasonable allowance to the clerk thereof, for the services to be performed by him, by virtue of this act; which several allowances shall be levied in their next county levy. (x)

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Allowance to clerk payable out of county levy.

72. AND, that no person may pretend ignorance, the court are also to direct what precinct or precincts in their county, respectively, every particular freeholder thereof shall attend and perform the processioning as aforesaid. (x)

Court to assign processioners to precincts.

73. AND, if any county court shall fail to make such order as aforesaid, every justice of the peace of such county, shall forfeit and pay twenty-five dollars. And, if any freeholder shall fail to obey and execute such order, every freeholder failing shall forfeit and pay fifteen dollars; and any county court clerk failing to perform his duty, as directed by this act, shall forfeit and pay twenty-five dollars: And if any other person not having lawful excuse, (to be judged of by the county court,) shall fail to perform his duty, as is herein required, every person so failing shall forfeit and pay fifteen dollars; one moiety of which several forfeitures shall be to the Commonwealth, for the use of the literary fund, and the other to the informer; and may be recovered by warrant before a magistrate, or in any court of record within this Commonwealth, having jurisdiction thereof, as the case may be. (y)

Penalty on court failing to order processioning; On freeholder disobeying such order; On clerk, or other person, for breach of duty hereby required.

How appropriated and recoverable.

74. PROVIDED, always, That, in any suit, information or warrant brought against a magistrate of a county, or any other person, for any breach of this act, where the defendant shall give sufficient evidence to the court, or magistrate, before whom the suit, information or warrant shall be depending, that he was necessarily absent, or that, being present, he offered to do his duty pursuant to this act, in such case the suit, information or warrant, as to such defendant, shall be dismissed. (y)

Proviso.

75. ALL and every processioning the bounds of any person's lands at three several times, heretofore made, according to the directions of the laws then in force, or hereafter to be made pursuant to the directions of this act, shall be held, and is hereby declared to be, sufficient to settle such bounds, so as the same may never afterwards be altered; and every processioning made in pursuance of and conformably to the former laws, shall be, and is hereby declared to be, one of the three times of processioning, by this act held to be sufficient. (z)

Bounds three times processioned settled.

Every processioning under former laws, counted as one.

76. WHEN any controversy shall hereafter happen between persons, whose lands lie contiguous, about their respective bounds, and the owner or owners of such lands shall refuse to suffer the same to be processioned, in such case, the freeholders appointed as aforesaid, shall, within ten days after such refusal, certify the same under their hands, to the court of the

Where bounds are disputed, and owners refuse to permit processioning, report to court.

(x) March, 1661-2; 2 *Hen. st. at lar.* p. 102; 1705, 3 *Ibid.* p. 325; 1748, 5 *Ibid.* p. 426; edi. 1769, c. 1, § 54; 1792, edi. 1794, 1803, and 1814, c. 86, § 56, 57.

1792, edi. 1794, 1803, and 1814, c. 86, § 58, 59.

(z) 1705; 3 *Hen. St. at lar.* p. 327; 1710, *Ibid.* p. 531; 1748, edi. 1769, c. 1, § 56; 1792, edi. 1794, 1803 and 1814, c. 86, § 60.

(y) 1748, edi. 1769, c. 1, § 54, 55;

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Order thereupon.
Surveyor with
jury to lay out the
bounds.

At whose expense.
Return to be re-
corded.

Provision in case
the lands lie in two
or more counties.

Order to be by
court of that
county in which
disputed bounds
begin.

Sheriff of each
county to attend
surveyor.

Such survey equi-
valent to process-
ioning.

Saving in favor of
reversioners or re-
maindermen ;

Of infants, &c.

Processioning sus-
pended in certain
counties ;

And how long.

Fines incurred by
magistrates in
those counties, re-
mitted.

Penalties &c. im-
posed by this act,
how recoverable.

county wherein such lands shall lie, at their next session ; and such court shall thereupon order their surveyor, with a jury, to lay out the bounds in dispute, at the charge of the party, against whom the right to such bounds shall be determined, and to return such survey to the next court after the same shall be made, which return shall be recorded by the county court clerk.(a)

77. If such lands shall happen to lie in two or more counties, then certificates as aforesaid shall be returned to the court of each county ; and the court of that county in which the beginning of such controverted bounds shall lie, shall order their surveyor, with a jury of their county, to survey the whole bounds in dispute, and the sheriff of each county wherein the same shall lie, to attend the surveyor in their respective counties ; and such survey shall be made, returned, recorded and registered, in like manner as aforesaid, and at the charge of the party against whom the right of such bounds shall be determined. And all and every survey, and surveys, so as aforesaid made and registered, shall be held, deemed and taken to be a sufficient processioning of such lands, to all intents and purposes, as if the same had been done by and with the consent of the owner thereof.(a)

78. *PROVIDED* always, That the processioning and settlement of the bounds of land, held by any tenant for life only, shall not bar or conclude the heir in reversion or remainder ; but such heir may, at any time within six years after the death of such tenant, controvert the bounds, as if no processioning or settlement had been made ; and that the processioning and settling the bounds of lands belonging to any person, then being within the age of one and twenty years, *feme covert*, *non compos mentis*, imprisoned or not resident within this Commonwealth, shall not be conclusive to such person or persons until six years after their respective incapacities or disabilities shall be removed or determined.(b)

79. So much of this act, as relates to the processioning of lands, shall be suspended with regard to the counties of *Russel, Bath, Botetourt, Henry, Kanawha, Hampshire, Augusta, Lee, Tazewell, Washington, Cabell, Randolph, Rockingham, Giles, Wood, Franklin, Patrick, Ohio, Monongalia, Harrison, Brooke, Mason, Wythe, Grayson, Montgomery, Monroe, Greenbrier, Pittsylvania, Pendleton, Shenandoah, Frederick, Berkeley*, and *Hardy*, for the term of five years, from the passage of this act : And the magistrates of the aforesaid counties shall be, and they are hereby released from any fine or penalty, which they may have incurred or be liable to, for having failed in carrying into execution the laws on the subject of processioning.(c)

80. THE several penalties and forfeitures by this act laid, given or inflicted, shall and may be recovered with costs, by action of debt or information, in any court of record within

(a) 1710 ; 3 *Hen. st. at lar.* p. 531, 532 ; 1748, *edi.* 1769, c. 1, § 58, 59 ; 1792, *edi.* 1794, 1803, and 1814, c. 86, § 61, 62.

(b) 1705 ; 3 *Hen. st. at lar.* p. 327 ; 1710, *Ibid.* p. 532, 533 ; 1748, *edi.* 1769, c. 1, § 61, 62 ; 1792, *edi.* 1794, 1803, and 1814, c. 86, § 63, 64.

(c) 1812, c. 85.

this Commonwealth, 'or warrant before a magistrate,' before whom such penalty or forfeiture shall be cognizable.(d)

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81. ALL and every act and acts, clauses and parts of acts, within the purview of this act, shall be and the same are hereby repealed : *Provided, nevertheless*, That all rights, remedies, fines, penalties and forfeitures, accrued or incurred under any former act, shall remain in the same condition as if this act had not been made. Repealing clause. Proviso.

82. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty. Commencement.

C. 87.

An act to explain and secure the rights of owners of shores on the Atlantic ocean, the Chesapeake bay, and the rivers and creeks thereof within this Commonwealth.(a)

A. D. 1819.

A. R. C. 43.

[Passed February 16, 1819.]

WHEREAS doubts exist how far the rights of owners of shores on the Atlantic ocean, the Chesapeake bay and the rivers and creeks thereof, within this Commonwealth, extend ; for explanation whereof, and in order effectually to secure said rights ;

1. *BE it enacted by the General Assembly*, That hereafter the limits or bounds of the several tracts of land lying on the Atlantic ocean, the Chesapeake bay, and the rivers and creeks thereof within this Commonwealth, shall extend to ordinary low water mark ; and the owners of said lands shall have, possess and enjoy exclusive rights and privileges to, and along the shores thereof, down to ordinary low water mark : *Provided*, That nothing in this act contained shall be construed to affect any creek or river, or such part thereof, as may be comprised within the limits of any survey : *And, provided, also*, That nothing in this section contained shall be construed to prohibit any person or persons from the right of fishing, fowling and hunting on those shores of the Atlantic ocean, Chesapeake bay and the rivers and creeks thereof, within this Commonwealth, which are now used as a common to all the good people thereof ; nor to repeal the sixth section of an act, entitled, *An act for reducing into one the several acts concerning the land office ; ascertaining the terms and manner of granting waste and unappropriated lands ; for settling the titles and bounds of lands, directing the mode of proceessioning, and prescribing the duty of surveyors*, passed the seventeenth day of December, one thousand seven hundred and ninety-two.(b)

Bounds of lands on the Atlantic ocean, &c. to extend to ordinary low water mark.

Proviso as to creeks or rivers comprised in surveys. Farther proviso, respecting the right of fishing, fowling and hunting.

Sixth section of land law of 1792, not to be repealed.

2. *AND be it further enacted*, That, when any ship or other vessel shall be stranded or foundered, or shall be in danger of

Right of property in goods, from stranded or foundered vessels, lodged or floating

(d) Oct. 1783, c. 32, § 7; Chan. Rev. p. 221; 1792, ed. 1794, 1803, and 1814, c. 86, § 65.

(a) 1818, c. 28; *vid.* 1 *Hen. st. at lar.* p. 456.

(b) *Ante*, c. 86, § 6.

A. D. 1819.
A. R. C. 43.

above low water
mark, to belong
to the owner of
the land ;
Saving the right
of the former own-
er of such goods ;
And the right of
the commissioners
of wrecks.

being stranded or foundered, or where, from any other cause, any wares, goods or merchandize from such ship or other vessel, shall be lodged upon, or floating along, any of the shores aforesaid, above low water mark, the right of property in and to such goods, wares and merchandize, shall be in the owner of the land, upon or over which they may be so found : *Saving, however*, to the former owner or owners of such goods, wares or merchandize, all the rights in and to such goods, wares and merchandize, which he or they hath or have, under the existing laws of this Commonwealth : *Provided*, That nothing in this act contained shall be construed to affect, or abridge any of the rights or powers given to the commissioners of wrecks by the act passed the twentieth of June, seventeen hundred and eighty two, entitled, *An act concerning wrecks*.

Breach of provi-
sions of this act to
be a trespass.
Commencement.

3. *AND be it enacted*, That every person, acting contrary to the provisions of this act, shall be deemed a trespasser.

4. This act shall commence and be in force from the first day of April next.

C. 88.

A. D. 1795.
A. R. C. 19.

An act prescribing a mode for making a title to the purchasers of lands heretofore sold by Sheriffs for arrears of taxes.(a)

[Passed December 12, 1795.]

Title to purchas-
ers of lands here-
tofore sold for ar-
rears of taxes, in
case of death of
officer who sold
same, how made.

1. *BE it enacted*, That, in all sales of lands heretofore made according to law,† on account of arrearages of public taxes, by any sheriff or other officer who may have departed this life before conveyance thereof to the purchaser or purchasers, and in which cases conveyances ought yet to be made, it shall and may be lawful for the sheriff of the county, where the land lies, now in office, or his successor, to convey the same to the purchaser or purchasers, or his or their heirs or assigns, in as full and ample manner as the sheriff or other officer who made the sale, might or should have done ; which conveyance shall recite the sale and consideration, and shall be effectual for passing to the purchaser or purchasers, or his, or their heirs or assigns, all the estate and interest which the debtor or Commonwealth had or might lawfully part with in the lands so sold as aforesaid.

Commencement.

2. This act shall commence and be in force from and after the passing thereof.

(a) 1795, c. 13.

† For the various laws directing the sale of lands, for the payment of taxes, prior to the passing of this act, *vid.* November, 1781, c. 40, § 4, 17 ; Chan. Rev. p. 153, 156 ; October, 1782, c. 8, § 4 ; Chan. Rev. p. 172 ; 1787, c. 42, *An act to remedy abuses in the manner of selling lands, for the payment of public taxes* : 1790, c. 5 ; 1791, c. 6 ; 1792, c. 20.

C. 89.

*An act for confirming and better securing the titles to lands in the Northern Neck, held under the right honorable Thomas Lord Fairfax, Baron of Cameron, in that part of Great Britain, called Scotland.**

A. D. 1736.

[Passed in 1736.]

1. WHEREAS the late King Charles II. by certain letters patent, under the great seal of England, bearing date at Westminster, the eighth day of May, in the one and twentieth year of his reign, reciting, that he, taking into his royal consideration the propagation of the christian faith, and the manifold benefits arising to the church of God, together with the welfare of multitudes of his loyal subjects, by the undertaking and vigorous prosecution of plantations of foreign parts, and particularly in his dominions of America, by his letters patent, under the great seal of England, bearing date at St. Germain's en Ley, the eighteenth day of September, in the first year of his reign, for the consideration therein expressed, had given, granted, and confirmed, unto Ralph Lord Hopton, Henry Earl of St. Alban's, by the then name of Henry Lord Jermyn, John Lord Culpeper, John Lord Berkeley, of Stratton, by the then name of Sir John Berkeley, Sir William Morton, one of the justices of his court of King's Bench, by the then name of Sir William Morton, Sir Dudley Wyatt, and Thomas Culpeper, their heirs and assigns for ever, all that entire tract, territory, or parcel of land, situate, lying, and being in America, and bounded within the heads of the rivers Rappahannock and Quirriough or Potowmac river, the courses of the said rivers, as they are commonly called and known by the inhabitants, and descriptions of those parts, and Chesapeake bay, together with the rivers themselves, and all the islands within the banks of those rivers, and all woods, under woods, timber, and trees, ways, waters, and rivers, ponds, pools, water courses, fishings, streams, havens, ports, harbours, creeks, wrecks of sea, fish royal, deer, wild beasts, and fowl, of what nature and kind soever, mines of gold and silver, lead, tin, iron, and copper, and quarries of stone and coal, which then were, or at any time thereafter should be had, coming, being, and arising, renewing, accruing, found, or taken, within the bounds or precincts aforesaid, together with the royalty of hawking and hunting, for themselves, their heirs, and assigns, servants, and tenants, in and upon the lands and premises aforesaid; saving and reserving to him, his heirs and successors, one full fifth part of all gold mines, or gold ore, and one full tenth part of all silver mines, or silver ore, thereafter to be found within the said tract or territory of land, to have, hold, and enjoy, all the said entire tract, territory, or portion of land, and all and singular other the premises, with their and every of their appurtenances, thereby grant-

Recital of patent,
21 Car. 2, where-
in is recited pa-
tent 1 Car. 2.

* August 1736, c. 13; 4 Hen. st. at lar. p. 514; edi. 1752, acts of 1736, c. 13; edi. 1769, acts of 1736, c. 3; edi. 1794, 1803, and 1814, c. 3.

A. D. 1736.

The death of some
of first patentees.
Lord Hopton's sale
and surrender of
first patent.

Consideration.

The grant.

ed or mentioned, or intended to be granted (except as before is excepted) to the said *Ralph Lord Hopton*, *Henry* then Lord *Jermyn*, now Earl of *St. Alban's*, *John Lord Culpeper*, Sir *John Berkeley*, now Lord *Berkeley*, of *Stratton*, Sir *William Morton*, Sir *Dudley Wyatt*, and *Thomas Culpeper*, their heirs, and assigns for ever, to their only use and behoof, and to no other use, intent, or purpose, whatsoever; yielding and paying therefore, yearly, at the feast of *St. John the baptist*, to his said majesty, his heirs, and successors, the sum of six pounds thirteen shillings and four pence, at the receipt of *Jamestown*, in the dominion of *Virginia*, in lieu of all services and demands whatsoever: reciting also that the said *Ralph Lord Hopton*, *John Lord Culpeper*, Sir *Dudley Wyatt*, and *Thomas Culpeper*, being dead, and the said Lord *Hopton* having sold his estate and interest in the premises to *John Trethewey*, Esq. the said tract, territory, or parcel of land, and all and singular other the premises, had been surrendered, together with the said letters patent, to be cancelled, to the intent that his said late majesty might grant them new letters patent thereof, with such alterations, provisos, and clauses, as therein after is expressed, he the said late King, in consideration of the said surrender, and for and in consideration of the many and faithful services done to his late royal father, of blessed memory, and to himself, by the said *Henry Earl of St. Alban's*, *John Lord Berkeley*, Sir *William Morton*, and *John Trethewey*, Esq., and for divers other good causes and considerations him thereunto especially moving, of his especial grace, certain knowledge, and mere motion, did give, grant, and confirm, unto the said *Henry Earl of St. Alban's*, *John Lord Berkeley*, Sir *William Morton*, and *John Trethewey*, their heirs, and assigns for ever, all that entire tract, territory, or parcel of land, situate, lying, and being in *America*, and bounded by and within the head of the rivers *Tappahannock* alias *Rappahannock*, and *Quirriough* alias *Potowmac* rivers, the courses of the said rivers, as they are commonly called and known by the inhabitants and descriptions of those parts, and *Chesapeake* bay, together with the rivers themselves, and all the islands within the banks of those rivers, and all woods, under woods, timber, and trees, ways, waters, rivers, ponds, pools, water courses, fishings, streams, havens, ports, harbours, creeks, wrecks of sea, fish royal, deer, wild beast and fowl, of what nature and kind soever, mines of gold and silver, lead, tin, iron, and copper, and quarries of stone and coal, which then were, or at any time thereafter should be had, coming, being, arising, renewing, accruing, found or taken, within the bounds or precincts aforesaid, together with the royalties of hawking and hunting, for themselves, their heirs and assigns, servants and tenants, in and upon the land and premises aforesaid, and in and upon every part and parcel thereof; saving, excepting, and reserving, to his said late majesty, his heirs, and successors, one full fifth part of the whole, in five parts to be divided, of all gold mines, or gold ore, one full tenth part of all silver mines, and silver ore, thereafter to be had or found within the said tract or territory of land; to have, hold, and enjoy, all the said entire tract, territory, or portion of land, and all and singular other the premises, with

Habendum.

A. D. 1736.

their and every of their appurtenances, thereby granted or mentioned, or intended to be granted (except as before is excepted) to the said *Henry Earl of St. Alban's, John Lord Berkeley, Sir William Morton, and John Trethewey*, their heirs, and assigns for ever, to their only use and behoof, and to no other use, intent, or purpose, whatsoever; yielding and paying therefore, yearly, at the feast of *St. John the baptist*, to his said late majesty, his heirs, and successors, the sum of six pounds thirteen shillings and four pence, at the receipt of *Jamestown in Virginia*, in lieu of all services and demands whatsoever; with power to divide the said tract or territory of land into counties, hundreds, parishes, tithings, townships, hamlets, and boroughs, and to erect and build cities, towns, parish churches, colleges, chapels, free schools, alms houses, and houses of correction, and to endow the same, at their free wills and pleasures; and did appoint them full and perpetual patrons of all such churches so to be built and endowed, with power of electing, nominating, and presenting, any fit person to the office and place of master of any college, or schoolmaster of any school, so to be founded and endowed; with power also to divide any part or parcels of the said tract or territory, or portion of lands, into manors, and to call the same after their own or any of their names, or by other name or names whatsoever, and within the same to hold a court, in the nature of a court baron, and to hold pleas of all actions, trespasses, covenants, accounts, contracts, detinues, debts, and demands whatsoever, where the debt or thing demanded exceed not the value of forty shillings of current money of *England*, and to receive and take all americiaments, fines, commodities, advantages, perquisites, and emoluments whatsoever, to such respective court barons belonging, or in any wise appertaining: And further, to hold within the said manors a court leet, and view of frank pledge, of all the tenants, residents, and inhabitants, of the hundreds within such respective manors, to be holden twice in every year, and to erect fairs, markets, courts of pipowder, with all things incident thereto; and to erect parks for breeding, feeding, and sustentation of deer, and other wild beasts of chase: And further, the said late King, by the said charter, for himself, his heirs, and successors, did grant and give license to the said *Henry Earl of St. Alban's, John Lord Berkeley, Sir William Morton, and John Trethewey*, their heirs, and assigns, freely, and without molestation of him, his heirs, and successors, to give, grant, or by any ways or means sell or alien, all and singular the premises by these presents granted, and every part and parcel thereof, to any person or persons being willing to contract for or buy the same; to be holden of the said *Henry Earl of St. Alban's, John Lord Berkeley, Sir William Morton, and John Trethewey*, their heirs, and assigns, as of any of their aforesaid manors, in free and common socage, by fealty only, and by suit of court, or by any other lawful tenure or terms used within the kingdom of *England*; rendering and paying such rents, and other lawful reservations, as shall seem fit and convenient to the said *Henry Earl of St. Alban's, John Lord Berkeley, Sir William Morton, and John Trethewey*, their heirs, and assigns, notwithstanding the sta-

Reservation of rent.

Powers granted to patentees.

A. D. 1733.

New patents to be granted.

Proviso, as to seating.

Patentees not to intermeddle with military affairs.

Inhabitants subject to payment of taxes.

And laws of colony.

Recital of patent, 4 Jac. 2, which recites beforemen-

tute, commonly called *quia emptores terrarum*, or any other statute, act, or ordinance, or provision, or any other thing, cause, or matter whatsoever, to the contrary notwithstanding : And further, the said late King, for himself, his heirs, and successors, did grant to the said patentees, their heirs, executors, and assigns, to enlarge and confirm the said letters patent, by granting to them and their heirs other new ones, with such favourable concessions and grants as might supply any defects therein contained; with this proviso, nevertheless, that the said letters patent, or any thing therein contained, should not extend, or be construed to extend, to infringe, make void, or other ways prejudice, any contract or contracts, grant or grants whatsoever, theretofore made or granted by the Governor and Council of *Virginia*, unto any planters, or other inhabitants, then in the actual possession thereof, by virtue of any such grants made before the nine and twentieth day of *September*, in the thirteenth year of his reign; but if any part of such lands so granted should escheat, or be otherwise forfeited, then the said patentees, their heirs, and assigns, might dispose thereof, for their best benefit and advantage, at their own free wills and pleasures; with this proviso also, that so much of the said granted premises, as, within the time and space of one and twenty years then next following, should not be possessed, inhabited, or planted, by the means or procurement of the said patentees, their heirs, or assigns, that then the said letters patent should cease, determine, and become void; and lastly, with this further proviso, that the said patentees, their heirs, and assigns, should not act or intermeddle in the military affairs or forces of or within the said tract of land and premises thereby granted, or any part thereof, or with the government or command of any of the castles, forts, or fortifications thereof, without the order, authority, or command, of the Governor and council of *Virginia* for the time being, or such other person or persons as his said late majesty, his heirs, or successors, should think fit to dispose the same; and that the Governor, Council, and Assembly of *Virginia*, for the time being, should have full power and authority to impose and lay any taxes and impositions upon the said territories thereby granted, and all the lands and premises thereby meant and intended to be granted, and all and every the possessors, or inhabitants thereof, for the public and common defence of the said colony of *Virginia*, and the territory and lands thereby granted, as upon other parts of *Virginia*, proportionably, when and as often as the necessity of the said colony should require the same for the common good; and that the said patentees, their heirs, and assigns, and other inhabitants of or in the premises, should be in all things subject and obedient to such laws and constitutions as were or should be made by the said Governor, Council, and Assembly, for or concerning the said colony, or the government thereof, any thing therein before contained to the contrary notwithstanding, as in the said letters patent more fully is contained.

2. AND, whereas the late King *James II.* by other letters patent, under the great seal of *England*, bearing date at *Westminster* the seven and twentieth day of *September*, in the fourth

year of his reign, reciting the above recited letters patents, and that the said former patentees, their heirs, and assigns, had, by good and sufficient conveyance and assurance in the law, for valuable considerations, sold, conveyed, and assured, the said whole tract, territory, and portion of land, and all and singular the premises, and every part and parcel thereof, and all their estate, right, title, and interest therein, together with the said letters patents, unto *Thomas Lord Culpeper*, eldest son and heir of *John* late Lord *Culpeper*, deceased, his heirs, and assigns, for ever, who was thereby become sole owner and proprietor thereof, in fee simple, for the considerations therein mentioned, did give, grant, and confirm, unto the said *Thomas Lord Culpeper*, all that entire tract, territory, or parcel of land, situate, lying, and being in *Virginia*, in *America*, and bounded by and within the first heads or springs of the rivers of *Tappahannock* (alias *Rappahannock*.) and *Quirriough* (alias *Potowmac*.) rivers, the courses of the said rivers, from their said first heads or springs, as they were commonly called and known by the inhabitants, and descriptions of those parts, and the bay of *Chesapeake*, together with the said rivers themselves, and all the islands within the uttermost banks thereof, and the soil of all and singular the premises, and all lands, woods, under woods, timber, and trees, ways, mountains, swamps, marshes, waters, rivers, ponds, pools, lakes, water courses, fishings, streams, havens, ports, harbours, bays, creeks, ferries, with all sorts of fish, as well whales, sturgeons, and other royal fishes, as all others whatsoever, wrecks of sea, *Floatson*, *Jetson*, and *Lagan*, and all sorts of deer, wild beasts, and fowl, of what nature or kind soever, and all manner of deodands, goods of felons and fugitives, treasures trove, waifs, strays, fines, forfeitures, escheats, advowsons, royalties, and hereditaments whatsoever, with all mines of gold and silver, lead, tin, iron, and copper, and all quarries of stone and coal, within the limits and precincts aforesaid, which then were, or at any time thereafter should be had, coming, being, arising, growing, renewing, accruing, found, or taken, within the bounds, limits, precincts, or places aforesaid; saving, excepting, and reserving, to his said late majesty, his heirs, and successors, one full fifth part of all gold mines, or gold ore, and one full tenth part of all silver mines, and silver ore, then being, or which thereafter should be had or found, within the said tract or territory of land; to have, hold, and enjoy, all the said entire tract, territory, or portion of land, and every part and parcel thereof, and all and singular other the premises, with their and every of their appurtenances, thereby granted or mentioned, or intended to be granted (except as before is excepted) to the said *Thomas Lord Culpeper*, his heirs, and assigns, for ever, to his and their only use and behoof, and to no other use, intent, or purpose whatsoever; yielding and paying therefore, yearly, from thenceforth, on the feast of *St. John* the baptist, to his said late majesty, his heirs, and successors, the sum of six pounds thirteen shillings and four pence, at the receipt of *Jamestown*, in the colony of *Virginia*, in lieu of all services and demands whatsoever; the first payment to be made on the feast day of *St. John* the baptist next ensuing the date of the said letters patent:

A. D. 1736.

tioned letters patent, and sale to Lord Culpeper.

The grant.

Habendum.

Reservation of rent.

A. D. 1736.

And his said late majesty did thereby, for himself, his heirs, and successors, further give, grant, ratify, and confirm, to the said *Thomas Lord Culpeper*, his heirs, and assigns, for ever, all and singular the grants, powers, authorities, privileges, licences, and clauses, in the said herein-before recited letters patents mentioned, granted, or conveyed, in as large and ample manner, to all intents and purposes whatsoever, as if the same, and every of them, had been particularly granted and expressed in these his letters patent, except only the abovementioned proviso; and his said late majesty did further, of his especial grace, certain knowledge, and mere motion, for himself, his heirs, and successors, fully and absolutely, for ever, release and discharge the said abovementioned proviso, and every part thereof, and every matter and thing therein contained, in as large and ample manner, to all intents and purposes whatsoever, as if the same had never been made, thereby declaring the same to be null and void, and the said *Thomas Lord Culpeper*, his heirs, and assigns, and the tract, territory, and premises, and every part thereof, to be for ever freed, cleared and discharged, from the same, so and in such manner that the said *Thomas Lord Culpeper*, his heirs, and assigns, might freely and absolutely enter into, have, hold, occupy, possess, and enjoy, the said tract, territory, and all and singular other the premises, freed and discharged of the said proviso, and all right, title, and equity, thereupon to be had, in as large, ample, and beneficial manner, to all intents and purposes, as if the same proviso had been never had or made, any thing in the said recited letters patent, or any thing therein, or in the last mentioned letters patent, to the contrary thereof, in any wise notwithstanding, as in the said last recited letters patent more is fully contained.

That validity of grants made by agents or attornies of present proprietor and his predecessors, have been questioned.

3. AND whereas the right honorable *Thomas Lord Fairfax*, baron of *Cameron*, in that part of *Great Britain*, called *Scotland*, heir at law to the said *Thomas Lord Culpeper*, is now become sole proprietor of the said territory, with the appurtenances, and the above recited letters patents; and whereas divers great quantities of land have been granted to adventurers and planters within the said territory, in fee simple, by the agents and attornies of the said Lord *Fairfax*, and his predecessors, former proprietors of the said territory, and letters patents, by virtue of divers letters of attorney, from time to time, by them respectively given and granted to their said attornies and agents, but now of late, after long possessions, and great and valuable improvements made upon the said lands, by such grantees, questions are like to arise between them and the said present proprietor, touching the validity of such grants, as well in respect to a construction set up and maintained, of the said letters of attorney, that the powers therein contained were not full and sufficient to enable and warrant the said agents and attornies to pass away estates in fee simple, as in respect of the said Lord proprietor's estate in the premises, the same being now held by him as tenant in tail, under the will or wills of some of his ancestors, whereby the minds of many of his majesty's good subjects, possessors of lands and tenements within the said territory, are greatly

disquieted, and many controversies and expensive law-suits may probably ensue: For the prevention whereof, and for settling peace between his Lordship and his said tenants,

A. D. 1786.

4. *Be it enacted by the Lieutenant Governor, Council and Burgesses of this present General Assembly, and it is hereby enacted, by the authority of the same, That, from henceforth all and every grant and grants, heretofore duly and regularly made and passed, by any of the agents or attornies of the proprietors of the said territory, or any of them, shall be good, available, and binding in law, to pass such estate or estates as therein have been granted: and the grantees, their heirs and assigns, respectively, shall forever hereafter, peaceably and quietly have, hold and enjoy the same granted premises, according to such granted estates, under the rents and services by the said grants reserved, notwithstanding the infancy, coverture, or any misprision or mistake of the names, dignity or title of the said proprietors, or either of them, or any misrecital, omission or defect, in the said grant or grants, or any of them, so as the same have been made and signed by the agents or attornies of the said proprietors, or the husband, guardian or guardians, trustee or trustees, of any of them, and passed under the common seal of the office kept by them for that purpose.*

Confirmation of these grants.

C. 90.

An act for confirming the Grants made by his majesty within the bounds of the Northern Neck, as they are now established.(a)

A. D. 1748.

[Passed in 1748.]

1. WHEREAS, in the late dispute and controversy touching the limits and boundaries of the several letters patent granted by their late majesties king *Charles* the second, and king *James* the second, unto the ancestors of the right honorable *Thomas Lord Fairfax*, it hath been adjudged and determined by his present majesty in council, that the said letters patent do include all that tract or territory of land between the rivers *Potowmac* and *Rappahannock*, and the line now marked from the head spring of the said river *Potowmac* to the head spring of *Rappahannock*, commonly called the *Conway*, in which said tract or territory of land, as is before described, many adventurers and planters have taken up great quantities of land, and obtained grants and patents thereof from the Crown, under seal of this colony: and whereas the said *Thomas Lord Fairfax* hath consented, before the king, in council, that the several grants and patents, made by the crown, of the lands included in the boundary aforesaid, should be confirmed to the several grantees, their heirs and assigns, to be held neverthe-

Preamble.

(a) October, 1748, c. 55; 6 *Hen. st. at lar.* p. 198; edi. 1752, acts of 1748, c. 55, and edi. 1769, acts of 1748, c. 41; edi. 1794, 1803 and '14, c. 4.

A. D. 1748.

Grants from crown of lands in Northern Neck, confirmed, but rents and services shall be to Lord Fairfax, and his heirs.

less, of the said Lord *Fairfax*, under the like rents, services, profits and emoluments, as should be paid, done and arise, by and from the said grants made by the crown :

2. *BE it therefore enacted, by the Lieutenant Governor, Council and Burgesses of this present General Assembly, and it is hereby enacted, by the authority of the same, That all grants and patents whatsoever, under the seal of this colony, for lands situate and lying within the limits and boundaries of the letters patent granted to the ancestors of the said Lord Fairfax, as the same are now settled and determined, heretofore made and granted by the crown, shall be held, deemed and taken to be valid and effectual; and the adventurers and planters to whom the same were granted, their heirs and assigns, shall forever hereafter, peaceably and quietly have, hold and enjoy the said granted premises, respectively, according to such granted estates, under the rents and services in the said grants reserved, to be paid and performed to the said Thomas Lord Fairfax, his heirs and assigns, for ever, any mis-recital or defect in the said grants notwithstanding.*

C. 91.

A. D. 1785.

A. R. C. 10.

An act for safe keeping the Land Papers of the Northern Neck in the Register's Office.(a)

[Passed October 1785.]

Preamble.

1. WHEREAS it is necessary and expedient that the records and papers, upon which the titles to their lands of the citizens of this Commonwealth depend, should be kept in the same office; and whereas it hath heretofore been customary to keep the records, documents, and entries of the lands within the district of the Northern Neck, in the office of the late proprietor :

Papers of proprietary office to be removed to land office.

2. *BE it enacted, That in future all such records, documents, books, and papers, shall be in the keeping of the register of the land office, in the city of Richmond, who is hereby appointed keeper of the same; and the Executive shall, within three months from the passing of this act, cause the said records, documents, books and papers, to be safely removed from the said proprietary office into the office of the register, who shall give a receipt for the same, which receipt shall be lodged in the council chamber, and recorded in the council books. And the expenses incurred by the said removal shall be paid out of the contingent fund.*

Register to furnish authenticated copies; and such copies evidence.

3. *AND be it further enacted, That every person having title or claim to any land or lands within the Northern Neck, shall, on application, be furnished with an authenticated copy of any record, document, or writing by the register; and such authenticated copies shall be evidence in all courts of record in*

(a) October 1785, a. 47, erroneously numbered 67.

which the title or quit rents of any of the said lands shall at any time be drawn into question.

4. *AND* whereas, since the death of the late proprietor, the right honourable Thomas Lord Fairfax, no mode hath been adopted to enable those who had before his death made entries for waste and unappropriated lands in his office, nor to enable those who since his death have made entries within the said district, according to an act of Assembly, intituled, *an act concerning surveyors*, to obtain titles for the same :

A. D. 1785.

A. R. C. 10.

BE it therefore enacted, That, where any surveys have been heretofore made, or hereafter shall be made under entries made in the life of the said proprietor, or under entries made with the surveyor of any county, under the act of Assembly aforesaid, and which have been returned to the said proprietary office, or shall hereafter be returned to the register's office, the register shall make out grants therefor, to bear *teste* under the hand of the Governor and the seal of this Commonwealth, in the same manner as is by law directed in cases of other unappropriated lands ; and the surveyors with whom such entries have been made, are hereby directed and empowered, to proceed to survey and record the same, and to make return of such surveys to the register's office, in the same manner, and within the same time, as is or shall be directed in cases of warrants issued for other unappropriated lands within this Commonwealth, and thereupon grants shall issue in the manner herein-before directed.

Grants or surveys returned to proprietary office to be issued by register, and surveys in future to be returned to land office.

5. *AND be it further enacted*, That, from and after the passing of this act, the unappropriated lands within the said district shall be subject to the same regulations, and granted in the same manner, and all *caveats* shall be proceeded upon, tried and determined, as is by law directed in cases of other unappropriated lands belonging to this Commonwealth.

Unappropriated lands in Northern Neck, grantable as other unappropriated lands.

6. *AND be it further enacted*, That, upon grants issued under this act, in consequence of entries heretofore made, a composition after the rate of thirteen shillings and four pence for every hundred acres, shall be paid to the register, to be by him accounted for and paid into the public treasury, in the same manner as other monies by him received by virtue of his office ; and the surveyors within the said district shall for their services be entitled to and receive the same fees as other surveyors within this Commonwealth for the like services.

Rate of composition to be paid register for grants on previous entries.

7. *AND be it further enacted*, That the land holders within the said district of the Northern Neck shall be forever hereafter exonerated and discharged from composition and quit-rents, any law, usage, or custom, to the contrary notwithstanding.

Land holders discharged from former composition and quit rents.

C. 92.

A. D. 1796.
A. R. C. 21.

An act concerning certain lands lying in the Northern Neck. (a)

[Passed December 10, 1796.]

Lands located in the Northern Neck claimed by D. Fairfax. Right of Commonwealth asserted.

Resolution of General Assembly containing terms of accommodation.

Letter from John Marshall one of purchasers of lands of Fairfax, and authorised to act for them all.

Deeds to be first executed by Fairfax; means of completing contract, &c.

WHEREAS sundry appropriations of lands supposed to lie within the Northern Neck, have been made in virtue of land warrants issued under the authority of the Commonwealth of Virginia, which lands are claimed under Denny Fairfax, who was devisee of Thomas Lord Fairfax, late proprietor of the said Northern Neck: *And whereas* the Commonwealth has asserted a right to the estate so devised to the said Denny Fairfax, he being an alien, which several claims remain undecided and are now pending in the court of appeals of this Commonwealth and in the supreme court of the United States, and a proposition made by a resolution of the General Assembly, in consequence of a petition from the counties of Hampshire, Hardy, and Shenandoah, for an accommodation of the said pending controversies, in the words following: *Resolved, That, in case the devisees of Lord Fairfax, or those claiming under them, will relinquish all claim to lands supposed to lie within the Northern Neck, which were waste and unappropriated at the time of the death of Lord Fairfax, that it would be advisable for this Commonwealth to relinquish all claim to any lands specifically appropriated by the said Lord Fairfax to his own use either by deed or actual survey,*" having been accepted by a letter in the words and figures following:—*Richmond, November the 24th, 1796, Sir, being one of the purchasers of the lands of Mr. Fairfax, and authorised to act for them all, I have considered the resolution of the General Assembly on the petition of sundry inhabitants of the counties of Hampshire, Hardy, and Shenandoah, and have determined to accede to the proposition it contains. So soon as the conveyance shall be transmitted to me from Mr. Fairfax, deeds extinguishing his title to the waste and unappropriated lands in the Northern Neck shall be executed, provided an act passes during this session, confirming, on the execution of such deeds, the title of those claiming under Mr. Fairfax, to lands specifically appropriated and reserved by the late Thomas Lord Fairfax, or his ancestors, for his or their use. I remain Sir, with much respect and esteem, your obedient servant, John Marshall. The Honorable, the Speaker of the House of Delegates. For carrying the said agreement and accommodation into effect:*

1. *Be it enacted, That, upon the execution of a deed by Denny Fairfax, or those having title under him or the said Thomas Lord Fairfax, extinguishing on behalf of this Commonwealth, his or their title to all lands lying within the Northern Neck, which, by the terms of the above recited proposal and agreement, he or they are bound to relinquish, all claim, right and title of the Commonwealth of Virginia in or*

(a) 1796, c. 14.

to any lands lying in the said Northern Neck, which is by the terms of the said proposal and agreement to be relinquished, shall from thenceforth be extinguished, null, and void; and the said Denny Fairfax, or those claiming under him, and his or their heirs, shall hold the same, as if he the said Denny had been a native citizen of this Commonwealth, and as if no escheat or forfeiture thereof had ever taken place; any law to the contrary notwithstanding.

A. D. 1796.
A. R. C. 21.

2. SAVING to every person, other than this Commonwealth, and Denny Fairfax, and those claiming under him, any right or title, in law or equity, which he or they may have to the lands in the said Northern Neck of Virginia, or any part thereof.

Saving of individual rights.

C. 93.

RESOLUTION,

Agreed to by both Houses, December 22 and 23, 1797.(a)

A. D. 1797.
A. R. C. 22.

RESOLVED, That the Executive be requested, and they are hereby authorised to take such measures as they may deem right, for carrying into complete effect, the act of the last session of the General Assembly, intituled, *An act concerning certain lands lying in the Northern Neck.*

C. 94.

An act to reduce into one, all acts and parts of acts concerning Aliens.†*

A. D. 1819.
A. R. C. 43.

[Passed February 15, 1819.]

1. *BE it enacted by the General Assembly, That, when any alien shall heretofore have purchased, or contracted to purchase, any lands or tenements within this Commonwealth, or shall hereafter purchase, or contract to purchase, any such lands or tenements, and, before the same shall have been escheated to the Commonwealth by an office found, such alien shall have become a citizen of the United States in pursuance of the laws thereof, in every such case, all the right, title and interest, in such lands and tenements, which shall have accrued to the Commonwealth, or to the president and directors*

Right of Commonwealth &c. to lands, released to alien purchasers, becoming citizens before office found.

(a) *Vid.* acts of 1797, p. 46.

* See the references in note on the title, *ante*, c. 23. And particularly, acts of 1780, 1705, and 1766, *edi.* 1769, p. 12, 48, 479; as to titles acquired by or under Aliens.

† This is the title of the act in the roll. The act, as it passed the House of Delegates, was an act to *reduce into one the several acts* on the subject; the Senate struck out all the provisions except those of the act of 1812; but, through inadvertence, no alteration was made in the title.

A. D. 1819.
A. R. C. 43.

Provision in favour
of citizens purcha-
sing from aliens,
bona fide.

Also, in favour of
citizens, lessees,
heirs or devisees
of aliens.

Such lands how
far subject to
alien's debts.
Repealing clause.

Commencement.

of the literary fund, by reason of the alienage of such purchaser, shall be, and the same is hereby released to him, his heirs and assigns forever.(a)

2. *BE it further enacted*, That, when any alien residing within the United States, holding or claiming title to any lands or tenements, not heretofore escheated to the Commonwealth by an office found, shall have *bona fide* sold or demised the same, or shall have died, testate or intestate, seised or possessed thereof, or claiming title thereto, and when any alien, residing within the United States, shall hereafter hold or claim title to any such lands or tenements, and, before any proceedings shall be instituted, by the escheator, for the purpose of escheating the same to the Commonwealth, shall *bona fide* sell or demise the same, or die, testate or intestate, seised or possessed thereof, or claiming title thereto; in every such case, the purchaser from such alien, or his lessee, heir or devisee, being a citizen of the United States, shall hold and enjoy such lands or tenements quit and discharged of all right, title or claim, which shall have accrued to the Commonwealth, or to the president and directors of the literary fund, by reason of the alienage of the person so having sold, demised or died. Such lands or tenements shall be subject to the debts of the alien, in the same manner as if he had been a citizen.(b)

3. ALL and every act and acts, coming within the purview of this act, shall be and are hereby repealed.

4. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty.

C. 95.

A. D. 1785.
A. R. C. 10.

*An act for securing to the Authors of Literary Works, an exclusive property therein for a limited time.**

[Passed the 21st of November, 1785.]

Exclusive right of
printing their
books vested in
authors for a limited
time.

1. *BE it enacted by the General Assembly*, That the author of any book or pamphlet already printed, being a citizen of any one of the United States, who has not transferred to any other person or persons, the copy or copies of such book, or pamphlet, share, or shares thereof, his heirs and assigns, or the person or persons who have purchased or acquired such copy or copies, share or shares, in order to print or re-print the same, his heirs and assigns, shall have the exclusive right of printing and re-printing such book or pamphlet, within this Commonwealth, for the term of twenty-one years to be computed from the first publication thereof; and that the author of any book or pamphlet already composed and not printed or published,

(a) 1812, c. 25, § 1.

(b) *Ibid.* § 3, amended at the late Revision.

* 1785, c. 6; *vid* Laws U. S. 1 Cong. 2 sess. c. 15, 7 Cong. 1 sess. c. 36. Const. U. S. Art. 1, § 8, which have in effect and in practice, superseded this act.

or that shall hereafter be composed, being a citizen, as aforesaid, his heirs and assigns, shall have the exclusive right of printing and re-printing such book or pamphlet, within this Commonwealth, for the like term of twenty-one years, to be computed from the first publication thereof. And, if any person or persons whatsoever, shall print, re-print, or cause to be printed or re-printed, within this Commonwealth, any such book or pamphlet; or shall import into this Commonwealth, from any foreign Kingdom or State, any printed or re-printed copies of such book or pamphlet, without the consent of the author or proprietor thereof, first obtained in writing, signed in presence of two credible witnesses at least; or who, knowing the same to be so printed, re-printed, or imported, without such consent first had and obtained, shall publish, sell, or expose to sale, or cause to be published, sold, or exposed to sale, any copy or copies of any such book or pamphlet; the person or persons offending herein shall forfeit to the party injured, double the value of all the copies so printed, re-printed, or imported, or so published, sold, or exposed to sale; to be recovered at the suit of such party, in any court of record within this Commonwealth.

A. D. 1785.

A. R. C. 10.

Penalty on persons printing, importing, or publishing such books.

2. *PROVIDED nevertheless*, That, no person shall be entitled to the benefit of this act, until he shall have registered the title of such book or pamphlet with the clerk of the council, and procured a certificate of such registry from the said clerk; which certificate the clerk is hereby required to give, taking only three shillings for his trouble.

Authors to register titles of their books with the clerk of the council.

C. 96.

*An act to reduce into one, the several acts directing the course of descents.**

A. D. 1819.

A. R. C. 43.

[Passed March 10, 1819.]

1. *Be it enacted by the General Assembly*, That henceforth, when any person having title to any real estate of inheritance, shall die intestate as to such estate, it shall descend and pass in parcenary to his kindred, male and female, in the following course; that is to say : (a) Estate of inheritance, to which intestate hath title, descendible to kindred, male and female.

2. To his children, or their descendants, if any there be : (a) Course of descents.

3. If there be no children, nor their descendants, then to his father : (a)

4. If there be no father, then to his mother, brothers and sisters, and their descendants, or such of them as there be : (a)

5. If there be no mother nor brother, nor sister, nor their

(a) 1785, c. 60, edi. 1794, 1803, & '14, c. 93, § 1, 2, 3, 4, 7, 8, 9, 10, 11, 12.

* The amendments made at the late revival are distinguished, as far as practicable, by being printed within single inverted commas. All the provisions of this act which are referred to as having been originally enacted by act of 1785, c. 60, took effect by the commencing clause of that act, on the first of January, 1787.

A. D. 1419.
A. R. C. 43.

descendants,* then the inheritance shall be divided into two moieties, one of which shall go to the paternal, the other to the maternal kindred, in the following course, that is to say :(a)

6. FIRST, to the grandfather :(a)

7. IF there be no grandfather, then to the grandmother, uncles and aunts on the same side, and their descendants, or such of them as there be :(a)

8. IF there be no grandmother, uncle nor aunt, nor their descendants, then to the great grandfathers, or great grandfather, if there be but one :(a)

9. IF there be no great grandfather, then to the great grandmothers, or great grand mother, if there be but one, and the brothers and sisters of the grandfathers and grandmothers, and their descendants, or such of them as there be :(a)

10. AND so on in other cases, without end ; passing to the nearest lineal male ancestors, and, for the want of them, to the lineal female ancestors, in the same degree, and the descendants of such male and female ancestors, or to such of them as there be.(a)

Proviso, in case of
an infant dying
without issue, hav-
ing estate derived
from father,

11. *PROVIDED, however, and be it further enacted, That* where an infant shall die without issue, having title to any real estate of inheritance, derived by 'gift, devise or descent, from the father, and there be living, at the death of such infant, his father, or any brother or sister of such infant on the part of the father, or the paternal grandfather or grand mother of the infant, or any brother or sister of the father, or any descendant of any of them, then such estate shall descend and pass to the paternal kindred, without regard to the mother or other maternal kindred of such infant, in the same manner as if there had been no such mother or other maternal kindred living at the death of the infant ;' *saving, however,* to such mother, any right of dower, which she may have, in such real estate of inheritance.†

Or from mother.

12. AND, where an infant shall die without issue, having title to any real estate of inheritance derived by 'gift, devise, or descent from the mother, and there be living, at the death of such infant, his mother, or any brother or sister of such infant on the part of the mother, or the maternal grandfather or grandmother of the infant, or any brother or sister of the mother; or any descendant of any of them, then such estate shall descend and pass to the maternal kindred, without regard to the father, or other paternal kindred of such infant, in the same manner as if there had been no such father, or other paternal kindred living at the death of the infant ;' *saving, however,* to such father the right which he may have as tenant by the curtesy in the said estate of inheritance.†

(a) 1785, c. 60, ed. 1794, 1803, & '14, c. 93, § 1, 2, 3, 4, 7, 8, 9, 10, 11, 12.

* The words "and the estate shall not have been derived either by purchase or descent, from either the father or the mother," which were here inserted by an amendment at the revival of 1792, (which amendment took effect on the first of October, 1793, *vid. ante*, c. 44,) were struck out at the late revival.

† These two sections, 11, 12, are substitutes (making material alterations in those passages that are printed within inverted commas,) for the act of 1790, c. 13, § 2, 3, ed. 1794, 1803, and 1814, c. 93, § 5, 6. The alterations can be understood only by comparison. The act of 1790, c. 13, being passed in the annual session of 1790-1, took effect March 1st, 1791, according to the act of 1789, c. 9, § 2.

13. But no right in the inheritance shall accrue to any persons whatever, other than to children of the intestate, unless they be in being, and capable in law to take as heirs, at the time of the intestate's death.(b)

A. D. 1819.

A. R. C. 43.

None but children to take, unless in being at intestate's death.

14. AND, where, for want of issue of the intestate, and of father, mother, brothers and sisters, and their descendants, the inheritance is before directed to go by moieties to the paternal and maternal kindred; if there should be no such kindred on the one part, the whole shall go to the other part: and if there be no kindred, either on the one part or the other, the whole shall go to the wife or husband of the intestate: and if the wife or husband be dead, it shall go to her or his kindred in the like course, as if such wife or husband had survived the intestate, and then died entitled to the estate.(b)

Rule, where inheritance is to go by moieties, and there is no kindred on the part of the father or mother.

When it shall go to wife or husband; And to whom, if wife or husband be dead.

15. AND, in the cases before mentioned, where the inheritance is directed to pass to the ascending and collateral kindred of the intestate, if part of such collaterals be of the whole blood to the intestate, and other part of the half blood only, those of the half blood shall inherit only half so much as those of the whole blood; but, if all be of the half blood, they shall have whole portions, only giving to the ascendants, (if any there be,) double portions.(b)

Rule, where some are of whole, and others of half blood.

16. AND, where the children of the intestate, or his mother, brothers and sisters, or his grandmother, uncles and aunts, or any of his female lineal ancestors living, with the children of his deceased lineal ancestors, male and female in the same degree, come into the partition, they shall take *per capita*; that is to say, by persons; and where, a part of them being dead, and a part living, the issue of those dead have right to partition, such issue shall take *per stirpes*, or by stocks, that is to say, the shares of their deceased parent.(b)

Who shall take *per capita*;

And who *per stirpes*.

17. WHEN any of the children of a 'person dying' intestate,* shall have received, from such intestate in his lifetime, any real 'or personal' estate by way of advancement, and shall choose to come into the partition 'of the estate' with the other parceners, such advancement 'both of real and personal estate,' shall be brought into hotchpot with the 'whole' estate 'real and 'personal,' descended, 'and such party, bringing into hotchpot such advancement as aforesaid, shall thereupon be entitled to his or their proper portion of the whole estate so descended, both real and personal.'(b)†

Advancement to a child of real or personal estate, in intestate's life-time, to be brought into hotchpot with whole estate, real and personal, descended.

18. IN making title by descent, it shall be no bar to a party, that any ancestor, through whom he derives his descent from the intestate, is or hath been an alien.‡ Bastards also shall be capable of inheriting or of transmitting inheritance on the part of their mother, in like manner as if they had been lawfully begotten of such mother.(b)

Alienage of ancestor, no bar in making title by descent through such ancestor.

Bastards, how capable of inheriting, &c.

And when legitimated.

(b) 1785, c. 60, ed. 1794, 1803, and 1814, c. 93, § 13, 14, 15, 16, 17, 18, 19.

* The words "or their issue," which were inserted here in the former laws, were omitted at the late revisal.

† *Vid. 3 Hen. st. at lar.* p. 371, ed. 1733, acts of 1705, c. 33, § 1, ed. 1769, acts of 1748, c. 7, § 1.

‡ See ed. 1769, acts of 1766, c. 20, confirming titles previously derived by purchase or descent from aliens.

A. D. 1819.

A. R. C. 43.

Issue in marriages
null in law, legiti-
mate.

When and how
kinds of intestates,
whose heirs are in-
fants, &c. may be
sold, and the mo-
ney divided.

shall afterwards intermarry with such woman, such child or children, if recognized by him, shall be thereby legitimated. The issue also in marriages deemed null in law, shall nevertheless be legitimate.(b)

20. WHENSOEVER any lands shall descend, from any person dying intestate, to two or more heirs, any one of whom shall be an infant, *feme covert*, *non compos mentis*, or beyond sea, and the dividend of each heir shall not exceed the value of three* hundred dollars, in the opinion of any court herein-after mentioned, it shall be lawful for the superior court of chancery of that district, or the court of the county or corporation in which such lands, or the greater quantity of them lie, to direct the sale of the said lands, and the distribution of the money arising therefrom, according to the rights of each claimant: *Provided always*, That each heir residing within this Commonwealth, shall be first duly summoned, to shew cause, if any he can, against such sale: and where any heir shall reside without this Commonwealth, the court shall make an order for publication, which order being inserted in any public newspaper, to be designated by the court in such order, for eight weeks successively, shall be considered as a summons.(c)

Parceners may
maintain waste a-
gainst each other.
Rights of parce-
ners equal in elec-
tions, divisions, &c.
Repealing clause.

21. ONE parcener may maintain an action of waste against another, but no parcener shall have or possess any privilege over another in any election, division or matter to be made or done, concerning lands which shall have descended to them.(d)

22. ALL and every act and acts, clauses and parts of acts heretofore made, containing any thing within the purview of this act, shall be, and the same are hereby repealed: *Provided always*, That nothing herein contained shall be construed in any wise to affect any right, title, interest or claim to, or in any estate in lands or tenements whatsoever, accrued before the commencement of this act, but the same shall be, and remain in the same condition as if this act had never been made.

Commencement.

23. THIS act shall commence and be in force, from the first day of January eighteen hundred and twenty.

C. 97.

A. D. 1786.

A. R. C. 11.

An act declaring when the death of persons absenting themselves, shall be presumed.†

[Passed December 1, 1786.]

BE it enacted by the General Assembly, That any person absenting himself beyond sea, or elsewhere, for seven years successively, shall be presumed to be dead, in any case whereia

(b) 1785, c. 60, edi. 1794, 1803, and '14, c. 93, § 13, 14, 15, 16, 17, 18, 19.

(c) Altered from act of 1790, c. 13, § 1, 6; edition 1794, 1803, and 1814, c. 93, § 20, 21.

(d) 1790, c. 13, § 6; edi. 1794, 1803, and 1814, c. 93, § 21.

* "One," by former acts.

† 1786, c. 67; edi. 1794, 1803 and '14, c. 26. This act took effect July 1st, 1787; *vid.* acts 1786, c. 115, § 5.

his death shall come in question, unless proof be made that he was alive within that time. But an estate recovered in any such case, if in a subsequent action or suit the person presumed to be dead shall be proved to be living, shall be restored to him who shall have been evicted; and he may moreover demand and recover the rents and profits of the estate, during such time as he shall have been deprived thereof, with lawful interest.

A. D. 1819.

A. R. C. 43.

C. 98.

*An act concerning Partitions, and Joint Rights and Obligations.**

A. D. 1786.

A. R. C. 11.

[Passed November 28, 1786.]

1. *BE it enacted by the General Assembly*, That all joint tenants, or tenants in common, who now are, or hereafter shall be, of any estates of inheritance in their own rights, or in the right of their wives, and all joint tenants, or tenants in common, who now hold, or hereafter shall hold, jointly, or in common, for term of life or years, with others who have or shall have estates of inheritance, or freehold in any lands, tenements or hereditaments, may be compelled to make partition between them, of such lands, tenements and hereditaments, as they now hold, or hereafter shall hold, as joint tenants, or tenants in common, by writs *de partitione facienda*, the forms whereof shall be devised in the general court, and adapted to the cases aforesaid: But no such partitions between joint tenants, or tenants in common, who hold or shall hold estates for term of life or years, with others holding equal or greater estates, shall be prejudicial to any entitled to the reversions or remainders, after the death of the tenants for life, or after the expiration of the years.

Joint tenants and tenants in common may be compelled to make partition. 31 Hen. 8, c. 1, § 2. 32 Hen. 8, c. 32, § 2.

2. If partition be not made between joint tenants, whether they be such as might have been compelled to make partition, or not, or of whatever kind the estates or thing holden or possessed be, the parts of those who die first shall not accrue to the survivors, but shall descend, or pass by devise, and shall be subject to debts, charges, curtesy or dower, or transmissible to executors or administrators, and be considered to every other intent and purpose, in the same manner as if such deceased joint tenants had been tenants in common.

The part of joint tenant dying first, not to accrue to the survivor.

3. The representative of one jointly bound with another for the payment of a debt, or for performance or forbearance of any act, or for any other thing, and dying in the life time of the latter, may be charged by virtue of such obligation, in the same manner as such representatives might have been charged if the obligors had been bound severally as well as jointly.

Representatives of one jointly bound, chargeable as in joint and several obligations.

* 1786, c. 60 and 115, § 5, commenced July 1st, 1787; *vid. ed.* 1794, 1803 and '14, c. 24.

A. D. 1786.

A. R. C. 11.

Allotment of parcels in partitions.

No plea in abatement.

8 and 9 Will. 3,

c. 31, § 3.

Proceeding in writs of partition.

Ibid, § 1, 2.

4. PARTITION may be demanded by one and the same writ, of all the several parcels of land or other real estate to which the parties have title, and execution thereupon done by the sheriff and jury, as heretofore, or by special commissioners, to be appointed by the court, with assent of the parties, by allotment to each party of part in each parcel, or of parts in one or more parcels, or of one or more individual parcels, with or without the addition of a part or parts of other parcels, as shall be most for the interest of the parties in general.

5. No plea in abatement shall be received in any suit for partition, nor shall it abate by the death of any tenant.

6. AFTER a writ of partition returned, affidavit being made by some credible person, that due notice of the writ had been given to the tenant or tenants to the action, and that a copy thereof had been left with him, her or them, if he, she or they could be found, or if not, that such notice had been given to, and a copy left with the wife, son or daughter, being of the age of twenty-one years, or upwards, and at the usual place of abode of such as could not be found, or the person in actual possession, not being the demandant of the lands whereof partition is demanded, twenty days or more before the day of return, if the tenant or tenants shall not cause an appearance to be entered, at the time by law appointed, or within one month thereafter, the demandant having filed his or her declaration, the court may proceed to examine his or her title, and the quantity demanded, and shall give judgment by default, for so much as he or she shall appear to them to have a right to, and award a writ to make partition, which being executed, after eight days' notice given to the persons mentioned before, judgment final shall thereupon be given, which shall be as binding as if it had been given after an appearance and upon a trial, unless any tenant, within one year after the first judgment, or, being an infant, a married woman, of unsound mind, or out of *Virginia*, within one year after attainment of full age, death of the husband, recovery of understanding, or return to the country, respectively, by motion to the court, either admitting the demandant's right and purpurs, shall shew inequality in the partition, (in which case the court may award a new partition to be made, and that in presence of all the parties, if they choose to attend it, and the second partition shall be as binding as if the tenant had appeared and pleaded in the first instance,) or else shall shew sufficient matter in bar of the partition, or that the demandant hath not title to so much as he or she hath recovered, in which case the court may suspend or set aside the judgment, and admit the tenant to appear and plead, and the cause shall proceed as if no judgment had been given; and if, upon the trial thereof, the court shall give the same judgment as the first, it shall stand confirmed, and the person or persons, in whose behalf the motion was made, shall be awarded to pay costs.

When and how
under-sheriffs may
execute judgments
in parti-

7. THE under-sheriff, when the high sheriff cannot conveniently attend, may, in presence of two justices of the peace, proceed to the execution of a judgment in partition, by inquiry in due form of law, and the high sheriff shall make the same return as if he had acted in person.

§ 4.

8. THEY who were tenants of the messuages, lands, tenements and hereditaments, or any part thereof, before they were divided, shall hold the same of the landlords, to whom they shall be allotted by the partition, in severalty, under the same conditions, rents, covenants and reservations, and the landlords shall warrant the several parts unto the tenants, as they were bound to do by leases or grants, respectively: and any demandant who was tenant, in actual possession, to the tenant to the action, for his purpart of the messuages, lands, tenements and hereditaments, divided by virtue of a writ of partition, or any part thereof, shall hold it for the same term, and under the same conditions and covenants, when it shall be allotted in severalty.

A. D. 1786.
A. R. C. 11.

Tenants to hold of landlords, to whom they may be allotted.

C. 99.

*An act, to reduce into one act the several acts for regulating Conveyances, and concerning wrongful alienations.**

A. D. 1819.
A. R. C. 43.

[Passed February 24, 1819.]

1. *BE it enacted by the General Assembly*, That no estate of inheritance or freehold, or for a term of more than five years, in lands or tenements, shall be conveyed from one to another, unless the conveyance be declared by writing sealed and deli-

What estates in lands, &c. shall not be conveyed, but by deed.

* The important amendments made at the late revisal are distinguished, as far as practicable, by being printed within single inverted commas. All the provisions of this act, which are referred to, as having been enacted by act of 1785, c. 62, took effect on the 1st of Jan. 1787. Former general laws on this subject: act of 1705, 3 *Hen. st. at lar.* p. 318; act of 1710, *edi.* 1733, c. 13; act of 1748, *edi.* 1752, and 1769, c. 1; act of 1785, *edi.* of 1794, 1803 and 1814, c. 90. Deeds were originally directed to be recorded in the general or county courts, generally, without regard to the county in which the lands lay, within six months from the delivery; *vid.* act of 1656, 1 *Hen. st. at lar.* p. 417; act of 1661-2, 2 *Id.* p. 98. By the act of 1705, they were required to be recorded in the general court or court of the county where the lands lay, within eight months; 3 *Id.* p. 318, 319. In 1710, the provisions of the act of 1705 were re-enacted; and all former deeds declared good, though not recorded within six months, nor in the court of the county where the land lay; *Id.* p. 518, *edi.* 1733, act of 1710, c. 13, § 1, 5. The act of 1748 is the same as those of 1705 and 1710, as to time and place of recording; *edi.* 1752 and 1769, act of 1748, c. 1. The same act, § 11, 12, 13, contains very important provisions, giving effect to deeds, that had been previously irregularly executed and recorded. By act of 1766, c. 11, deeds dated within eight months preceding the 1st of Nov. 1765, and between that date and the 1st of June 1766, might be recorded within eight months from the 1st of March 1767, *edi.* 1769, p. 466. On the institution of district courts, in 1788, the same jurisdiction was given them in respect to probat of deeds of lands within the districts wherein the lands lay respectively, as the general court had exercised; act of 1788, c. 67, § 11; *edi.* 1794, 1803 and 1814, c. 66, § 6. The superior courts of law succeeded in 1809, to the same jurisdiction in this respect, within their respective counties, which belonged to the district courts within their districts; act of 1807, c. 3, which took effect in 1809. But, by act of 1813, the probat of deeds is confined to the courts of the county and corporation where the lands lie, after Nov. 1st, 1814; and deeds are allowed to be recorded on acknowledgment of the parties, or proof by three witnesses, in the clerk's office, or on acknowledgment before two justices in the country certified in due form under seal; act of 1813, c. 10, § 1, 2. As to deeds partly proved, before the last mentioned act, in the general or superior courts, and previous commissions to take the privy examination of *femes covert*, provision was made for completing the probat and record in

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How such conveyance shall be proved; and where recorded.

How covenants, &c. in consideration of marriage shall be proved; and where recorded, if land be charged;

Or if personal estate only be settled, &c.

Livery of seisin to be proved, and recorded with deed.

Bargains, sales & other conveyances of lands, deeds of settlement upon marriage, deeds of trust and mortgages, how far void, if not recorded:

And how far valid.

Deeds how admissible to record, where the party resides not in the U. States, or any territory thereof.

vered; nor shall such conveyance be good against a purchaser for valuable consideration, not having notice thereof, or any creditor, unless the same writing be acknowledged by the party or parties, who shall have sealed and delivered it, or be proved by three witnesses to be his, her or their act, before the court of the county, city or corporation, in which the land conveyed or some part thereof lieth, or in the manner herein-after directed, and be lodged with the clerk of such court to be there recorded.(a)

2. No covenant or agreement, made in consideration of marriage, shall be good against a purchaser for valuable consideration, not having notice thereof, or any creditor, unless the same covenant or agreement be acknowledged by the party bound thereby, or proved by three witnesses, to be his, her or their act, if land be charged, before the court of the county, city or corporation, in which the land or part thereof lieth; or, if the personal estate only be settled or covenanted, or agreed to be paid or settled, before the court of that county, city or corporation, in which such 'personal estate shall remain,' or in the manner herein-after directed, and be lodged with the clerk of such court, to be there recorded.(b)

3. WHEN any such deed or conveyance shall be acknowledged or proved, in order to their being recorded; the livery of seisin thereupon made, in such cases where the same is by law required, shall in like manner be acknowledged or proved, and shall be recorded together with the deed or conveyance whereupon it shall be made.(c)

4. ALL bargains, sales and other conveyances, whatsoever, of any lands, tenements or hereditaments, whether they be made for passing any estate of freehold or inheritance, or for a term of years, and all deeds of settlement upon marriage, wherein either lands, slaves, money or other personal thing shall be settled or covenanted to be left or paid, at the death of the party or otherwise; and all deeds of trust and mortgages whatsoever which shall hereafter be made and executed, shall be void, as to all creditors and subsequent purchasers 'for valuable consideration, without notice,' unless they shall be acknowledged or proved, and 'lodged with the clerk to be' recorded, according to the directions of this act; but the same, as between the parties, and their heirs, 'and as to all subsequent purchasers, with notice thereof, or without valuable consideration,' shall nevertheless be valid and binding.(c)

5. If the party, who shall sign and seal any such writing, reside not in 'the United States, or any territory thereof,' the acknowledgment of such party, or the proof by the number of

the general or superior courts, and for recording the execution of such commissions, in the courts having jurisdiction under existing laws, or in the county court, by act of 1814, c. 28. So, formerly, deeds partly proved in the general court might be fully proved and recorded there, or sent to the district court, by act of 1789, c. 13, § 9, and a like provision was made in respect to deeds partly proved in the district court, on the institution of superior courts, by act of 1807, c. 4, § 8.

(a) 1785, c. 62, § 1, altered from acts of 1705, 1710, and 1748; *vid.* 3 *Hen. st. at lar.* p. 318; *edi.* 1733, act of 1710, c. 13, § 1; *edi.* 1752, and 1760, act of 1748, c. 1, § 1.

(b) 1785, c. 62, § 1.

(c) Act of 1705, 3 *Hen. st. at lar.* p. 323; act of 1710, *edi.* 1733, c. 13, § 8; act of 1748, *edi.* 1752, and 1769, c. 1, § 2, 4.

witnesses requisite, of the sealing and delivering of the writing, before any court of law, or the mayor or other chief magistrate of any city, town or corporation, of and in the country in which the party shall dwell, certified by such court, or mayor, or chief magistrate, in the manner such acts are usually authenticated by them, shall be effectual, for the admission thereof to record.(d)

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6. The clerks of the several county and corporation courts of this Commonwealth, and their deputies, shall be, and they are hereby authorised and required, to admit to record at any time(e) in the form required by this act, any conveyance, either on the acknowledgment of the party or parties, or the proof on oath of such acknowledgment by the legal number of witnesses thereto, made in the office of the respective clerks. And any conveyance so recorded shall have the same legal validity in all respects, as if it were proved in open court.(e)

Clerks of courts may admit deeds to record at any time, on legal proof in their offices ;

7. ANY deed may, in like manner, be admitted to record upon the certificate under seal of any two justices of the peace for any county or corporation within the *United States*, or any territory thereof, or within the district of *Columbia*, annexed to such deed, and to the following effect, to wit :

Or upon certificate under seal of any two justices of peace for any county, &c. within U. States, &c.

County or corporation, &c.

Form of such certificate.

WE A. B. and C. D. justices of the peace in the county (or corporation) aforesaid, in the state, (or territory, or district) of do hereby certify, that E. F. a party (or E. F. and G. H. &c. parties) to a certain deed, bearing date on the day of , and hereto annexed, personally appeared before us, in our county (or corporation) aforesaid, and acknowledged the same, to be his, (or their) act and deed, and desired us to certify the said acknowledgment to the clerk of the county (or corporation) court of , in order that the said deed may be recorded. Given under our hands and seals this day of

*A. B. [SEAL.]
C. D. [SEAL.](f)*

8. THE several clerks aforesaid shall, on the first day of every term of their respective courts, return to the court, a correct and complete list of all deeds, by them admitted to record in manner aforesaid, since the term last preceding, of their said courts, specifying therein the proof or acknowledgment of such deeds before them, as the case may be, and also particularly reciting the truth of the case, in relation to any deed which may have been admitted to record upon the certificate of magistrates as aforesaid ; and setting forth therein, a description of each deed, by the names of the parties thereto, and the kind of property therein mentioned ; which list, having been inspected by the court, shall be inserted in the minutes of the proceedings of the day, and read therewith in open

List of deeds so admitted to record to be returned to court by the clerk ; and when. What shall be specified therein.

(d) 1794, c. 6, § 2, amending the revised act of 1792, which was from act of 1785, c. 62, § 1 ; *vid. edi* 1794, 1803, and 1814, c. 90, § 5. The time for offering deeds to be recorded, was struck out of § 1 and 5, of this act, at the late revision, and provided for in § 12, *post*.

(e) 1813, c. 10, § 1 ; am. at rev. of 1818, by omitting the words " within the period and," after the words " at any time."

(f) 1813, c. 10, § 2, am. at rev. 1818.

Such list to be inserted in minutes of court's proceedings.

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Penalty on clerk
for neglect ;

how recoverable
and appropriated.

False-swearing, in
proof of a deed so
recorded, perjury.

Where deeds of
personalty shall be
recorded.

Provision, where
person claiming
under such deed
shall permit the
property to be re-
moved out of the
county, &c.

All deeds, (except
deeds of trust and
mortgages,) valid
as to all persons
from their date, if
recorded within
eight months.

Deeds of trust and
mortgages when-
ever recorded, and
other deeds not re-
corded within 8
months, valid from
time of being re-
corded, only.

court ; and the said clerks shall, moreover, cause a fair copy of such list of deeds, to be set up early in the morning of the day in which such return is made, at the principal door of their respective court-houses.(g)

9. ANY clerk failing to make the return aforesaid, or to advertise a copy thereof, in the manner herein prescribed, shall forfeit and pay for every such neglect of duty, the sum of one hundred dollars, recoverable with costs, on action or information, in the superior court of law for the county in which such clerk has his office, one moiety to the informer, or the person suing for the same, and the other to the Commonwealth, for the benefit of the literary fund.(g)

10. ANY witness, who, in proving the acknowledgment of any deed recorded in the manner herein prescribed, shall wilfully and corruptly forswear himself, shall be deemed guilty of perjury, and shall be subject, on conviction thereof, to the same punishment, as if such perjury had been committed in open court.(g)

11. 'EVERY deed respecting the title of personal chattels, hereafter executed, which by law ought to be recorded, shall be recorded in the court of that county or corporation, in which such property shall remain : and, if afterwards, the person claiming title under such deed, shall permit any other person in whose possession such property may be, to remove with the same, or any part thereof, out of the county or corporation in which such deed shall be recorded, and shall not, within twelve months after such removal, cause the deed aforesaid to be certified to the court of that county or corporation, into which such other person shall so have removed, and to be delivered to the clerk, to be there recorded, such deed, for so long as it shall not be recorded in such last mentioned county or corporation court, and, for so much of the property aforesaid as shall have been so removed, shall be void in law, as to all purchasers thereof for valuable consideration, without notice, and as to all creditors.'(h)

12. 'EVERY conveyance, covenant, agreement and other deed in this act mentioned, except deeds of trust and mortgages, which shall be acknowledged, proved or certified according to law, and delivered to the clerk of the proper court, to be recorded, within eight months after the sealing and delivery thereof, shall take effect and be valid, as to all persons, from the time of such sealing and delivery ; but all deeds of trust and mortgages, whensoever they shall be delivered to the clerk to be recorded, and all other conveyances, covenants, agreements and deeds, which shall not be acknowledged, proved or certified, and delivered to the clerk of the proper court, to be recorded, within eight months after the sealing and delivery thereof, shall take effect, and be valid as to all subsequent purchasers for valuable consideration, without notice, and as to all creditors, from the time when such deed of trust or mortgage, or such other conveyance, covenant, agreement or deed, shall have been so acknowledged, proved or certified, and delivered to the clerk of the proper

‘ court, to be recorded, and from that time only: *Provided, however, That, if two or more deeds embracing the same property, after having been so acknowledged, proved or certified, be delivered to the clerk, to be recorded on the same day, that which was first sealed and delivered, shall have preference in law.**

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Where two deeds for same property are delivered to clerk on same day, that first executed to be preferred.

13. ‘ EVERY title bond, or other written contract, in relation to land, may be proved, certified or acknowledged, and recorded, in the same manner as deeds for the conveyance of land; and such proof, acknowledgment or certificate, and the delivery of such bond or contract to the clerk of the proper court, to be recorded, shall be taken and held as notice to all subsequent purchasers, of the existence of such bond or contract.’*

Title bonds, or other written contracts, concerning land, may be recorded. Effect thereof.

14. HEREAFTER, every partition of any tract of land or lot, and every assignment of dower in any tract of land or lot, made under any order or decree of any court, and every judgment or decree, by which the title to any tract of land or lot, shall be recovered, shall be duly recorded in the court of the county or corporation in which such tract of land or lot, or part thereof, shall lie, and until so recorded, such partition or assignment, judgment or decree, shall not be received in evidence in support of any right claimed by virtue thereof.(k)

Partitions, assignments of dower, judgments and decrees for land, to be recorded in court of county, &c. where land lies; And not receivable as evidence until so recorded.

15. WHEN a husband and his wife have sealed and delivered a writing, purporting to be a conveyance of any estate or interest, if she appear in court, and, being examined privily and apart from her husband, by one of the judges thereof, shall declare to him, that she did freely and willingly seal and deliver the said writing, to be then shewn and explained to her, and wishes not to retract it, and shall, before the said court, acknowledge the said writing, so again shewn to her, to be her act, such privy examination, acknowledgment and declaration, shall be thereupon entered of record in such court: and if, before any two justices of the peace for any county or corporation, in ‘ any state,’ or territory of the *United States*, ‘ or of the district of *Columbia*,’ such married woman, being examined privily and apart from her husband, and having the writing aforesaid fully explained to her, shall acknowledge the same to be her act and deed, and shall declare that she had willingly signed, sealed and delivered the same, and that she wished not to retract it, and such privy examination, acknowledgment and declaration shall be certified by such justices, under their hands and seals, by a certificate annexed to the said writing, and to the following effect, that is to say:

On deeds by husband and wife, privy examination and acknowledgment of wife, how taken in court.

Must be recorded. How taken and certified by any two justices of the peace, within the U. States, &c.

County or Corporation, &c:

We A. B. and C. D., justices of the peace in the county (or corporation,) aforesaid, in the State (or territory or district,) of _____, do hereby certify that E. F., the wife of G. H., parties to a certain deed, bearing date, on the

Form of such certificate.

(k) 1813, c. 10, § 9.

Sections 12, 13, were introduced at the late revision; though the provision that deeds recorded after eight months, should be effectual from the time of recording, (which is incorporated in § 12,) had been before enacted by act of 1813, c. 10, § 7.

† The words “the greater,” which were in the act of 1813, c. 10, § 9, were struck out at the late revision.

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day of _____, and hereunto annexed, personally appeared before us, in our county (or corporation,) aforesaid; and, being examined by us, privily and apart from her husband, and having the deed aforesaid fully explained to her, she the said E. F. acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it. Given under our hands and seals, this _____ day of _____

A. B. [Seal.]
C. D. [Seal.]

To be recorded
with the deed.

Effect of such privy
examination,
&c. when record-
ed.

Proviso, as to ef-
fect of covenants
or warranties in
such deeds, on the
wife and her
heirs.

Provision where
the wife is not in
the United States,
&c.

AND such certificate shall be offered for record to the clerk of the court, in which such deed ought to be recorded; it shall be the duty of such clerk to record the said certificate accordingly, along with the deed to which it is annexed: And, when the privy examination, acknowledgment and declaration of a married woman shall have been so taken in court, and entered of record, or certified by two magistrates, and delivered to the clerk to be recorded, and the deed also shall have been duly acknowledged or proven, as to the husband, and delivered to the clerk to be recorded, pursuant to the directions of this act, such deed shall be as effectual in law, to pass all the right, title and interest of the wife, as if she had been an unmarried woman: *Provided, however,* That no covenant or warranty, contained in such deed hereafter executed, shall, in any manner, operate upon any *feme covert*, or her* heirs, further than to convey effectually, from such *feme covert* and her heirs, her right of dower, or other interest in real estate, which she may have at the date of such deed. (l) †

16. If the wife be not in the *United States of America*, or in the territories thereof, or in the District of *Columbia*, a commission to examine her privily, and take her acknowledgment, shall 'be issued by the clerk of the court in which the 'deed ought to be recorded, and' be directed to any two judges

(l) Compiled of act of 1785, c. 62, § 1; act of 1796, c. 13, § 2; act of 1814 c. 28, § 3, 4; *vid. ed.* 1803 and 1814, c. 90, § 6, and c. 208, § 5.

* "His," in the roll.

† This section is compiled from the acts mentioned in note (l); but the provisions of those acts were amended and new modelled at the late revision. By the acts of 1674, 1705 and 1710, the privy examination and acknowledgment of *femes covert* to deeds, could only be taken of the *femes* personally, by the general or county court where the deed was recorded; 2 *Hen. st. at law*. p. 317—3 *Id.* p. 319, 517. The act of 1734 provided, that a commission might be issued by the clerk of the general or of any county court to two or more commissioners, *being justices of the county where the feme shall reside*, to take and certify her privy examination and acknowledgment; and such commissions and privy examinations made before that act, were *declared good*; and the law was *declared* to be, that such privy examination and acknowledgment were not binding on the *feme*, unless recorded; 4 *Id.* p. 400, 401, and the provisions of the act of 1734, were substantially re-enacted by the act of 1748; 5 *Id.* p. 410, 411, *edi.* 1769, acts 1748, c. 1, § 6, 7, 8. The report of the committee of revisors of 1784, p. 21, and after them the Assembly of 1785, made a slight alteration; requiring that the commission should issue *from the court where the deed ought to be recorded*, and be executed by two justices of the peace of that county in which the *feme dwelleth*; acts of 1785, c. 62, *edi.* 1794, 1803 and 1814, c. 90, § 6. By an act of 1796, magistrates of corporations were empowered to execute such commissions; *edi.* 1803 and 1814, c. 208, § 2. The act of 1814, c. 28, § 3, provided that the privy examination and acknowledgment of a *feme covert*, may be taken, without any commission, before any two justices of the peace in any county or corporation within the United States, or the territories thereof, *within which the feme covert may be*.

or justices of any court of law, or to the mayor, or other chief magistrate of any city, town or corporation of the country in which the wife shall be: and, in the execution of such commission, the person or persons to whom it shall be directed, shall 'take and certify the privy examination, acknowledgment and declaration of such *feme covert*, in the same manner as justices of the peace within the *United States* are required to take and certify the same. Such certificate of the judges or justices, mayor or chief magistrate, authenticated in the form, and with the solemnity, by them used in other acts, and delivered, together with the commission aforesaid, to the clerk of the proper court, to be recorded, shall, with such commission, be accordingly recorded by him, together with the deed, to which they are annexed, and shall be as effectual in law as a certificate, in like case, by two justices of the peace within the *United States*, made pursuant to the provisions of this act.'(m)

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17. No such deed as is mentioned in this act, shall hereafter be admitted to record in any other than the county and corporation courts of this Commonwealth; except, only, that any deed which, at any time before the first day of November, the year eighteen hundred and fourteen, had been partially proven in the general court, in any of the former district courts of law, or in the superior court of law for any county, may be fully proven and admitted to record, in the court in which it may have been partially proven, if that were the general court or a superior court of law; or, if it were a former district court, then in the superior court of law for the county, in which such district court was holden; and being so fully proven and recorded, it shall be as effectual, to all intents and purposes, as if recorded in a county or corporation court.(n)

Deeds to be recorded in county or corporation courts only. Exception as to deeds partly proved before November 1st, 1814.

18. THE clerks of the several courts aforesaid shall record all writings acknowledged or proved, or certified to have been acknowledged or proved, in manner before prescribed, all privy examinations and acknowledgments of married women, howsoever taken or made according to this act, and all endorsements on such writings, and all plats, schedules and other papers, thereto annexed, by entering them, word for word, in well bound books, to be carefully preserved, and shall afterwards re-deliver them to the parties entitled to them: *Provided, however*, That when the grantee or other person bound to pay the fee for recording any deed, resides out of the state, the clerk shall not be bound to receive such deed to be recorded, or to receive any proof or acknowledgment thereof, until the payment of such fee shall be secured to him.(o)

Duty of clerks recording deeds, to record all endorsements thereon, and plats, schedules, &c. annexed thereto;

And re-deliver them to parties entitled. *Provido*, as to fee for recording, when party is non-resident.

19. In every case, where a commission for a privy examination of a *feme covert* hath heretofore duly issued, from the office of the general court, or from the office of any former district court, or from the office of any superior court of law within this Commonwealth, and shall have been, or shall be,

Commissions for privy examination heretofore issued, being returned duly executed, where to be recorded.

(m) Altered from act of 1785, c. 62, § 1; edi. 1794, 1803 and 1814, c. 90, § 7.

(n) From act of 1813, c. 10, § 5; amended at rev. of 1818.

(o) 1785, c. 62, § 1; am. at rev. of 1792; 1796, c. 5, § 1; *vid.* edi. 1803 and 1814, c. 90, § 8, and c. 201, § 1.

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Effect thereof.

Alienations and warranties of land shall pass only what the grantor might lawfully convey.

Alienations of particular estates, or their union with the inheritance, shall not defeat remainders.

How far heir of warrantor shall be barred or bound. St. of Gloucester, 4 Ed. 1, st. 2, c. 6, 4 Ann. c. 16, c. 21. Tenants' remedy against him.

Estates in tail October 7, 1776, declared fees-simple from that day.

Estates so limited since, declared also fees-simple.

Such estates discharged of conditions restraining alienations before issue born.

returned duly executed, it shall be lawful to record such commission, and the privy examination certified in pursuance thereof, in the county court, or other court, in which, according to this act, it would be proper to record the deed upon which such commission issued. And such commission and privy examination shall have the same effect in law as if the commission had been issued from the court in which the deed may be recorded.(p)

20. ALL alienations and warranties of lands, tenements or hereditaments, made by any, purporting to pass or assure a greater right or estate than such person may lawfully pass or assure, shall operate as alienations or warranties of so much of the right and estate, in such lands, tenements or hereditaments, as such person might lawfully convey, but shall not pass or bar the residue of the said right, or estate, purporting to be conveyed or assured; (q) 'nor shall the alienation of any particular estate, on which any remainder may depend, whether such alienation be by deed or will, nor shall the union of such particular estate, with the inheritance, by purchase or by descent, so operate, by merger or otherwise, as to defeat, impair, or in any wise affect such remainder.'

21. BUT, if the deed of the alienor doth mention, that he and his heirs be bound to warranty, and if any heritage descend to the demandant of the side of the alienor, then he shall be barred for the value of the heritage that is to him descended. And, if, in time after, any heritage descend to him, by the said alienor, then shall the tenant recover against him, of the seisin warranted, by judicial writ, that shall issue out of the rolls of the justices, before whom the plea was pleaded, to re-summon his warranty, as before hath been done in cases where the warrantor cometh into the court, saying, that nothing descended from him by whose deed he is vouched.(g)

22. EVERY estate in lands or slaves, which, on the seventh day of October, in the year of our Lord one thousand seven hundred and seventy-six, was an estate in fee tail, shall be deemed from that time to have been, and from thence forward to continue, an estate in fee simple: And every estate in lands, which since hath been limited, so that, as the law aforetime was, such estate would have been an estate tail, shall also be deemed to have been, and to continue an estate in fee simple: And, all estates which, before the said seventh day of October, one thousand seven hundred and seventy-six, by the law, if it remained unaltered, would have been estates in fee tail, and which now, by virtue of this section, are and will continue estates in fee simple, shall from that time and henceforth be discharged of the conditions, annexed thereto by the common law, restraining alienations before the donee shall have issue; so that the donees or persons in whom the conditional fees vested or shall vest, had, and shall have the same power over the same estates, as if they were pure and absolute fees.(r)

(p) 1814, c. 28, § 2.

(q) 1785, c. 67, § 1, 2; edi. 1794, 1808 and 1814, c. 13, § 1, 2.

(r) October 1776, c. 26; 1785, c.

62, § 1.—Edi. 1794, 1803, and 1814, c. 90, § 9.

23. *PROVIDED, always,* That, all estates in lands or slaves, which have become, or shall hereafter become, escheatable to the Commonwealth, by virtue of the act, entitled, *an act declaring tenants of lands or slaves in tail, to hold the same in fee simple*, or of this act, for defect of blood, shall descend, and be deemed to have descended, agreeably to the limitations of the deed or will creating such estates.^(s)

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Proviso, as to such estates as have or may become escheatable.

24. *PROVIDED, also,* That nothing in this act contained, shall be construed to restrain any tenant of such lands or slaves, from selling or conveying the same by deed, in his or her life time, or disposing thereof by his or her last will and testament, and that all such estates shall remain liable to the debts of the tenants, in the same manner as lands and slaves held in fee simple: *Provided, moreover,* That, this act shall not extend to any lands or slaves, which have been escheated and sold for the use of the Commonwealth.^(s)

Such estates may be conveyed by deed or will, and shall be subject to debts, as estates in fee simple.

Farther proviso.

25. 'EVERY estate in lands, which shall be limited by any deed hereafter made, or by the will of any person, who shall hereafter die, so that, as the law was on the seventh day of October, in the year of our Lord, one thousand seven hundred and seventy-six, such estate would have been an estate tail, shall be deemed to be an estate in fee simple, in the same manner, as if it had been limited by those technical words which, at the common law, are appropriate to create an estate in fee simple; and every limitation upon such an estate, shall be held valid, if the same would be valid when limited upon an estate in fee simple, created by technical language as aforesaid.'

Estates tail turned into fees-simple, as if created such by technical words.

Limitations upon them valid, as upon fees-simple so created.

26. 'EVERY contingent limitation in any such deed or will, made to depend upon the dying of any person without heirs, or heirs of the body, or without issue, or issue of the body, or without children, or offspring, or descendant, or other relative, shall be held and interpreted a limitation to take effect when such person shall die, not having such heir, or issue, or child, or offspring, or descendant, or other relative, as the case may be, living at the time of his death, or born to him within ten months thereafter, unless the intention of such limitation be otherwise expressly and plainly declared on the face of the deed or will creating it.'

New rule of construction of contingent executory limitations.

27. EVERY estate in lands, which shall hereafter be granted, conveyed, or devised to one, although other words heretofore necessary to transfer an estate of inheritance be not added, shall be deemed a fee simple, if a less estate be not limited by express words, or do not appear to have been granted, conveyed or devised, by construction or operation of law.^(v)

Every estate conveyed or devised to be deemed fee-simple, unless a less estate be limited.

28. WHERE an estate hath been, or shall be, by any conveyance, limited in remainder, to the son or daughter, or to the use of the son or daughter, of any person, to be begotten, such son or daughter, born after the decease of his or her father, shall take the estate in the same manner, as if he or she had been born in the life time of the father, although no estate shall have been conveyed to support the contingent remainder after his death;^(v) 'And, hereafter, an estate of freehold or

When a contingent remainder shall be good, though no estate be conveyed to support it.
10 and 11 Will. 3. c. 16, § 1.

(s) May 1783, c. 27; ed. 1794, 1803, and 1804, c. 90, § 10, 11.

(v) 1785, c. 62, § 1; ed. 1794, 1803 and '14, c. 90, § 12, 13, 14, 15, 16, 17, 18.

A. D. 1819.
A. R. C. 43.

Estate of freehold &c. may be made to commence in futuro, by deed. In conveyances of uses, possession shall be transferred to the use, without livery. 27 Hen. 8, c. 10. What estate shall thereby pass.

Trust estates subject to debts and charges of cestuys que trust; and how far. 29 Car. 2, c. 3, 10.

Trust estates subject to dower and curtesy.

Grants of rents, reversions &c., good without attornment.

4 Ann. c. 16, § 9, 10. When attornment to a stranger shall be void.

11 Geo. 2, c. 19, § 11.

Conveyances by commissioners and sheriffs, under decrees or judgments, effectual to pass title.

Saving.

Repealing clause.

‘of inheritance may be made to commence *in futuro* by deed in like manner as by will.’

29. By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seised to the use, or deed operating by way of covenant to stand seised to use, the possession of the bargainor, releasor, or covenantor shall be deemed heretofore to have been, and hereafter to be, transferred to the bargainee, releasee or person entitled to the use, for the estate or interest, which such person hath or shall have in the use, as perfectly, as if the bargainee, releasee or person entitled to the use, had been enfeoffed, with livery of seisin, of the land intended to be conveyed by such deed or covenant.(v)

30. ESTATES of every kind, holden or possessed in trust, shall be subject to like debts and charges of the persons, to whose use or to whose benefit they were, or shall be respectively holden or possessed, as they would have been subject to, if those persons had owned the like interest in the things holden or possessed, as they own or shall own in the uses or trusts thereof.(v)

31. WHERE any person, to whose use or in trust for whose benefit, another is or shall be seised of lands, tenements, or hereditaments, hath or shall have such inheritance in the use or trust, as that, if it had been a legal right, the husband or wife of such person would thereof have been entitled to curtesy or dower, such husband or wife shall have and hold, and may, by the remedy proper in similar cases, recover curtesy or dower of such lands, tenements or hereditaments.(v)

32. GRANTS of rents, or of reversions, or remainders, shall be good and effectual, without attornments of the tenants; but no tenant who, before notice of the grant, shall have paid the rent to the grantor, shall suffer any damage thereby.(v)

33. THE attornment of a tenant to any stranger, shall be void, unless it be with the consent of the landlord of such tenant, or pursuant to, or in consequence of, the judgment of a court of law, or the order or decree of a court of equity.(v)

34. ALL conveyances by commissioners and sheriffs, hereafter to be made, for lands sold in virtue of any decree or judgment of any court within this Commonwealth, shall be, and they are hereby declared to be, good and effectual, for passing the absolute title to such lands, to the purchasers thereof, and all persons claiming under them, any law to the contrary notwithstanding; *saving* to the Commonwealth, and to all and every person and persons, bodies politic and corporate, their respective heirs and successors, other than the parties to such conveyances, decrees or judgments, and those claiming under them, all such right, title, interest and demand, as they, every or any of them, would have had in case this act had not been made.(w)

35. ALL and every act and acts, clause and clauses of acts, containing any thing within the purview of this act, shall be, and the same are hereby repealed: *Provided, nevertheless,*

(v) 1785, c. 62, § 1; edi. 1794, 1803, and 1814, c. 90, § 12, 13, 14, 15, 16, 17, 18.

(w) Revisal of 1792; edi. 1794, 1803, and 1814, c. 90, § 19.

That, nothing herein contained shall be construed to affect any right, which may have accrued, or been vested before the commencement of this act.

A. D. 1819.
A. R. C. 43.

36. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty.

Commencement.

C. 100.

*An act reducing into one, the several acts concerning the manner of authenticating foreign deeds, records, and other instruments in writing.**

A. D. 1792.
A. R. C. 17.

[Passed December 8, 1792.]

1. WHEREAS the intercourse between this State and the other States in the Union, and between this State and foreign nations, has become more considerable than heretofore, which renders it necessary that some mode should be adopted, to give authenticity to deeds and certain other instruments in writing, foreign judgments, specialties on record, registers of births and marriages, made, executed, entered into, given and enregistered by and between persons residing in any of the United States, or in any foreign kingdom, state, nation, or colony, beyond sea, and out of the jurisdiction of this State :(a)

Preamble.

2. *Be it enacted by the General Assembly,* That all such deeds, if acknowledged by the party making the same, or proved by the number of witnesses requisite, before any court of law, or the mayor, or other chief magistrate of any city, town, or corporation of the country in which the party shall dwell, certified by such court, or mayor, or chief magistrate, in the manner such acts are usually authenticated by them; and all policies of insurance, charter parties, powers of attorney, foreign judgments, specialties on record, registers of births and marriages, as have been, or shall be made, executed, entered into, given and enregistered in due form, according to the laws of such state, kingdom, nation, province, island or colony, and attested by a notary public, with a testimonial from the proper officer of the city, county, corporation, or borough, where such notary public shall reside, or the great seal of such state, kingdom, province, island, colony, or place beyond sea, shall be evidence in all the courts of record within this Commonwealth, as if the same had been proved in the said courts.(a)

How foreign deeds and other instruments of writing must be authenticated to be evidence.

3. ALL and every act, clause and clauses of acts, coming within the purview of this act, shall be, and the same are hereby repealed: *Provided, always,* That nothing in this act

Repealing clause.

Proviso.

(a) From 1785, c. 62; 1787, c. 21, § 4, 5, 6; 1792, edi. 1794, 1803, and 1814, c. 91.

* This act was suspended till October 1st, 1793; *vid. ante.* c. 44. And *vid. const. U. S.* art. 4, § 1, laws U. S. 1 cong. 2 sess. c. 11, 8 cong. 1 sess. c. 56, prescribing the method of authenticating public acts, records and judicial proceedings, and of exemplifications from the office books, of the courts of justice, and public offices of each state and territory of the Union, and the effect of such authentications and exemplifications in every other state and territory.

A. D. 1792.
A. R. C. 17.

contained, shall be construed in any manner to alter the method of taking and certifying the privy examination of any *feme covert*, or in any other respect to alter or repeal the act, intituled, *an act for regulating conveyances*.

Commencement.

4. THIS act shall commence in force from the passing thereof.

C. 101.

*An act to prevent frauds and perjuries.**

[Passed November 30, 1785.]

A. D. 1785.
A. R. C. 10.

Certain contracts, agreements, and promises, not binding, unless made in writing.
29 Car. 2, c. 3,
§ 1, 2, 4.

1. *BE it enacted by the General Assembly*, That no action shall be brought whereby to charge any executor or administrator upon any special promise to answer any debt or damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract for the sale of lands, tenements, or hereditaments, or the making any lease thereof for a longer term than one year, or upon any agreement which is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorised.

Conveyances of lands or goods, and hereditaments, bonds, suits, judgments, and executions to defraud creditors, void as to them.
13 Eliz. c. 5, § 2,
3.
27 Eliz. c. 4, § 2,
3.

2. EVERY gift, grant, or conveyance of lands, tenements, hereditaments, goods or chattels, or of any rent, common, or profit out of the same, by writing or otherwise, and every bond, suit, judgment or execution, had or made, and contrived of malice, fraud, covin, collusion, or guile, to the intent or purpose to delay, hinder, or defraud creditors of their just and lawful actions, suits, debts, accounts, damages, penalties, or forfeitures, or to defraud or deceive those who shall purchase the same lands, tenements, or hereditaments, or any rent, profit, or commodity out of them, shall be from henceforth deemed and taken (only as against the person or persons, his, her, or their heirs, successors, executors, administrators, or assigns, and every of them, whose debts, suits, demands, estates, interests, by such guileful and covinous devices and practices, as is aforesaid, shall or might be in any wise disturbed, hindered, delayed or defrauded,) to be clearly and utterly void, any pretence, colour, feigned consideration, expressing of use, or any other matter or thing, to the contrary notwithstanding. And moreover, if a conveyance be of goods and chattels, and be not on

Conveyances of goods, not on valuable consideration, to be deemed

* 1785, c. 64; edi. 1794, 1803, and 1814, c. 10. This is the first and only statute of *frauds and perjuries* in our code. The first section is taken from the statute of Car. II. which, being subsequent to the 4 Jac. I. was never in force in Virginia, till enacted by this act; but so much of the second and third sections as are taken from the two statutes of Elizabeth, were always in force in Virginia.

consideration deemed valuable in law, it shall be taken to be fraudulent within this act, unless the same be by will duly proved and recorded, or by deed in writing acknowledged or proved, if the same deed include lands also, in such manner as conveyances of land are by law directed to be acknowledged or proved, or, if it be of goods and chattels only, then acknowledged or proved by two witnesses in the general court, or court of the county, wherein one of the parties lives, within eight months after the execution thereof, or unless possession shall really and *bona fide* remain with the donee; and, in like manner, where any loan of goods and chattels shall be pretended to have been made to any person with whom, or those claiming under him, possession shall have remained by the space of five years without demand made, and pursued by due process at law on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of a use or property, by way of condition, reversion, remainder, or otherwise, in goods and chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken, as to the creditors and purchasers of the persons aforesaid, so remaining in possession, to be fraudulent within this act, and that the absolute property is with the possession, unless such loan, reservation, or limitation of use or property, were declared by will or by deed, in writing, proved and recorded as aforesaid.

A. D. 1785.
A. R. C. 10.

fraudulent, unless by will or deed, proved and recorded.

In what cases of loans of goods, the absolute right, shall be deemed to be in possessor.

3. THIS act shall not extend to any estate or interest in any lands, goods, or chattels, or any rents, common, or profit out of the same, which shall be upon good consideration, and *bona fide*, lawfully conveyed or assured to any person or persons, bodies politic or corporate.

Exception as to lands or goods *bona fide* sold and conveyed.
13 Eliz. c. 5, § 6.
27 Eliz. c. 4, § 4, 6.

4. THIS act shall commence and be in force, from and after the first day of January, one thousand seven hundred and eighty-seven.

Commencement.

C. 102.

An act to reduce into one act, the several acts against Usury.*

A. D. 1819.
A. R. C. 43.

[Passed February 24, 1819.]

1. BE it enacted by the General Assembly, That, no person shall, upon any contract, take, directly or indirectly, for loan of any money, wares, or merchandize, or other commodity, above

Rate of interest, six per centum per annum.

* The rate of interest in 1730, was fixed at *six per cent. per annum*, *vid. 4 Hen. st. at lar. p. 194*; *edi. 1733, act of 1730, c. 12*: in 1734, it was reduced to *five per cent.*, and the former act amended, by giving costs to the prosecutor, and authorising the borrower to exhibit a bill in equity, against the lender of money, to discover the Usury; *4 Hen. st. at lar. p. 395, 396*.—In the Revision of 1748, the provisions of the act of 1734 were re-enacted; 1748, *edi. 1752, c. 37*, and *edi. 1769, c. 30*. The same rate of interest is prescribed in the act of 1786, *c. 55, edi. 1794, 1803, and 1814, c. 31*; and it continued at *five per cent.* until the 1st of May, 1797, when the act of 1796, *c. 16*, took effect, (*edi. 1803, and 1814, c. 209*), by which it was raised to *six per cent.*

A. D. 1819.
A. R. C. 43.

37 Hen. 8. c. 9.

13 Eliz. c. 8.

29 Eliz. c. 18,
§ 12.

21 Jac. 1. c. 17.

3 Car. 1, c. 4.

12 Ann. st. 2, c.

16, § 1.

Usurious contracts void.

Penalty for usury.

37 Hen. 8. c. 9,
§ 3.

12 Ann. st. 2, c.
16, § 1.

How appropriated.

Borrower relievable in chancery, against lender; and to what extent.

Rates of brokerage on loans.

21 Jac. 1. c. 17,
§ 3.

12 Ann. st. 2, c.
16, § 2.

Penalty for taking more than legal rates.

How appropriated.

Repealing clause. Proviso.

Commencement.

the value of six dollars for the forbearance of one hundred dollars for a year, and after that rate for a greater or lesser sum, or for a longer or shorter time; and all bonds, contracts, covenants, conveyances, or assurances, to be made, for payment or delivery of any money or goods so to be lent, on which a higher interest is reserved or taken, than is hereby allowed, shall be utterly void.(a)

2. If any person shall, by any way, or means of any corrupt bargain, loan, exchange, shift, covin, device or deceit, take, accept or receive, for the loan of, or giving day of payment for, money, wares, merchandize or other commodity, above the rate of six dollars for one hundred dollars for one year, every person so offending shall forfeit double the value of the money, wares, merchandize or commodity, so lent, exchanged or shifted; one moiety to the use of the Commonwealth, and the other to the informer, to be recovered with costs.(b)

3. ANY borrower of money, or goods, may exhibit a bill in chancery against the lender, and compel him to discover, upon oath, the money or thing really lent, and all bargains, contracts or shifts, which shall have passed between them, relative to such loan, or the re-payment thereof, and the interest or consideration for the same; and if, thereupon, it shall appear, that more than lawful interest was reserved, the lender shall be obliged to accept his principal money without any interest, or other consideration, and pay costs, but shall be discharged from all other penalties of this act.(c)

4. EVERY broker, solicitor or driver of bargains, who shall hereafter, directly or indirectly, take or receive more than the rate or value of twenty-five cents, for brokerage or soliciting the loan or forbearance of one hundred dollars for a year, or above seventeen cents for making or renewing the bond or bill, for such loan or forbearance, or for any counter-bond or bill, concerning the same, shall forfeit, for every offence, sixty-six dollars and sixty-six cents, to the Commonwealth and informer, to be recovered and divided, as herein-before mentioned.(d)

5. ALL acts and parts of acts, coming within the purview of this act, shall be, and the same are hereby repealed: *Provided*, That all rights, remedies, penalties, forfeitures, actions and prosecutions, heretofore accrued, incurred or commenced, shall be and remain in the same condition, as is if this act had never been passed.

6. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty.

(a) 1796, c. 16, § 1; edi. 1803, and 1814, c. 209, § 1; taken from 1786, c. 55, edi. 1794, 1803 and 1814, c. 31, § 1. with an alteration as to the rate of interest; which last act was from 1748, edi. 1752, c. 37, and edi. 1769, c. 30.

(b) *Ibid.* § 2.

(c) *Ibid.* § 3.

(d) 1786, c. 55, edi. 1794, 1803, and 1814, c. 31, § 4.

C. 103.

*An act against conveying or taking pretended Titles.**

A. D. 1786.
A. R. C. 11.

[Passed December 6, 1786.]

1. *BE it enacted by the General Assembly*, That no person shall convey or take, or bargain to convey or take, any pretended title to any lands or tenements, unless the person conveying or bargaining to convey, or those under whom he claims, shall have been in possession of the same, or of the reversion or remainder thereof, one whole year next before; and he who offendeth herein knowingly, shall forfeit the whole value of the lands or tenements; the one moiety to the Commonwealth, and the other to him who will sue as well for himself as for the Commonwealth: But any person lawfully possessed of lands or tenements, or of the reversion or remainder thereof, may nevertheless take or bargain to take the pretended title of any other person, so far, and so far only, as it may confirm his former estate.

Forfeiture for buying or selling pretended titles.
32 Hen. 8. c. 9,
§ 2, 3.

C. 104.

An act reducing into one, the several acts concerning wills, the distribution of intestates' estates, and the duty of executors and administrators.†

A. D. 1819.
A. R. C. 43.

[Passed March 3, 1819.]

1. *BE it enacted by the General Assembly*, That every person aged twenty-one years, or upwards, being of sound mind, and not a married woman, shall have power, at his 'or her' will and pleasure, by last will and testament in writing, to devise all the estate, right, title and interest, in possession, reversion or remainder, which he 'or she' hath, or at the time of his 'or her' death shall have, of, in, or to lands, tenements or hereditaments, or annuities or rents charged upon, or issuing out of them, so as such last will and testament be signed by the testator, or by some other person in his 'or her' presence, and by his 'or her' direction; and moreover, if not wholly written by himself 'or herself,' be attested by two or more credible witnesses, in his 'or her' presence.(a)

Who capable of devising lands.
32 Hen. 8. c. 1, § 1.
34 and 35 Hen. 8. c. 5, § 4, 14.
29 Car. 2. c. 3, § 5.
What estates therein are devisable.
Devise of lands how to be executed;
How attested.

(a) 1785, c. 61, § 1.

* 1786, c. 51, and 115, § 5, commenced July 1st, 1787; *Vid.* also *edi.* 1794, 1803, and 1814, c. 30; previous to which, however, the English Statute from which this act is taken, being prior to 4 Jac. 1., was in force in Virginia.

† Former general laws on this subject; act of 1748, *edi.* of 1752, c. 5; *edi.* of 1769, c. 3; and act of 1785, c. 61; *edi.* of 1794, 1803, and 1814, c. 92. The important amendments made at the late revision, are distinguished by being printed within single inverted commas. All the provisions in this act, which are referred to as having been originally enacted by act of 1785, c. 61, took effect on the 1st January, 1787.

A. D. 1819.

A. R. C. 43.

Saving widow's dower.

Revocations express, how to be made.

29 Car. 2, c. 3, § 6. Revocations how far implied, in case of a testator childless at date of will, in favor of children after born.

Provision for posthumous children pretermitted by will and unprovided for.

Provision for children, born after will made, not provided for, and only pretermitted by will.

Where devises or legacies shall not lapse by death of devisee or legatee in testator's lifetime.

2. SAVING to the widows of the testators, their dower in such lands, tenements, rents or annuities, according to law, which shall not be prejudiced by any devise thereof.(b)

3. No devise so made, or any clause thereof, shall be revocable, but by the testator 'or testatrix' destroying, cancelling, or obliterating the same, or causing it to be done in his 'or her' presence, or by a subsequent will, codicil or declaration in writing, made as aforesaid. But every last will and testament, made when the testator had no child living, wherein any child he might have, is not provided for, or mentioned, if, at the time of his death, he leave a child, or leave his wife enseint of a child, which shall be born, shall have no effect during the life of such after-born child, and shall be void, unless the child die, without having been married 'and' before he or she have attained the age of twenty-one years. When a testator shall leave children born, and his wife enseint, the posthumous child or children, if it be unprovided for by settlement, and be neither provided for nor disinherited, but only pretermitted by the last will and testament, shall succeed to the same portion of the father's estate, as such child would have been entitled to, if the father had died intestate; towards raising which portion, the devisees and legatees shall contribute proportionably, out of the parts devised and bequeathed to them by the same will and testament.(c)

4. If a testator, having a child or children, born at the time of making and publishing his last will and testament, shall, at his death, leave a child or children, born after the making and publishing of his said last will and testament, the child or children so after-born, if such child or children be unprovided for by settlement, and be neither provided for nor disinherited, but only pretermitted by the last will and testament, shall succeed to the same portion of the father's estate, as such child or children would have been entitled to, if the father had died intestate; towards raising which portion, the devisees and legatees shall contribute, proportionably, out of the parts devised and bequeathed to them by the same will and testament, in the same manner as is provided in the case of posthumous children.(d)

5. WHENSOEVER any estate of any kind, shall or may be devised or bequeathed by the testament and last will of any testator or testatrix, to any person being a child or other descendant of such testator or testatrix, and such devisee or legatee shall, during the lifetime of such testator or testatrix, die, testate or intestate, leaving a child or children, or one or more descendants of a child or children, 'who shall survive such 'testator or testatrix;' in that case, such devise or legacy, to such person so situated as above-mentioned, and dying in the lifetime of the testator or testatrix, shall not lapse; but the estate so devised or bequeathed, shall 'vest in such child or 'children, descendant or descendants of such legatee or devisee, in the same manner as if such legatee or devisee had survived the testator or testatrix, and had died unmarried and 'intestate.'(e)

(b) 1785, c. 61, § 2.
(c) *Ibid*, § 3.

(d) 1794, c. 19.
(e) 1812, c. 19.

6. No person under the age of eighteen years, shall be capable of disposing of his or her chattels by will.(f)

A. D. 1819.
A. R. C. 43.

7. No nuncupative will shall be established, unless it be made in the time of the last sickness of the deceased, at his 'or her' habitation, or where he 'or she' hath resided for ten days next preceding, except where the deceased is taken sick from home, and dies before he 'or she' returns to such habitation; nor, where the value exceeds thirty dollars, unless it be proved by two witnesses, that the testator 'or testatrix' called on some person present to take notice, or bear testimony, that such is his 'or her' will, or words of the like import.(g)

None under eighteen years old capable to bequeath chattels.

In what cases only nuncupative wills may be established.

29 Car. 2, c. 3, § 19.

8. AFTER six months have elapsed from the time of speaking the pretended testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony, or the substance thereof, shall have been committed to writing within six days after making the will.(h)

Proof thereof, when inadmissible.

29 Car. 2, c. 3, § 20.

9. No will in writing, or any devise therein, of chattels, shall be revoked by a subsequent will, codicil or declaration, unless the same be in writing.(h)

Written bequests how revocable.

10. ANY soldier in actual military service, or any mariner or seaman being at sea, may dispose of his chattels, as he might heretofore have done.(h) *

Soldiers and seamen may bequeath as heretofore.

29 Car. 2, c. 3, § 23.

11. IF any person shall subscribe his 'or her' name as a witness to a will, wherein any bequest is given to him 'or her,' if the will may be not otherwise proved, the bequest shall be void, and such witness shall be allowed and compellable to appear, and give testimony on the residue of the will, in like manner as if no such bequest had been made. But, if such witness would be entitled to any share of the estate of the testator 'or testatrix' in case the will were not established, so much of his said shares shall be saved to him 'or her,' as shall not exceed the value of the legacy bequeathed to him 'or her.'(i)

Bequest to witnesses, when void.

25 Geo. 2, c. 6.

12. THE several superior courts of law, county and corporation courts, shall have power to hear and determine all causes, matters, suits and controversies testamentary, arising within their respective jurisdictions, and to examine and take the proof of wills, and grant certificates thereof, according to the methods and rules following, that is to say: If any testator 'or testatrix' shall have a mansion-house, or known place of residence, his 'or her' will shall be proved in the superior court of law of the county, or in the court of the county or corporation, wherein such mansion-house, or place of residence is; if he 'or she' have no place of residence, and lands be devised in the will, it shall be proved in the superior court of law of the county, or in the court of the county or corporation wherein the lands lie, or in one of them, where there shall be lands in several counties; and if he 'or she' hath no such known place of residence, and there be no lands devised, then the will may be proved, either in the superior court of law of

Saving.

What courts may take probat, and grant certificates thereof.

(f) 1785, c. 61, § 4.

(g) *Ibid*, § 5.

(h) 1785, c. 61, § 6, 7, 8.

(i) *Ibid*, § 9, 10.

This section is taken from the statute of Car. 2, which also refers to the pre-existing law, that is, the common law, which, in cases of testaments, conformed very nearly with the civil law.

A. D. 1819.
A. R. C. 43.

Probate receivable when will is exhibited.

But its validity contestible within seven years; and how:

To be tried by jury.

Saving for infants, &c.

Certificate of testimony on the probate, admissible evidence before the jury.

Depositions of non-resident witnesses to wills, how attainable.

Effect of such depositions.

In what courts authenticated copies of wills, proved out of the State, may be recorded.

the county, or in the court of the county or corporation, where the testator 'or testatrix' shall die, or that wherein his 'or her' estate, or the greater part thereof, shall be; or such will may, in any case, be proved in the general court.(i)

13. WHEN any will shall be exhibited to be proved, the court having jurisdiction as aforesaid, may proceed immediately to receive the probate thereof, and grant a certificate of such probate. If, however, any person interested shall, within seven years afterwards, appear, and by his 'or her' bill in chancery contest the validity of the will, an issue shall be made up, whether the writing produced be the will of the testator 'or testatrix' or not, which shall be tried by a jury, whose verdict shall be final between the parties; saving to the court, a power of granting a new trial for good cause, as in other trials: but, no such party appearing within that time, the probate shall be forever binding; saving also to infants, *femes covert*, and persons absent from the State, or *non compos mentis*, the like period after the removal of their respective disabilities.(k)

14. In all such trials by jury, the certificate of the oath of the witnesses, at the time of the first probate, shall be admitted as evidence, to have such weight as the jury shall think it deserves.(l)

15. It shall be lawful for any court, when any will shall be produced to them for probate, and any witness attesting the same, shall reside out of the Commonwealth, to issue a commission or commissions annexed to such will, and directed to the presiding judge of any court of law, or to any notary public, mayor or other chief magistrate of any city, town, corporation or county, where such witness may be found, authorising the taking and certifying his 'or her' attestation. If the person, to whom any such commission shall be directed, shall certify, in the manner such acts are usually authenticated by him, that the witness personally appeared before him, and made oath, or solemn affirmation, (as the case may require,) that the testator 'or testatrix,' signed and published the writing annexed to such commission, as his 'or her' last will and testament, or that some other person signed it, by his 'or her' direction, that he 'or she' was of disposing mind and memory, and that he 'or she' subscribed 'his or her' name thereto, in the presence of the testator 'or testatrix,' and at his 'or her' request, such oath or affirmation shall have the same operation, and the will be recorded in like manner, as if such oath or affirmation had been made in the court from whence such commission issued.(m)

16. AUTHENTICATED copies of wills, proved according to the laws of any of the United States, or of the countries without the limits of the same, and relative to any estate within this Commonwealth, may be offered for probate in the general court; or, where the estate so devised, shall lie altogether in one county or corporation, the superior or inferior court of such county or corporation, respectively, may admit to record

(i) 1785, c. 61, § 9, 10.

(k) 1785, c. 61, § 11; altered from 1748, ed. 1769, c. 3, § 3, 4.

(l) 1785, c. 61, § 12.

(m) 1787, c. 21; am. at rev. of 1792.

any such authenticated copies : but, the bond and oath of the executor 'or executrix,' administrator 'or administratrix,' with the will annexed, shall be changed from the bond and oath required by law in other cases, in such manner as to the said court shall seem necessary, and the proof to be made by the witnesses shall be conformed to the nature of the case. But such will shall be liable to be contested and controverted, in the same manner, as the original might have been.(m)

A. D. 1819.
A. R. C. 43.

Executor's bond and oath to conform to the case.

17. ALL persons named as executors in any such will, shall, after the copy thereof has been admitted to record, as above directed, be entitled to a probat of the said will, in the same manner as if the original will had been proved in such court. And, where there shall be no executors named in the said will, or the executors therein named shall all of them refuse the executorship, the court shall have the same power and authority to hear and determine the right of administration, and to grant a certificate for obtaining letters of administration, with the will annexed, as if the original will had been proved in court.(n)

Probat may be obtained, as if original were produced ;

Or administration, with will annexed, granted.

18. No nuncupative will shall be proved within fourteen days after the death of the 'testator or testatrix,' nor until the widow, if any, of the testator, and next of kin, have been summoned to contest the same, if they please.(o)

Further rules concerning probat of nuncupative wills. 29 Car. 2, c. 3, § 21.

19. If the general court, or any superior court of law, county or corporation court, having jurisdiction as aforesaid, shall be informed, that any person hath the will of a testator or testatrix in his or her custody, such court may summon such person, and, by a proper process, compel him 'or her' to produce the same.(o)

Person having possession of will, how compellable to produce it.

20. If the executors named in any will shall refuse the executorship, or, being required to give security, as herein-after mentioned, shall all refuse or fail to give the same, (which shall amount to a refusal of the executorship,) in either case, the court, having jurisdiction as aforesaid, may receive the proof of the will, and grant a certificate for obtaining letters of administration with the same annexed, to the person to whom administration would have been granted, if there had been no will of the deceased.(p)

When, and to whom, administration may be granted with will annexed.

21. BEFORE granting a certificate of the probat of any will, the executor 'or executrix,' administrator 'or administratrix,' with the will annexed, (as the case may be,) shall, in open court, take the following oath, to wit :

Executor's oath.

You shall swear that this writing contains the true last will of the within named _____, as far as you know or believe ; and that you will well and truly perform the same, by paying, first, his 'or her' debts, and then the legacies contained in the said will, as far as his 'or her' goods, chattels and credits will extend, and the law charge you ; and that you will make a true and perfect inventory of all the said goods, chattels and credits, as also a just account when thereto required. And shall also give bond, in such penalty as will be equal to the full value of the estate at the least, and with such security as shall be approved of by the court, with the following condition, to wit :

Bond and security to be given.

(m) 1787, c. 21 ; am. at rev. of 1792.

(o) 1785, c. 61, § 13, 14 ; am. at rev. of 1792.

(n) 1787, c. 21, § 7.

(p) *Ibid*, § 15.

A. D. 1819.

A. R. C. 43.

Condition of bond.

The condition of this obligation is, that if the said executor 'or executrix' of the last will and testament, (or administrator 'or administratrix,' with the will annexed, of all the goods, chattels and credits) of deceased, do make a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession or knowledge of , the said , or into the hands or possession of any other person or persons for , and the same so made, do exhibit to the court of , at such time as shall be thereto required by the said court, and the same goods, chattels and credits do well and truly administer according to law, and make a just and true account of actings and doings therein, when thereunto required by the said court; and further, do well and truly pay and deliver all the legacies contained and specified in the said will, as far as the said goods, chattels and credits will extend, according to the value thereof, and as the law shall charge ; then this obligation to be void, or else to remain

To whom payable, and how payable.

in full force. Which bond shall be payable to the judges or justices, sitting in court, and their successors, and shall not become void upon the first recovery, but may be put in suit, and prosecuted from time to time, by and at the costs of any party injured by a breach thereof, until the whole penalty be recovered thereupon.(q)

Where no surety shall be required.

22. But, where any testator 'or testatrix' shall leave visible estate, more than sufficient to pay all his 'or her' debts, and by will shall direct, that his, 'or her' executors shall not be obliged to give security, in that case no security shall be required, unless the court shall see cause, from their own knowledge, or the suggestions of creditors or legatees, to suspect the executors of fraud, or that the personal estate will not be sufficient to discharge all the debts, and shall require security; when, the same shall be given, before a certificate shall be granted, notwithstanding any directions to the contrary in the will.(r)

Proviso.

Power of executors before probat, not hereby restrained.

23. THE power of executors over their testators' estates, before probat of the will, is not hereby restrained, but shall continue as heretofore.(s)

Curator during contest about a will, or infancy or absence of executor.

24. DURING any contest about a will, or during the infancy, or in the absence of an executor, or until a will, which may have once existed but is destroyed, shall be established, or whenever the court from any other cause shall judge it convenient, they may appoint any person or persons to collect and preserve the estate of any decedent, until a probat of his will, or *durante minore ætate*, or until administration of his estate be granted; taking bond and security for collecting the estate, making an inventory thereof, and safe keeping and delivering up the same, when required, to the executors or administrators.(s)

Curator's bond & oath.

25. THE bond and oath of the administrator or appointee, in such cases, shall be changed from the bond and oath of an

(q) 1785, c. 61, § 16, 17.

(r) *Ibid*, § 18.

(s) 1785, c. 61, § 19, 20; am. at rev. of 1792.

administrator in ordinary cases, in such manner as to the said courts, or any of them, shall seem necessary.(s)

A. D. 1819.
A. R. C. 43.

26. WHEN any widow shall not be satisfied with the provision made for her by the will of her husband, she may, within one year from the time of his death, before the general court, or court having jurisdiction of the probat of his will as aforesaid, or by deed executed in the presence of two or more credible witnesses, declare, that she will not take or accept the provision made for her by such will, or any part thereof, and renounce all benefit, which she might claim by the same will; and, thereupon, such widow shall be entitled to one third part of the slaves, whereof her husband died possessed, which she shall hold during her life; and, at her death, they and their increase shall go to such person or persons, to whom they would have passed and gone, if such declaration had not been made; and she shall, moreover, be entitled to such share of his other personal estate, as if he had died intestate, to hold to her as her absolute property; but, every widow not making a declaration within the time aforesaid, shall have no more of her husband's slaves and personal estate, than is given her by his will.(t)

When and how widow may renounce provision made by husband's will.

Her portion of his estate in such case.

27. ALL original wills shall be recorded, and shall also remain in the clerk's office of the court wherein they are respectively proved, except during such time as they may be in any superior court, having been removed thither for inspection, by *certiorari* or otherwise, after which they shall be returned to the said office.(v)

Original wills to be recorded, and kept in clerk's office.

28. IT shall be the duty of the clerks of the respective courts of record within this Commonwealth, to deliver or cause to be delivered, on or before the first day of June annually, to the clerk of the general court, a list of all certificates for probats and administrations granted in their courts respectively, within the year next preceding the first day of April; in this form :

Clerks to deliver annually to clerk of general court, lists of probats and administrations.

Date of Certificate.	Penalty of Bond.	Name of Testator or Intestate.	Names of Executors.	Names of Administrators.	Names of Secutices.

Form of lists.

For which said docket and list, the said clerks, respectively, may demand of the clerk of the general court his receipt. And if any such clerk shall fail herein, for every failure he shall forfeit and pay to the Commonwealth forty dollars, to be recovered on motion, without notice, in the general court, and the *onus probandi* shall lie on the defendant. And the clerk of the general court shall, after the first day of June, in each year, deliver to the attorney general a list of the clerks (if any) who shall have failed to deliver, or cause to be delivered to him, the lists of certificates for probats and administrations, agreeably to the directions of this act; and it shall be the duty of

Duty of clerk of general court;

And attorney general.

(s) 1785, c. 61, § 19, 20; am. at rev. 1792.

acts of 1748, c. 3, § 11; edi. 1769, acts of 1727, c. 4, § 21.

(t) 1785, c. 61, § 21; *vid.* edi. 1733, acts of 1727, c. 11, § 12; edi. 1752,

(v) 1785, c. 61, § 24.

A. D. 1819.
A. R. C. 43.

Distribution of intestates' estates.

22 and 23 Car. 2, § 2, 4, 5, 6.

29 Car. 2, c. 3, § 5.

1 Jac. 2, c. 17, § 7.

Husband, administrator of wife, not bound to distribute.

Advancements of real or personal estate, by intestate in his life time, to be brought into hotchpot with the whole estate real and personal.

Provision as to personal estates of infants dying intestate.

What courts may grant administration of intestates' estates.
31 Ed. 3, c. 11;
21 Hen. 8, c. 5, § 3, 4.
Right of administration.

If distributees fail to apply, creditors of others may be appointed.

the attorney general to proceed to a recovery of the penalty aforesaid.(w)

29. WHEN any person shall die intestate as to his goods and chattels, or any part thereof, after funeral debts and just expenses paid, if there be no child, one moiety, or, if there be a child or children, one third of the surplus shall go to the wife; but she shall have no more than the use for her life of such slaves as shall be in her share; and the residue of the surplus, and after the wife's death, the slaves in her share, or, if there be no wife, then the whole of such surplus shall be distributed in the same proportions, and to the same persons, as lands are directed to descend, in and by an act of the General Assembly, entitled, "*An act to reduce into one the several acts directing the course of descents.*" Nothing in this act contained shall be understood, so as to compel the husband to make distribution of the personal estate of his wife dying intestate.(x)

30. WHERE any 'of the' children of a 'person dying' intestate, or their issue shall have received, from such intestate in his lifetime, any 'real or' personal estate, by way of advancement, and shall choose to come into the 'partition and' distribution 'of the estate' with the other 'parceners and distributees;' such advancement, 'both of real and personal estate,' shall be brought into hotchpot with the 'whole estate' 'real and personal descended;' and such party, returning such 'advancement as aforesaid, shall thereupon be entitled to his 'or their proper portion' of the whole estate, so descended, both 'real and personal.'(y)

31. PROVIDED, That when an infant having title to personal estate, shall die before attaining to the age when one may legally bequeath that kind of property, or, after obtaining such age, shall die without bequeathing it, those of his or her kindred shall succeed to the said infant, who would have succeeded, if he or she had been, at the time of his or her death, of the age of twenty one years.(z)

32. THE general court, and the several courts, respectively, shall have the like jurisdiction to hear and determine the right of administration of the estates of persons dying intestate, as is herein-before mentioned, as to the proof of wills, in respect to the intestate's place of residence, or death, or where the estate shall lie; and shall grant certificates for obtaining such administration, to the representatives who apply for the same; preferring first the husband or wife, and then such others as are next entitled to distribution, or one or more of them, as the court shall judge will best manage and improve the estate.(a)

33. If no such person apply for administration, within thirty days from the death of an intestate, or at the next suc-

(w) 1785, c. 61, § 34; 1810, c. 13, § 1, 2, 3; *vid.* 2 Hen. st. at lar. p. 27, § 1, p. 25; *edi.* 1735, acts of 1711, c. 2, § 28; acts of 1748, *edi.* 1752, c. 5; *edi.* 1769, c. 3, § 1; *edi.* 1794, 1803, and 1814, c. 92, § 37.

(x) 1785, c. 61, § 21; *edi.* 1733, acts of 1705, c. 33, § 2; *edi.* 1769, acts of 1705, c. 3, § 10, and c. 7, § 2, 3;

Hen. st. at lar. p. 371, *edi.* 1794, 1803 and 1814, c. 92, § 27.

(y) 1785, c. 61, § 27; *vid.* 3 Hen. st. at lar. p. 371; *edi.* 1733, act of 1705, c. 33, § 1; *edi.* 1769, act of 1748, c. 7, § 1.

(z) 1801, c. 13.

(a) 1785, c. 61, § 28.

ceeding court after the expiration thereof, the court may grant administration to any creditor or creditors who apply for the same, or to any other person the court shall, in their discretion, think fit.(b)

A. D. 1819.
A. R. C. 43.

34. But, if any will shall afterwards be produced, and proved by executors, or the wife or other distributee, who shall not have before refused, shall apply for administration, the same shall be granted, in like manner as if the former had not been obtained.(c) Provision in case, afterwards a will be proved, or the wife, &c. apply for administration.

35. BEFORE granting a certificate for the administration of any estate, the person or persons, to whom the same is granted, shall in open court take the following oath, to wit: Administrator's oath.

You shall swear that deceased, died without any
will, as far as you know or believe, and that you will well and truly administer all and singular the goods, chattels and credits of the said deceased, and pay his debts, as far as his goods, chattels and credits will extend and the law require you; and that you will make a true and perfect inventory of all the said goods, chattels and credits, as also a just account when thereto required. So help you God.(d)

AND shall also give bond, in a penalty, at least equal to the value of the estate, and with such security as shall be approved by the court, with the following condition, to wit: Bond and surety.

THE condition of this obligation is, that, if the said administrator of the goods, chattels and credits of the deceased, do make a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have, or shall come, to the hands, possession or knowledge of Condition of bond.
, the said , or in the hands or possession of any other person or persons, for
the same so made, do exhibit into the court
when he shall be thereunto required by the said court; and such goods, chattels and credits do well and truly administer, according to law; and further do make a just and true account of his actings and doings therein, when thereto required by the said court; and all the rest of the said goods, chattels and credits which shall be found remaining upon the account of the said administrator, the same being first examined and allowed by the justices of the said court for the time being, shall deliver and pay unto such persons respectively, as are entitled to the same by law; and if it shall hereafter appear, that any last will and testament was made by the deceased, and the same be proved in court, and the executor obtain a certificate of the probat thereof, and the said do,
in such case, being required, render and deliver up his letters of administration; then this obligation to be void, else to remain in full force: Which bond shall be payable to the sitting justices, and their successors, and may be put in suit and prosecuted in the like manner, as is before directed in the case of bonds to To whom payable, and how suable.
22 and 23 Car. 2, c. 10, § 1.

(b) 1795, c. 61, § 27; 4 Hen. st. at lar. p. 15; edi. 1769, acts of 1748, c. 3, § 14.

(c) 1785, a. 61, § 27.

(d) 4 Hen. st. at lar. p. 17; edition 1733, acts of 1711, c. 2, § 10; edition 1752, c. 5, and edi. 1769, c. 3; acts of 1748, § 17; 1785, c. 61, § 29.

A. D. 1819.

A. R. C. 43.

Executors &c. and their sureties, not chargeable beyond assets, for mispleading or false pleading. Remedy against court, for granting administration without good surety.

be given by executors or administrators with the will annexed.(d)

36. But no executor (or) administrator, 'or,' security for any executor or administrator, shall be chargeable beyond the assets of the testator or intestate, by reason of any omission or mistake in pleading, or false pleading, of such executor or administrator.(e)

37. If any court shall grant a certificate for obtaining administration of the estate of any person deceased, without taking good security for the same, as aforesaid, to be judged of according to the apparent circumstances of the security, when taken, and not from subsequent accidents or discoveries thereof, the justices of such court then sitting, shall be answerable to the person or persons injured, for all loss or damage occasioned by not requiring any, or by taking insufficient security, recoverable with costs, by action on the case, in any court of record.(f)

When and how sureties of executors &c. may have counter-security; Or their principals be compelled to give new bond.

38. WHEN securities for executors or administrators, or their representatives, conceive themselves in danger of suffering thereby, and petition the court for relief,(g) the court shall summon the executor or administrator, and shall have full power to order, either that the said executor or administrator shall give good counter security, or that he shall execute a new bond, with good security, in a penalty not less than the penalty of the first bond executed by him, for the faithful discharge of his duties, and payable in like manner to the judge or judges, or the sitting justices. Such new bond shall have relation back to the time of granting probat or letters of administration, and shall be as effectual in every respect, as if it had been executed before such letters or probat had been granted. The condition thereof shall be as follows :

Effect of such bond.

Condition thereof.

THE condition of the above obligation is, that, whereas the above bound executor of the last will and testament of deceased, (or administrator of the goods and chattels and credits of deceased,) hath heretofore executed a bond payable to and conditioned for the discharge of his duties as executor (or administrator) as aforesaid, which said bond bears date the day of ; and whereas, by an order of court, made on the day of , other bond and security hath been required of the said executor (or administrator) (g) now, therefore, if the said executor (or administrator,) shall well and truly have kept and performed, and shall well and truly keep and perform, the condition of the bond aforesaid, and shall in all respects have performed, and shall continue to perform, the duties of his office aforesaid; then this obligation to be void, otherwise it shall remain in full force and virtue.”(h)

Sureties how far discharged thereby,

39. UPON the execution of such new bond, with security, payable and conditioned as aforesaid, all the securities to the former bond, and their legal representatives, shall be forthwith

(d) 4 Hen. st. at law. p. 17 ; edition 1733, acts of 1711, c. 2, § 10 ; ed. 1752, c. 5, and ed. 1769, c. 3, of acts of 1748, c. 17 ; 1785, c. 61, § 29.
(e) 1785, c. 61, § 30.

(f) 1785, c. 61, § 31, *Vid. ed. 1752, c. 5 ; ed. 1769, c. 3, of acts 1748, § 18.*
(g) 1785, c. 61, § 32, *Vid. ed. 1752, c. 5. ed. 1769, c. 3, of acts 1748, § 19.*
(h) 1813, c. 13, § 3, 4, 5.

discharged from the obligation thereof; except only as to such matters, for which an action on said bond may be then depending against such securities, or their representatives, or against any of them, and may be prosecuted to a judgment or decree: *Provided, however,* That nothing herein contained shall be so construed as to exonerate, in any manner, the security or securities of any executor or administrator, in any bond executed before the seventh day of February one thousand eight hundred and fourteen, from any liability or claim, that he, she or they might or would have been subjected to, by reason of his, her, or their undertaking as security or securities, had not the foregoing provision been made. If the court shall order counter security to be given, the bond shall be in a penalty equal to the penalty of the first bond, shall be made payable to the person petitioning for relief, and shall be conditioned for his entire indemnity against any loss or injury already sustained or which may be hereafter sustained, in consequence of the execution of the said first bond.(h)

A. D. 1819.
A. R. C. 43.

Proviso.

Bond for counter security, how to be taken.

40. If the executor or administrator shall fail to comply with such order for counter security, or for the execution of a new bond with security, as aforesaid, the court shall have full power to revoke and annul his power and authority as executor or administrator, in part or in the whole, and to appoint an administrator *de bonis non*, in the same manner as if such executor or administrator were dead; or to take from the possession of the executor or administrator, the estate of his testator or intestate, remaining unadministered, and place the same in the hands of his security or securities, or of some other curator, or to make such other order or orders respecting said estate, as may be essential to the protection of the securities, having due regard always to the rights and interests of creditors, legatees or distributees.(h)

Court may revoke powers of executors &c. failing to give such counter security, or new bond.

Or commit the estate to the surety, or a curator; or make other order.

41. WHENEVER, upon the complaint of any creditor, legatee, distributee, or other person interested, it shall appear to the court having granted letters of administration or probat, that the securities given by the executor or administrator have become insufficient, either by removal out of the Commonwealth, or by any other cause, or that, by reason of the misconduct, removal, or incapacity of the executor, or administrator, it is improper any longer to permit the estate of his testator or intestate to remain under his controul, it shall be lawful for such court, the executor or administrator having been previously summoned to appear before them, by process served upon him, if he can be found within the Commonwealth, or, if he cannot be found, published in such manner as the court shall direct, either to require of such executor or administrator other good security for the performance of his duties, or to revoke or annul his power as executor or administrator; and, if necessary, to appoint an administrator *de bonis non* in the same manner as if such executor or administrator were dead, or to commit the estate to the hands of the sheriff, in the same manner as if there had been no executor or administrator: *Provided, however,* That no revocation of the power and

Additional security may be required of executors &c., or their powers revoked, on complaint of creditors, or others interested.

Proceeding in such cases.

Administrator *de bonis non* may thereupon be appointed.

Proviso concerning previous acts of the executors, &c.

(h) 1813, c. 13, § 3, 4, 5.

A. D. 1819.
A. R. C. 43.

And suits pending,
for or against
them.

authority of an executor or administrator, by virtue of this act, shall operate, either to invalidate any previous act of such executor or administrator, or to discontinue or abate any suit then depending, by or against such executor or administrator; but any suit so depending, where the executor or administrator be plaintiff, instead of being conducted in the name of such executor or administrator, shall thereafter be conducted in the name of the person having the administration, care or management of the estate; whose name shall be substituted in the place of the original plaintiff, executor or administrator, by the order of the court, before which such suit or suits may be depending; which order such court is directed to make on the production of the order committing such administration, care or management of the estate. And, where such executor or administrator shall be defendant in any depending suit, it shall be in the discretion of the plaintiff or plaintiffs, to continue such suit against such executor or administrator, to final judgment or decree, or to have the person or persons, to whom the administration, care or management of the estate, may be committed, substituted as defendant in such suit, in the manner before prescribed for making such person or persons plaintiff or plaintiffs; and such suit shall thereafter progress to final judgment or decree, in like manner as if it had originally been instituted against such person or persons so substituted.(i)

Rights and duties
of surety or cura-
tor to whom estate
is committed.

42. WHEN the estate of any testator or intestate shall have been committed to any security of the executor or administrator, or any other curator, in manner aforesaid, such security or other curator, during the continuance of his authority, shall have power to demand and receive the debts and other personal property, due, or belonging to the estate, to pay the debts due from it, and may sue and be sued, in the same manner as an executor or administrator.(i)

Certificate, attest-
ed by clerk, effec-
tual as probats or
letters of adminis-
tration in due
form.

Such probats or
letters to be made
out in due form, if
required; and
how.

43. ALL certificates of probat or administration, attested by the clerk, shall enable the executor or administrator to act, and may be produced, or given in evidence, in any court within this Commonwealth, and be as effectual as any probat or letters of administration made out in due form: nevertheless, the clerks of the courts shall, when required by an executor or administrator, make out such probat or letters in due form, in the name of the first justice of the court; which probat or letters shall be signed by such justice, and sealed with the superior court of law, county or corporation court seal, if such court hath a seal, if the will hath been proved in a district court, or be proved in a superior court of law, county or corporation court; or, with the seal of the Commonwealth, if proved in the general court.(k)

Appraisers to be
appointed.

Their duty.

44. EVERY court granting a certificate for a probat or administration, shall nominate three or more appraisers in every county or corporation, where any of the personal estate of the decedent shall be; who, being sworn before a justice of the peace for that purpose, shall, truly and justly, to the best of their judgment, view and appraise all the personal estate to them produced, and shall return such appraisement, under their

hands, to the court ordering the same ; which appraisement, if signed by the executor or administrator, may be considered as an inventory of such part of the estate, as had heretofore come to his hands.(l)

A. D. 1819.
A. R. C. 43.

Appraisement, if signed by the executor, &c. to be considered an inventory. Inventories and appraisements, how far evidence.

45. INVENTORIES and appraisements may be given in evidence, in any suit by or against the executor or administrator, but shall not be conclusive for or against him, if other testimony be given, that the estate was really worth or was *bona fide* sold for more or less than the appraisement.(l)

46. EACH appraiser shall be entitled to one dollar per day for his attendance, to be paid by the executor or administrator, and charged to the estate.(l)

Appraiser's compensation.

47. EXECUTORS and administrators, whether it be necessary for the payment of debts or not, shall, as soon as convenient after they are qualified, sell at public sale, all such goods of their testator or intestate, specific legacies excepted, as are liable to perish, be consumed, or rendered worse by keeping, giving such credit as they shall judge best, and the circumstances of the estate will admit of ; taking bond and good security of the purchasers ; and shall account for such goods according to the sales. If more be sold than will pay the debts and expenses, the executor or administrator may assign the bonds for the surplus, to those entitled to the estate, and be discharged as to so much ; and, if, after such assignment, the obligor become insolvent, so as the money be lost, without the fault or neglect of the assignee, then such loss shall be made good to the assignee out of the decedent's estate.(l)

Perishable goods to be sold as soon as convenient.

Bonds taken at such sales assignable to those entitled to the estate. Provision in case of obligor's insolvency after such assignment.

48. If such perishable goods be not sufficient for paying the debts and expenses, the executor or administrator shall proceed, in the next place, to sell the other personal estate, until the debts and expenses be all paid, and having regard to the privilege of specific legacies.(l)

Other personalty may be sold for debts and expenses.

49. *PROVIDED*, That executors and administrators shall not sell the slaves of their testators or intestates, unless the other part of the personal estate (regard being had to the privilege of specific legacies) shall not be sufficient for paying the debts and expenses ; and, in that case, such part only of the slaves shall be sold, as shall be sufficient to satisfy the debts and expenses, and the residue of the slaves shall be reserved in kind for the legatees or distributees of their testators or intestates respectively.(l)

Slaves not to be sold, if other personalty sufficient.

50. *NEVERTHELESS*, if the testator direct his estate not to be appraised, it shall be sufficient to return an inventory thereof only ; and, if he direct his estate not to be sold, the same shall be preserved in specie, unless a sale be necessary for the payment of his debts.(l)

If testator so direct, estate not to be appraised ; Nor sold, unless necessary.

51. THE dead victuals and liquors, which, at the death of any testator or intestate, shall have been laid in for consumption in his family, shall not be sold by the executor or administrator, but shall remain for the use of such family, without account thereof being made. If, however, before it's final con-

Victuals and liquors to remain for family use.

Child leaving family, entitled to equal share.

(l) 4 Hen. 8. at law. p. 21, 22, 281 ; edi. 1752, c. 5, and edi. 1769, c. 3 ; acts of 1748, § 24, 25, 26, 27, 28, 29, ; am. 1785, c. 61, § 35, 36, 37, 38, 39, 40 ; edition of 1794, c. 92, § 38, 39, 40, 41, 42, 43 ; acts 1794, c. 19 ; edi. 1794, 1803 and '14, c. 170, § 2.

A. D. 1819.

A. R. C. 43.

Live stock may be killed for food.

sumption, any child shall leave the family, such child shall have a right to carry with him or her an equal share of what shall then be on hand. Any live stock, which may be necessary for the food of the family, may be also killed for that use, at any time before the sale, division or distribution of the estate.^(m)

By whom sales and conveyances of lands devised to be sold shall be made.
21 Hen. 8, c. 4, § 1.

52. THE sale and conveyance of lands devised to be sold, shall be made by the executors, or such of them as shall undertake the execution of the will, if no other person be thereby appointed for that purpose, or if the person so appointed shall refuse to perform the trust, or die before he shall have completed it; but, if none of the executors named in such will shall qualify, or, after they have qualified, shall die before the sale and conveyance of such lands, then, in those cases, the sale and conveyance thereof shall be made by such person or persons to whom administration of the testator's estate, with the will annexed, shall be granted.⁽ⁿ⁾

Regulations concerning servants or slaves, where decedent dies after 1st of March.

53. If any person shall die after the first day of March, the servants and slaves of which he was possessed, whether held for life or for other interest, and which were employed in making a crop, shall be continued on the plantation in the occupation of the decedent, until the last day of December following, and then delivered to those who shall have a right to demand the same; and their crops shall be assets in the hands of the executors and administrators, subject to debts, legacies and distribution; the levies and taxes, their tools, the expense of feeding them and their families to that time, and delivering them well clothed, being first deducted. And, if such slaves or servants be held by the testator or intestate for his or her life only, in that case, the executor or administrator shall be obliged to deliver, to those who are entitled in remainder or reversion, three barrels of Indian corn for every such servant or slave, old and young, to be allowed in their accounts of administration.^(o)

Provision for reversioners or remainder-men.

In such case, emblements, severed before 31st of December, to be assets:—otherwise, if decedent die before 1st of March.

54. If a testator or intestate shall die on or after the first day of March, all the emblements of his land, which shall be severed before the thirty-first day of December following, shall, in like manner, be assets in the hands of the executors or administrators; but all such emblements, growing on the lands at that day, or at the time of the death of the testator or intestate, if that event happen after the thirty-first day of December and before the first day of March, shall pass with the land to the heir, devisee, reversioner or remainder-man.^(o)

Provision concerning lands or slaves, let or hired by tenant for life, to another, if such tenant die after 1st of March.

55. If there be a tenant for life of lands or slaves let or hired to another, at the death of such tenant for life, if that event happen after the first day of March, the lessee or person hiring shall hold the lands and slaves, until the last day of December following, paying rent or hire to that time, and, in case of slaves, delivering them well clothed.^(p)

(m) 1785, c. 61, § 41.

(n) *Ibid.*, § 42.

(o) 4 *Hen. st. at lar.* p. 21, 284; *edl.* 1733, acts of 1711, c. 2, § 17; *edl.* 1752, c. 3, and *edl.* 1769, c. 3, acts of

1748, § 30, 25; *am.* 1785, c. 61, § 45, 44; *edl.* 1794, 1803 and 1814, c. 92, § 46, 47.

(p) 1785, c. 61, § 45, 46, 47; *edl.* 1794, 1803 and 1814, c. 9, § 48, 49, 50.

56. THE rent of land or hire of slaves shall be apportioned between the executor or administrator of him, who, having a freehold, or other uncertain estate in the land, and the use for life or for other uncertain term in the slaves, shall die before the rent or hire become due, and him who shall succeed to the lands and slaves, as heir, devisee, or person in reversion or remainder, unless, in a case of a devisee, the contrary be directed by the testator.(p)

A. D. 1819.
A. R. C. 43.

Rent or hire to be apportioned, where tenant for life dies before it be due.

57. THE appointment of a debtor executor shall in no case be deemed an extinguishment of the debt, unless it be so directed in the will.(p)

Debt not extinguished by appointing debtor executor.

58. No distribution shall be made of an intestate's estate, until nine months after his death; nor shall an administrator be compelled to make distribution at any time, until bond and security be given, by the persons entitled to distribution, to refund due proportions of any debts or demands, which may afterwards appear against the intestate, and the costs attending the recovery of such debts.(q)

Distribution of intestates' estates, when to be made. Bond and security to refund required of distributees. 22 and 23 Car. 2, c. 10, § 1.

59. EXECUTORS and administrators shall be allowed, in their accounts, all reasonable charges and disbursements, which they shall lay out and expend in the funeral of the deceased, and other their administration, and may be allowed such recompence for their personal trouble, as the court, on passing their accounts, shall judge reasonable.(r)

What charges shall be allowed in administration accounts. Compensation to executors, &c.

60. THE executors or administrators of a guardian, of a committee, or of any other person, who shall have been chargeable with, or accountable for the estate of a ward, an idiot, or a lunatic, or the estate of a dead person, committed to their testator or intestate by a court of record, shall pay so much as shall be due from their testator or intestate, to the ward, idiot or lunatic, or to the legatees, or persons entitled to distribution, before any proper debt of their testator or intestate.(s)

Debts due by decedents as guardians, committees, executors, &c. preferred as of highest dignity.

61. WHERE any person shall die seised of lands held for life of another, such person may, by his or her last will and testament in writing, made and proved, as is herein-before directed for the devise of lands, devise all his interest in such lands, which shall, if necessary, be assets in the hands of such devisee. And if no such devise be made, such lands, for the residue of the term, shall be assets in the hands of the heir, if it shall come to him by reason of a special occupancy, in the same manner as lands descending in fee simple; and, if there be no special occupant, it shall go to the executors or administrators of the person so dying seised, and be assets in their hands, subject to debts, legacies and distribution.(t)

Estate for life of another devisable; and, if necessary, to be assets in hands of devisee; if not devised, in hands of the heir, as special occupant; or of executors, &c. if no special occupant. 29 Car. 2, c. 3, § 12; 14 Geo. 2, c. 20, § 9.

62. EXECUTORS or administrators may sue, or be sued upon all judgments, bonds or other specialties, bills, notes or other writings of their testators or intestates, whether the executors

On what contracts of decedents, their executors, &c. may be sued.

(p) 1785, c. 61, § 45, 46, 47; edli. 1794, 1803, and '14, c. 9, § 48, 49, 50.

(q) 3 Hen. st. at lar. p. 373; edli. 1753, acts of 1705, c. 33, § 7; edli. 1769, acts of 1748, c. 7, § 7; 1785, c. 61, § 48; edli. 1794, 1803, and '14, c. 9, § 51.

(r) 4 Hen. st. at lar. 287; edli. 1753,

acts of 1730, c. 8, § 21; edli. 1752, c. 5, and edli. 1769, c. 3, of acts of 1748, § 38; am. 1785, c. 61, § 49.

(s) 3 Hen. st. at lar. 375; edli. 1733, acts of 1705, c. 33, § 13; edli. 1769, acts of 1705, c. 7, § 13; *Ibid.*, acts of 1748, c. 2, § 13; am. 1785, c. 61, § 50.

(t) 1785, c. 61, § 51, 52.

A. D. 1819.
A. R. C. 43.

Suit may be brought on administration bond, immediately after judgment against executor, &c. as such, and execution returned *no effects*.

Pleadings and evidence in such suit.

Trespass, for goods carried away in decedent's lifetime, maintainable against executors, &c.
4 Ed. 3, c. 7.
Powers and duties of executors of executors.
25 Ed. 3, st. 5, c. 5.

Executors, &c. of executors in their own wrong, how chargeable.
Executors, &c. how chargeable for *devastavit* by their testators, &c.
30 Car. 2, c. 7, § 2;
4 and 5 W. & M. c. 24, § 12.
When and how court may commit administration to sheriff, &c.

His powers and duties in such case.

or administrators be, or be not, named in such instruments, and also upon all their personal contracts.(t)

63. WHEN any person or persons shall have heretofore recovered, or shall hereafter recover any judgment against executors or administrators, in their representative character; and, upon execution issued upon such judgment, it shall be returned that there are not found, in the possession of the said executors or administrators, sufficient assets of the testator or intestate, to pay and satisfy the whole, or any part, of such judgment, (costs excepted,) such person or persons, recovering such judgment, his, her or their executors or administrators, may, upon such return of the execution as aforesaid, immediately commence and prosecute his, her or their action, against such executors or administrators, and their securities, or against either of them, or the executors or administrators of either of them, upon the bond given by them, for the performance of the duties of such executors or administrators; in which said action the defendants may plead any plea or pleas, and in support thereof offer any evidence, which would be legally admissible in any action against executors or administrators suggesting a *devastavit*.(v)

64. ACTIONS of trespass may be maintained by or against executors or administrators, for any goods taken or carried away in the lifetime of the testator or intestate; and the damages recovered shall be, in the one case, for the benefit of the estate, and in the other, out of the assets.(w)

65. EXECUTORS of executors shall do and perform all things, in the execution of the will of the first testator, which shall remain undone at the death of the executor; and shall and may sue or be sued, in all things respecting the estate, in the same manner as such first executor could or might have sued or been sued.(w)

66. THE executor or administrator of an executor in his own wrong, and the executor or administrator of a rightful executor or administrator, by whom any waste shall have been committed, shall be chargeable in the same manner as his testator or intestate might have been.(x)

67. IF all the executors named in any last will, shall refuse, to undertake the executorship, or, being required to give security, shall refuse to give, or be unable to procure the same, and no person will apply for administration with the will annexed, or if no person shall apply for administration of the goods and chattels of any intestate, it shall be lawful for the general court, or other court having jurisdiction of such probat or administration, as herein-before mentioned, after the expiration of three months from the death of the testator or intestate, to order the sheriff, or other officer of the county or corporation, to take the estate into his possession;(y) 'whereupon such sheriff or other officer, without being required to give any

(t) 1785, c. 61, § 51, 52.

(v) 1813, c. 13, § 2.

(w) 1785, c. 61, § 53, 54.

(x) 4 Hen. st. at lar. 284; edition 1752, c. 5, and edi. 1769, c. 3, of acts

of 1748, § 36; edi. 1794, 1803, and '14, c. 92, § 60.

(y) 1785, c. 61, § 55; altered from acts of 1705, and 1748; see edi. 1769, acts of 1705, c. 7, § 10, 11; *Ibid*, acts of 1748, c. 3, § 2.

other bond or security, than he may have already given, or to take any other oath of office than he hath before taken, shall be, to all intents and purposes, the administrator, with the will annexed, of the testator, if there be a will, or the administrator of the intestate, if there be no will, and shall be thenceforward entitled to all the rights, and bound to perform all the duties, of such administrator. The court, however, shall have power, at any time afterwards, to revoke such order, and to grant letters testamentary, or letters of administration, to any person entitled thereto. When, by the death of any executor or administrator, or sheriff, or other person, to whom the estate of a testator or intestate shall have been committed, there shall be no personal representative of such estate, and no person shall take letters of administration, or letters testamentary upon such estate, within three months after such death, it shall be lawful for the court, in the manner aforesaid, to commit such estate to the sheriff or other officer of the county or corporation, who shall thereupon, in like manner, be the administrator, *de bonis non*, of such estate.'

A. D. 1819.

A. R. C. 43.

Such administration revocable at any time.

When court may commit administration *de bonis non*, to sheriff, &c.

68. ALL sales and conveyances of lands, *bona fide*, made by a sheriff or other officer, under any order of the court, where the lands had been devised to be sold, and the executor had refused to act, are hereby confirmed and made effectual against all persons claiming under the testator.(z)

Sales and conveyances, by sheriffs, &c. of lands devised to be sold, confirmed.

69. ALL and every act, clause and clauses of acts, coming within the purview of this act, shall be and the same are hereby repealed: *Provided, nevertheless*, That nothing in this act contained shall be construed to affect any right which may have accrued or been vested, or offence committed before the commencement of this act.

Repealing clause.

70. THIS act shall commence and be in force from and after the first day of January, eighteen hundred and twenty.

Commencement.

C. 105.

*An act for the relief of Creditors against fraudulent devises.**

A. D. 1789.

A. R. C. 14.

[Passed December 18, 1789.]

1. WHEREAS it is not reasonable or just, that, by the practice or contrivance of any debtors, their creditors should be defrauded of their just debts, and nevertheless, it hath often so happened, that, where several persons, having by bonds or other specialties bound themselves and their heirs, have afterwards died, seised in fee simple of, and in, messuages, lands, tenements, and hereditaments, or, having power or authority to dispose of, or charge the same by their wills or testaments, have,

Preamble.

3 Will. and Mar.

c. 4.

Perpetuated,

6 Will. 3, c. 14.

(z) 1785, c. 61, § 56.

* 1789, c. 39; edi. 1794, 1803, and 1814, c. 51. The acts of 1726, c. 3, § 26, 27, 28, edi. 1733, p. 364, and of 1748, c. 8, § 22, edi. 1752, p. 279, edi. 1769, p. 196, adopt the statute of 3 Will. 3, c. 14, by its title, without inserting its contents. This act is nearly an exact transcript of the same English statute.

A. D. 1789.
A. R. C. 14.

to the defrauding of such their creditors, by their last wills or testaments, devised the same, or disposed thereof in such manner as such creditors have lost their said debts: For remedying of which, and for the maintenance of just and upright dealing;

Devises of lands,
&c. void as to cre-
ditors.

Ibid, § 2.

2. *Be it enacted by the General Assembly*, That all wills and testaments, limitations, dispositions or appointments, of, or concerning any messuages, lands, tenements or hereditaments, or of any rent, profit, term or charge out of the same, whereof any person or persons, at the time of his, her or their decease, shall be seised in fee simple in possession, reversion, or remainder, or have power to dispose of the same by his, her or their last wills or testaments, shall be deemed and taken (only as against such creditor or creditors as aforesaid, his, her and their heirs, successors, executors, administrators and assigns, and every of them,) to be fraudulent, and clearly, absolutely and utterly void, frustrate and of none effect; any pretence, colour, feigned or presumed consideration, or any other matter or thing to the contrary, notwithstanding.

Creditors may sue
heirs and devisees
jointly.

Ibid, § 3.

3. *AND*, for the means that such creditors may be enabled to recover their said debts, *Be it further enacted*, That, in the cases before-mentioned, every such creditor shall and may have and maintain, his, her and their action and actions of debt, upon his, her, and their said bonds and specialties against the heir and heirs at law of such obligor or obligors, and such devisee and devisees, jointly, by virtue of this act; and such devisee or devisees shall be liable and chargeable for a false plea by him or them pleaded, in the same manner as any heir should have been for any false plea by him pleaded, or for not confessing the lands or tenements to him descended.

Exception of devisees,
&c. to pay
debts or portions
under marriage
contract.

Ibid, § 4.

4. *PROVIDED always, and be it enacted by the authority aforesaid*, That where there hath been, or shall be any limitation or appointment, devise or disposition of, or concerning any messuages, lands, tenements or hereditaments, for the raising or payment of any real and just debt or debts, or any portion or portions, sum or sums of money, for any child or children of any person, other than the heir at law, according to, or in pursuance of any marriage contract or agreement in writing, *bona fide* made before such marriage, the same and every of them shall be in full force; and the same messuages, lands, tenements and hereditaments, shall and may be holden and enjoyed by every such person or persons, his, her and their heirs, executors, administrators and assigns, for whom the said limitation, appointment, devise or disposition was made, and by his, her, and their trustee or trustees, his, her, and their heirs, executors, administrators and assigns, for such estate or interest as shall be so limited or appointed, devised or disposed, until such debt or debts, portion or portions, shall be raised, paid and satisfied; any thing in this act contained to the contrary notwithstanding.

5. *AND* whereas several persons, being heirs at law, to avoid the payment of such just debts, as, in regard of the lands, tenements and hereditaments, descending to them, they have by law been liable to pay, have sold, aliened, or made over such

lands, tenements or hereditaments, before any process was or could be issued out against them.

A. D. 1789.
A. R. C. 14.

6. *Be it further enacted*, That, in all cases where any heir at law shall be liable to pay the debt of his ancestor in regard of any lands, tenements or hereditaments, descending to him, and shall sell, aliene or make over the same, before any action brought, or process sued out against him, such heir at law shall be answerable for such debt or debts, in an action or actions of debt, to the value of the said land so by him sold, aliened or made over; in which cases, all creditors shall be preferred, as in actions against executors and administrators; and such execution shall be taken out upon any judgment or judgments so obtained against such heir, to the value of the said land, as if the same were his own proper debt or debts, saving that the lands, tenements and hereditaments, *bona fide* aliened before the action brought, shall not be liable to such execution.

In what manner heir answerable, where he alienes lands descended. *Ibid*, § 5.

7. *PROVIDED, always, and be it further enacted*, That, where any action of debt upon any specialty is brought against any heir, he may plead *riens per discent* at the time of the original writ brought or the bill filed against him, any thing herein contained to the contrary notwithstanding; and the plaintiff in such action may reply that he had lands, tenements or hereditaments from his ancestor, before the original writ brought, or bill filed; and if upon issue joined thereupon, it be found for the plaintiff, the jury shall enquire of the value of the lands, tenements or hereditaments so descended, and thereupon judgment shall be given, and execution shall be awarded as aforesaid; but if judgment be given against such heir by confession of the action, without confessing the assets descended, or upon demurrer, or *nihil dicit*, it shall be for the debt and damages, without any writ to enquire of the lands, tenements or hereditaments, so descended.

Heir may plead *riens per discent*. *Ibid*, § 6.

Jury to enquire of the value of the lands, if found against him; but not, if judgment be by confession or *nihil dicit*.

8. *PROVIDED, also, and be it further enacted*, That all and every devisee and devisees made liable by this act, shall be liable and chargeable in the same manner as the heir at law by force of this act, notwithstanding the lands, tenements and hereditaments, to him or them devised, shall be aliened before the action brought.

Devisees liable as heirs, in case of alienation. *Ibid*, § 7.

C. 106.

*An act, to reduce into one, the several acts, to regulate the solemnization of marriages; prohibiting such as are incestuous, or otherwise unlawful; to prevent forcible and stolen marriages; and for the punishment of the crime of bigamy.**

A. D. 1819.
A. R. C. 43.

[Passed March 1, 1819.]

1. *Be it enacted*, That no minister shall celebrate the rites of matrimony between any persons, or join them together as

Rites of matrimony not to be celebrated without license, or publication of banns.

* Former general laws on this subject; 1730, edi. 1733, 1752, and 1769, c. 2, § 5; 4 *Hen. et. al. lar.* p. 245, 1748, edi. 1752, c. 32; edi. 1769, c. 26; 1792, edi. 1794, 1803, and 1814, c. 104.

A. D. 1819.
A. R. C. 43.

Punishment of minister for unlawful solemnization of marriage in or out of the State.

Publication of banns when there is no minister.

Punishment for granting false certificate of publication of banns. Such crime, forgery.

Prosecutions for offences, where triable and determinable.

Publications of banns on western waters, how made and where.

Fee for certificate of publication.

Who may celebrate rites of matrimony; and in what form.

man and wife, without lawful license, or thrice publication of banns according to the rubric in the common prayer, if the parties so to be married shall be members of the protestant episcopal church; and if the persons to be married, dwell in several parishes, the banns shall be published in each parish, and the minister of the one shall not solemnize the matrimony, until he hath a certificate from the minister of the other parish, that the banns have been thrice published, and no objection made against the parties joining together. And, if any minister shall celebrate the rites of matrimony, or join any persons in marriage, without such license or publication of banns as by this act required, he shall, for every such offence, be imprisoned one whole year without bail or mainprize, and shall also forfeit and pay fifteen hundred dollars. And if any minister shall go out of this government, and there join in marriage any person or persons belonging to this Commonwealth, without such license or publication of banns, he shall be liable to the same penalties and forfeitures, as if such marriage had been by him celebrated within this Commonwealth: *Provided, always, That, where any parish or parishes, have not a minister, the clerk or reader may publish banns, and if no objection be made, grant certificate thereof, which, together with a certificate under the hand and seal of a justice of the peace for the said county, living in the parish where such publication shall be, certifying that the *feme* so to be joined hath been an inhabitant of the said parish, one month next before the date of such certificate, shall be sufficient for the minister to solemnize the rites of matrimony: and if any minister, clerk or reader shall grant or issue a false certificate, he shall suffer the imprisonment without bail, and pay the forfeiture aforesaid; and shall also be liable to be prosecuted and punished, as in case of forgery: and that all or any of the offences aforesaid may be prosecuted, tried and determined in any court of record within this Commonwealth; which courts are hereby declared to have cognizance thereof, and may hear and determine the same and award execution thereupon, according to the course of the common law. And *provided, also, That all publications of the banns of matrimony on the western waters of this Commonwealth shall be made on three several days, and not in less time than two weeks, in open and public assemblies, convened for religious worship, or other lawful purposes, within the bounds of the respective congregations or militia companies, in which the parties to be married severally reside; and, for a certificate of such publication, the person making the same may demand and receive fifty cents.*(a)*

2. It shall and may be lawful for any ordained minister of the gospel, in regular communion with any society of christians, and every such minister is hereby authorised, to celebrate the rites of matrimony, according to the forms and customs of the church to which he belongs, between any persons within this State, between whom publication of banns shall have been duly made, or who shall produce a marriage license, pursuant to the

(a) From 1748, *edi.* 1752, c. 32, § 1, and 1769, c. 26, § 1; *am.* at rev. of 1792, *vid.* *edi.* 1794, 1803, and '14, c. 104, § 1.

directions of this act, directed to any authorised minister of the gospel.(b)

A. D. 1819.
A. R. C. 43.

3. *PROVIDED, always,* That every such minister shall first produce credentials of his ordination, and also of his being in regular communion with the christian society, of which he is reputed a member, to the court of the county or corporation in which he resides; shall take the oath of allegiance to this Commonwealth, and enter into bond with two or more sufficient securities, in the sum of fifteen hundred dollars, payable to the Governor for the time being, and his successors, conditioned for the true and legal performance of this trust: whereupon such court is hereby required to grant such minister a testimonial in the following form, given under the hand and seal of the then sitting judge or senior magistrate, and attested by the clerk; to wit:

Proviso, as to credentials of ministers.

Oath.

Bond and security.

Testimonial.

This shall certify to all whom it may concern, that, at a court held for the year one thousand , on the day of the year one thousand hundred and , A. B. produced credentials of his ordination, and also of his being in regular communion with the church, took the oath of allegiance to this Commonwealth, and entered into bond, as required by an act reducing into one, the several acts to regulate the solemnization of marriages; prohibiting such as are incestuous, or otherwise unlawful; to prevent forcible and stolen marriages; and for punishment of the crime of bigamy; and that he is thereby authorised to celebrate the rites of matrimony agreeably to the forms and customs of the said church, between any persons, to him regularly applying therefor, within this State. Given under my hand and seal, the day and year above written.

Form thereof.

EVERY testimonial so obtained shall be taken as good and sufficient authority, for celebrating the rites of matrimony according to law: *Provided, nevertheless,* That no testimonial shall be granted to any minister who is itinerant, or who is not stated and settled within some parish, or with some christian congregation within this Commonwealth.(c)

Effect thereof.

Not to be granted to itinerant ministers.

4. IT shall and may be lawful for any ordained minister of the gospel, in regular communion with any society of christians, residing in any adjoining state, to celebrate the rites of matrimony, according to the forms and customs of the church to which he belongs, between any persons of this State who shall produce a marriage license, pursuant to the directions of the act of Assembly in such case made and provided: *Provided, always,* That every such minister shall first produce credentials of his ordination, and also of his being in regular communion with the christian society of which he is reputed a member, to the court of the county or corporation in which such minister may be required to celebrate such rites, who shall enter into bond, with two or more securities being residents of this State, in the sum of fifteen hundred dollars, payable to the Governor for the time being, and his successors, conditioned for the true and legal performance of his trust; whereupon

Ministers residing in any adjoining state, how authorised.

Credentials of ordination, &c.

Bond and Security.

Testimonial.

(b) October 1784, c. 76, § 2; 1792, edi. 1794, 1803, and '14, c. 104, § 2.

(c) 1784, c. 76, § 2; 1792, edition 1794, 1803, and '14, c. 104, § 3.

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Oath not required.

When and how authorised minister shall give up testimonials, or give sureties caution for indemnification.

How quakers, jews, &c. may solemnize marriages.

Confirmation of marriages solemnized by magistrates, &c. for want of ministers.

Penalties remitted.

Proviso.

Where courts of counties may appoint persons, not

such court is hereby required to grant such minister a testimonial in the form prescribed by this act: And *provided, also*, That nothing herein contained, shall be so construed as to authorise any county or corporation court, to require any such minister to take the oath of allegiance to this Commonwealth.(d)

5. *PROVIDED, also*, if any authorised minister shall himself, at any time, decline or be ejected from his office, by the church to which he belongs; or, if any of his securities shall give him notice in writing, that they desire to be released from their surety-ship; in either of these cases, if he refuses or neglects to give up his testimonials to the court, from which they were obtained, any one, of his securities, without instituting a suit, may proceed against him, as if they were special bail in an action of debt, until he is thereunto compelled, or gives them sufficient caution for their indemnification.(e)

6. It shall and may be lawful for the people called Quakers, and for Jews and persons of all religious persuasions and denominations to solemnize their own marriages, in the manner, and agreeably to the regulations that have heretofore been practised in their respective societies.(f)

7. AND, whereas some magistrates and others, not authorised by law, have been induced by the want of ministers to solemnize marriages; *Be it enacted*, That all such marriages openly solemnized, and made at any time before the first day of January, one thousand eight hundred and nineteen, and which shall have been made and consummated by the parties cohabiting together as husband and wife, shall be taken, and they are hereby declared good and valid in law; and all and every person or persons solemnizing such marriages, are and shall be exonerated from all pains and penalties, as if they had been authorised ministers: *Provided, always*, and it is the true intent and meaning of this act, that nothing herein contained shall extend, or be construed to extend, to confirm any marriage heretofore celebrated, or which may hereafter be celebrated, between parties within the degrees of consanguinity or affinity, forbidden by law, or where either of the parties were bound, by a prior marriage, to a husband or wife then alive.(g)

WHEREAS it is suggested to the General Assembly of Virginia, that there is no ordained minister of the gospel in regular communion with any society of christians, or other persons residing in several counties within this Commonwealth, authorised to celebrate the rites of matrimony, between persons desirous of entering into that state;(h)

8. *Be it therefore enacted by the General Assembly of Virginia*, That, from and after the passing of this act, it shall

(d) 1811, c. 25; edi. 1812, c. 105.

(e) 1784, c. 76, § 2; 1792, edition 1794, 1803, and '14, c. 104, § 4.

(f) Altered at the late revision from 1784, c. 76, § 3; 1792, edi. 1794, 1803, and '14, c. 104, § 5; and extended to jews and persons of all religious persuasions.

(g) 1784, c. 76, § 3, 4; 1792, edi. 1794, 1803 and '14, c. 104, § 6, 7.

(h) The provisions contained in § 8, 9, 10, 11, which are made *general* by this act, were originally *special*, and adapted to the circumstances of particular counties: *vid.* 1794, c. 15; edi. 1794, 1803 and '14, c. 169; 1796, c. 23; edi. 1794, 1803 and '14, c. 218; 1800, c. 35; 1801, c. 37; 1802, c. 55; 1804, c. 77; 1813, c. 67; 1815, c. 104; 1816, c. 115.

and may be lawful for the courts of the said counties, to appoint two persons of each of the said counties, who shall be residents within the county from the court whereof they shall have received their appointments, who, by virtue of this act, shall be authorised to celebrate the rites of marriage, in the counties wherein they respectively reside.(h)

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ministers, to solemnize marriages.

9. EVERY person so appointed, before entering into the Oath required execution of his office, shall take the oath of fidelity to the Commonwealth, and enter into bond, with sufficient security, Bond and security in the sum of fifteen hundred dollars, payable to the Governor ty. for the time being, and his successors, conditioned for the true and faithful performance of his trust; whereupon, such court is hereby required to grant to the person so appointed a certificate, in the following form, given under the hand and seal of the then sitting judge or senior magistrate, and attested by the clerk, to wit: *This shall certify to all whom it may concern, Form, and that, at a court held for the county of , on the day of , in the year of our Lord, , A. B. took the oath of fidelity to this Commonwealth, and, having entered into bond and security, agreeably to an act, entitled, An act, to reduce into one, the several acts to regulate the solemnization of marriages, prohibiting such as are incestuous or otherwise unlawful, to prevent forcible and stolen marriages, and for punishment of the crime of bigamy, is hereby authorised to celebrate within the county of , the rites of marriage between persons desirous of contracting the same.* And every testimonial so obtained shall be considered Effect thereof. as a good and sufficient authority, to celebrate the rites of marriage, within the county, from the court whereof the testimonial is obtained, between persons regularly applying therefor.(h)

10. PROVIDED, That any person so appointed shall, in no instance, celebrate the rites of marriage, until the due publication of banns, or in consequence of a license duly obtained; and, if he should celebrate the rites of marriage, when forms of law have been dispensed with, which are necessary to be observed when marriage is celebrated by an ordinary minister, he shall be subject to the same penalties, as are in such instances inflicted on ordained ministers, recoverable in the manner, and liable to the action of the party aggrieved as is directed by this act.(h)

Proviso, requiring publication of banns or license.
Penalties.

11. AND, if any person, so appointed by the courts aforesaid, or either of them, shall die or remove out of the county, it shall be lawful for the said courts, or either of them, to appoint some person in lieu of the person so dying or removing, who shall qualify to the performance of his trust in the manner before directed, and shall be subject to the same penalties and actions, and by the same mode of recovery, above pointed out.(h)

New appointment, on death or removal of any person so appointed.

12. ANY authorised minister, and any person appointed by virtue of this act to celebrate the rites of marriage, may demand and receive, in current money, for the celebration of every marriage, the sum of one dollar.(i)

Fee for celebrating matrimony.

(h) See note (h) on preceding page.
(i) 1792, ed. 1791, 1803 and '14,

c. 104, § 8; which was an alteration as to the fee; from 1784, c. 76, § 5.

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Penalty for extortion.

For refusal to publish or certify publication of banns.

How appropriated and recoverable.

Register of marriages, how to be kept.

Certificate from minister, &c. when to be transmitted to clerk of county, &c. :

To be recorded. Such record evidence of marriage. Clerk's fee ; And by whom payable.

Penalty on minister, &c. failing to transmit such certificate to clerk. On clerk for not recording.

Marriage license, how issuable.

Bond and security.

Condition of bond.

Penalty on clerk failing to take such bond, &c.

Consent of father or guardian, where requisite.

Evidence of such consent.

13. If any minister, or other person, authorised as aforesaid, shall refuse to celebrate the rites of matrimony for the fees herein-before allowed him, or shall exact other or greater fees ; or, if he, or any parish reader or clerk, shall refuse to publish the banns, or to certify the same, when required, for the fee aforesaid, or exact any other or greater fee, every person so offending, shall forfeit and pay fifty dollars to the party grieved, for every such offence, recoverable in any court in this Commonwealth, by action of debt or information.(k)

14. AND, that a register of all marriages may be preserved ; *Be it enacted*, That a certificate of every marriage hereafter solemnized, signed by the minister, or other authorised person, celebrating the same, or in the case of quakers, menonists and other societies, that solemnize their marriages by the consent of the parties taken in open congregation as aforesaid, by the clerk of the meeting, shall be by such minister or other authorised person or clerk, (as the case may be,) transmitted to the clerk of the county or corporation wherein the marriage is solemnized, within twelve months thereafter, to be entered or recorded by the clerk, in a book by him to be kept for that purpose, which shall be evidence of all such marriages. The clerk shall be entitled to demand and receive, of the party so married, the sum of twenty-five cents for recording such certificate, and giving the bearer a receipt therefor.(l)

15. EVERY minister, or other authorised person, or clerk of a congregation, (as the case may be,) failing to transmit such certificate to the clerk of the court in due time, shall forfeit and pay the sum of sixty dollars ; and if the clerk of any county shall fail to record such certificate, he shall forfeit and pay the like sum of sixty dollars, to be recovered with costs of suit, by the informer, in any court of record.(l)

16. EVERY license for marriage shall be issued by the clerk of the court of that county or corporation, wherein the *feme* usually resides, in manner following, that is to say ; the clerk shall take bond, with good security, for the sum of one hundred and fifty dollars, payable to the Governor of the Commonwealth, for the time being, and his successors, for the use of the Commonwealth, with condition that there is no lawful cause to obstruct the marriage, for which the license shall be desired ; and every clerk failing herein shall forfeit and pay one hundred and fifty dollars : and, if either of the parties intending to marry, shall be under the age of twenty-one years, and not theretofore married, the consent of the father or guardian of every such infant shall be personally given before the said clerk, or certified, under the hand and seal of such father or guardian, attested by two witnesses, one of which witnesses shall personally appear before the said clerk, and make oath or affirmation, (as the case may require,) that he saw the father or guardian, whose name is annexed to such certificate, subscribe or acknowledge the same ; and, thereupon, the clerk

(k) 1748, edl. 1752, c. 32, § 5 ;
anul edl. 1769, c. 26, § 5 ; 1784, c. 76,
§ 6 ; 1792, edl. 1794, 1803 and '14,
c. 104, § 9.

(l) 1784, c. 76, § 7 ; 1792, edl. 1794,
1803 anul '14, c. 104, § 10, 11.

shall issue a license; and every clerk is hereby authorised to administer such oath or affirmation as aforesaid; and every license so obtained and signed, and no other whatsoever, is hereby declared to be a lawful license; and if any county or corporation court clerk shall, in any other manner, issue any marriage license, or if any person whatsoever shall presume to sign or direct such license, in other manner, or without such certificate as is by this act required, every person so offending shall be imprisoned one whole year, without bail or main-prize, and shall forfeit and pay fifteen hundred dollars, recoverable in any court of record within this Commonwealth.^(m)

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Clerk authorised to swear witnesses
Punishment of clerk for issuing license illegally.

17. If any person whatsoever, since the eighth day of December, one thousand seven hundred and eighty eight, hath, or at any time hereafter, shall marry within the following degrees, that is to say; If the son hath married or shall marry his mother or step-mother; the brother his sister; the father his daughter, or his son's daughter, or his daughter's daughter; or if the son hath married or shall marry the daughter of his father, begotten and born of his step-mother; or the son hath married or shall marry his aunt, being his father's or his mother's sister; or hath married or shall marry his uncle's wife; or the father hath married or shall marry his son's wife; or the brother hath married or shall marry his brother's wife; or any hath married or shall marry his wife's daughter, or his wife's son's daughter, or his wife's daughter's daughter, or his wife's sister; or if, since the twenty-fifth day of February in the year eighteen hundred and eighteen, any man hath married, or, at any time hereafter, any man shall marry, his step-daughter, or his brother's daughter, or his sister's daughter, or the wife of his brother's or sister's son; every person or persons, so unlawfully married, shall be separated by the definitive sentence or judgment of any superior court of law within this Commonwealth, as herein-after provided.^{(n)*}

Degrees of relationship, within which marriage is prohibited.

Persons so unlawfully married, how to be separated.

18. THE superior courts of law shall have jurisdiction over all offences against the provisions herein contained, inhibiting marriages within certain degrees of relationship; and the judges shall constantly give in charge to the grand juries of their courts respectively, the provisions aforesaid. If any person or persons resident within this State, for the purpose of eluding the provisions aforesaid, shall go out of the limits thereof, and contract a marriage within the said inhibited degrees, and the persons so married shall afterwards return, and be resident within this State, cohabiting together as man and wife, such persons may be proceeded against, separated and punished, in the same manner, as if the marriage had been solemnized within this Commonwealth. Every offence against the aforesaid provisions of this act, wheresoever the marriage

Jurisdiction of superior courts of law on this subject.

Charge to grand jury.
Provision against persons going out of State, and marrying within prohibited degrees.

Such offences where cognizable.
Duty of State's attorneys.

^(m) 1748, edi. 1752, c. 32, § 2; and edi. 1769, c. 26, § 2; 1792, edi. 1794, 1803 and '14, c. 104, § 13.

⁽ⁿ⁾ Compiled of 1788, c. 32; 1792, edi. 1794, 1803, and 1814, c. 104, § 13; and 1817, c. 18, § 4.

* The act of 1730, edi. 1733, 1752, and 1769, c. 2, § 5, declared the issue of marriages within the prohibited degrees *illegitimate*; the act of 1788, extended the prohibitions, but declared that the issue of such marriages should not be *illegitimate*; the act of 1817 extended the prohibitions still further, *Vid.* 1817, c. 18, § 4.

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Prosecution by information or indictment.

On trial, what shall be evidence of the marriage.

Judgment.
Court may fine parties, and require bond and security for not cohabiting.

Fine to be assessed by jury.

Issue of marriage so annulled, not illegitimate.

Bigamy.
1. Jac. 1, c. 11.

How punishable.

Where triable, &c.

Exceptions, in case of absence of husband or wife, for seven years, &c.

Of divorces, or marriages declared void by lawful authority; or contracted within age of consent.

Effect of marriage by *feme sole*, of age of twelve and under fourteen years, against consent of father or guardian, and without publication of banns.

was solemnized, shall be cognizable in the superior court of law in which the offenders may reside. It shall be the duty of the attorneys prosecuting on behalf of the Commonwealth, in the said courts, upon information made to them of any marriage contrary to the provisions aforesaid, to prosecute the offenders by information or indictment; and the proceedings in the said courts, in the cases coming within the purview of this act, shall be according to the accustomed course of the law; and, in all trials upon any such information or indictment, satisfactory proof of habitual cohabitation as man and wife, shall be deemed conclusive evidence of any marriage charged in such information or indictment. And the said courts shall and may proceed to give judgment, and to declare the nullity of such marriage, and moreover may punish the parties by fine; and, if the court see fit, may cause the parties to give bond with sufficient security, that they will not cohabit hereafter, in such penalty as the said court shall judge reasonable: *Provided always*, That no punishment by fine shall be imposed on any person, until the same shall have been assessed by a jury, duly impanelled at the bar of the said court: And *Provided also*, That nothing herein contained shall be construed to render illegitimate the issue of any marriage so annulled.(o)

19. If any person or persons within this Commonwealth, being married, or who shall hereafter marry, do, at any time after the commencement of this act, marry any person or persons, the former husband or wife being alive, every such offence shall be felony; and the person or persons so offending shall undergo imprisonment in the public jail and penitentiary, for a period not less than one, nor more than ten years; and the party or parties so offending shall receive such and like proceeding, trial and judgment within this Commonwealth, as if the offence had been committed in the county where such person shall be taken or apprehended: *Provided*, That nothing herein contained shall extend to any person or persons, whose husband or wife shall be continually remaining beyond the seas by the space of seven years together, or whose husband or wife shall absent himself or herself, the one from the other by the space of seven years together, in any part within the United States of America or elsewhere, the one of them not knowing the other to be living within that time: *Provided also*, That nothing herein contained shall extend to any person or persons, that are or shall be, at the time of such marriage, divorced by lawful authority, or to any person or persons, where the former marriage hath been, or hereafter shall be, by lawful authority, declared to be void and of no effect, nor to any person or persons for or by reason of any marriage, had or made, or hereafter to be had or made within the age of consent.(p)

20. If any *feme sole* of the age of twelve and under fourteen years shall marry any person, contrary to the will or consent of her father or guardian, and without legal publication of the banns, then the next of kin to such *feme*, to whom the

(o) Compiled of 1788, c. 32; 1792, ed. 1794, 1803, and '14, c. 104, § 13; and 1817, c. 18, § 1, 2, 3; and new modelled at late Revision.

(p) 1788, c. 34; 1792, ed. 1794, 1803, and 1814, c. 104, § 14.

inheritance should descend or come, shall have right to enter upon and take possession, of all lands, tenements, hereditaments and other real estate whatsoever, which such *feme*, at the time of her marriage, had in possession, remainder or reversion, and shall have, hold, occupy, and enjoy the same to him or her, and the representatives of his or her stock, with all the immunities and privileges thereto belonging, during the time of such coverture; but after determination thereof, all such estate and the possession, reversions and remainders, rights, immunities and privileges, shall immediately re-vest, be, and remain in the said *feme*, and her heirs, other than her husband, and she and they, and every of them, may re-enter and take possession thereof, as if this act had never been made. (q)

A. D. 1819.

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Forfeiture of estate, to next of kin, during the coverture.

Revestiture, afterwards in feme and her heirs, other than husband. 4 and 5 Phil. and Mar. c. 8, § 6.

21. If any minister, clerk, reader, or other person, shall wittingly publish the banns of marriage between any servants by act of assembly, indenture or custom, or between any free person and such servant, or if any minister or other person shall knowingly marry any such, without certificate from the master or owner of every such servant, that it is with his or her consent, every minister, clerk, reader or other person so offending, shall forfeit two hundred and fifty dollars for every such offence, recoverable in any court of record of this Commonwealth; and every such servant so married, without consent of his or her master or owner, shall serve him or her, and his or her assigns, one whole year after all other time of service is expired, or pay him or her twenty dollars; and every free person, so marrying such servant, shall pay the master or owner twenty dollars, for his or her own use, recoverable by warrant, with costs, or shall well and faithfully serve such master or owner one whole year in actual service. (q)

Penalty on minister, &c. publishing banns, or marrying servants, or free persons and servants, without consent of masters.

On servants so marrying.

On free persons so marrying servants.

22. AND, for preventing white men and women intermarrying with negroes or mulattoes; *Be it enacted*, That, whatsoever white man or woman, being free, shall intermarry with a negro or mulatto man or woman, bond or free, shall, by judgment of the county court, be committed to prison, and there remain six months, without bail or mainprize, and shall forfeit and pay thirty dollars to the Commonwealth, for the use of the literary fund. (r)

Punishment of free white persons intermarrying with negroes or mulattoes.

23. No minister or person whatsoever, within this Commonwealth, shall hereafter presume to marry a white man with a negro or mulatto woman, or to marry a white woman with a negro or mulatto man, upon pain of forfeiting and paying, for every such marriage, two hundred and fifty dollars, one half to the Commonwealth for the use of the literary fund, and the other half to the use of the informer, to be recovered with costs, by action of debt, bill, plaint or information, in any court of record within this Commonwealth. (r)

Penalty on minister, &c. marrying a white person to a negro or mulatto.

24. AND whereas women, as well maidens as widows and wives, having substances, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their ancestors, for the lucre of such substances, have been

(q) 1748, edi. 1752, c. 32, § 3, 4; and edi. 1769, c. 26, § 3, 4; 1792, edi. 1794, 1803, and 1814, c. 104, § 15, 16.

(r) 1753, edi. 1769, c. 2, § 14, 15; 1792, edi. 1794, 1803, and 1814, c. 104, § 17, 18.

A. D. 1819.
A. R. C. 42.

Forcible abduction
and marriage, fe-
lony in all parties
concerned.

How punishable.
3 Hen. 7, c. 2.

Proviso.

Punishment for
unlawfully taking
away from parent,
guardian, &c. any
maiden within age
of sixteen years
4 & 5 Phil. & Mar.
c. 8, § 2, 3.

For so taking a-
way and deflower-
ing, or unlawfully
contracting matri-
mony with such
maiden.
Ibid, § 4.

Repealing clause.

Proviso.

Farther proviso,
as to offences com-
mitted before Fe-
bruary 25, 1818.

oftentimes taken by misdoers contrary to their will, and after-
wards married to such misdoers, or to others by their consent,
or defiled: *Be it further enacted*, That whatsoever person or
persons shall take any woman so against her will, unlawfully,
that is to say, maid, widow or wife, such taking, and the pre-
curing and abetting to the same, and also receiving wittingly
the same woman, so taken against her will, shall be felony;
and that such misdoers, takers and procurers to the same, and
receivers, knowing the said offence in form aforesaid, shall be
reputed and judged as principal felons; and, upon conviction
thereof, shall be sentenced to undergo a confinement in the
public jail and penitentiary-house, not less than two, nor more
than ten years: *Provided, always*, That this act shall not ex-
tend to any person taking any woman, only claiming her as his
ward or bond woman.(s)

25. If any person above the age of fourteen years, shall
unlawfully take and convey away, or shall cause to be unlaw-
fully taken or conveyed away, any maiden or woman child,
unmarried, being within the age of sixteen years, out of or
from the possession, and against the will of the father or mo-
ther of such maiden or woman child, or out of or from the pos-
session and against the will of such person or persons, as then
shall happen to have, by any lawful ways or means, the order,
keeping, education or governance of any such maiden or wo-
man child, and be thereof duly convicted, he shall suffer im-
prisonment, without bail or mainprize, for any term not exceed-
ing two years, as shall be adjudged against him.(t)

26. If any person or persons shall so take away, or cause to
be taken away as is aforesaid, and deflower any such maid or
woman child, as is aforesaid, or shall, against the will or know-
ledge of the father of any such maid or woman child, if the
father be in life, or against the will or knowledge of the mo-
ther of any such maid or woman child, having the custody and
governance of such child, if the father be dead, by secret let-
ters, messages or otherwise, contract matrimony with any such
maiden or woman child; every person so offending, and being
thereof lawfully convicted, shall suffer imprisonment of his
body, by the space of five years, without bail or mainprize.(t)

27. *ALL* and every act and acts, clause and clauses of acts,
coming within the purview of this act, shall be, and are hereby
repealed: *Provided, however*, That nothing herein contained
shall be so construed as to prevent the prosecution and punish-
ment of any offence committed or done before the commence-
ment of this act, but such offence may be prosecuted and punish-
ed as if this act had never passed.

28. *PROVIDED, always*, That nothing in this act contained,
shall be so construed as to authorise the superior courts of law
within this Commonwealth to entertain jurisdiction over any
offence committed against the thirteenth section of the act,
entitled, *An act to regulate the solemnization of marriages,*
prohibiting such as are incestuous or otherwise unlawful; to
prevent forcible or stolen marriages, and for punishment of

(s) 1789, c. 8, § 1; 1792, *ed.* 1794,
1803, and 1814, c. 104, § 19.

(t) 1789, c. 8, § 2, 3; 1792, *edition*
1794, 1803, 1814, c. 104, § 20, 21.

the crime of bigamy, which occurred previous to the twenty-fifth day of February, in the year eighteen hundred and eighteen: (v) 'And provided also, That any prosecution authorised by this act, may be commenced at any time within five years after the commission of the offence, and not after, any former law to the contrary notwithstanding.'

A. D. 1819.

A. R. C. 43.

Limitation of time for prosecutions under this act.

29. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty.

Commencement.

C. 107.

An act to reduce into one, all acts and parts of acts relating to Dower.*

A. D. 1792.

A. R. C. 17.

[Passed December 6, 1792.]

1. BE it enacted by the General Assembly, That the widow of any person dying intestate, or otherwise, shall be endowed of one full and equal third part of all the lands, tenements, and other real estate, whereof her husband, or any other to his use, was seized of an estate of inheritance, at any time during the coverture, to which she shall not have relinquished her right of dower, by deed executed, acknowledged, and recorded, in the manner prescribed by law for that purpose. (a)

Widows intitled to dower.

Magna charta, 9 Hen. 3, c. 7.

2. AND till such dower shall be assigned, it shall be lawful for her to remain and continue in the mansion house, and the messuage or plantation thereto belonging, without being chargeable to pay the heir any rent for the same; any law, usage, or custom to the contrary in any wise notwithstanding. (b)

And may remain in mansion house, &c. till dower be assigned.

9 Hen. 3, c. 7.

3. AND, if she be thereof in the mean time deforced, she shall have a vicontiel writ, in the nature of a writ *de quarentina habenda*, directed to the sheriff; whereupon such proceedings and speed shall be used, as hath or might have been used on the said writ of quarentine. (b)

Remedy if in mean time deforced thereof.

4. WHosoever shall deforce widows of their dowers of the lands whereof their husbands died seized, or of such mansion house or plantation, if the same widows shall afterwards recover by plea, they that be convicted of such wrongful deforcement, shall yield damages to the same widows; that is to say, the value of the whole dower to them belonging, from the time of the death of their husbands, unto the day that the said widows by judgment have recovered seizin of their dower. (c)

Damages for deforcing widows of dower.

St. Merton.

20 Hen. 3, c. 1.

5. IN a writ of dower called *unde nihil habet*, the writ shall not abate by the exception of the tenant, because the demandant hath received her dower of another man, before her writ purchased, unless he can shew that the dower so received was in satisfaction of her right of dower in the lands whereof she demands dower. (c)

What exception shall not abate writ of dower.

St. Westminster. 1.

3 Ed. 1, c. 49.

(v) 1818, c. 29.

(b) 1785, c. 65, § 1; 1792, editions

(a) 1705, edition 1733, c. 33, § 8;

1794, 1803, and 1814, c. 94, § 2, 3.

and edition 1769, c. 7, § 8; 1792, edi.

(c) 1785, c. 65, § 2; 1792, editions

1794, 1803, and 1814, c. 94, § 1.

1794, 1803, and 1814, c. 94, § 4, 5.

* 1785, c. 65; 1792, edi. 1794, 1803, and 1814, c. 94.

A. D. 1792.

A. R. C. 17.

Judgment by default against husband, no bar of widow's dower. St. Westm. 2. 13 Ed. 1, c. 4, § 1.

Remedy where widow is endowed to prejudice of heir within age. St. Westm. 2. 13 Ed. 1, c. 4, § 1, c. 7.

Judgment by default against widow impleaded for dower shall not bar her right. St. Westm. 2. 13 Ed. 1, c. 4, § 1.

Widows may bequeath crops of dower lands. How wife may forfeit dower. St. Westm. 2. 13 Ed. 1, c. 34.

Where jointure shall bar widow of dower. 27 Hen. 8, c. 10, § 6, 2.

6. IN case where, the husband being impleaded for land by default, the woman after his death demanding her dower shall be heard, and if it be alledged against her, that her husband lost the land, whereof the dower is demanded, by judgment, whereby she ought not to have dower, and then it be enquired, by what judgment, and it be found it was by default; whereupon the tenant must answer; then it behoveth the tenant to answer further, and to shew that he had right, and hath in the aforesaid lands, according to the form of the writ that the tenant before purchased against the husband. And if he can shew that the husband of such wife had no right in the lands, nor any other but he that holdeth them, the tenant shall go quit, and the wife shall recover nothing of her dower; which thing if he cannot shew, the wife shall recover her dower.(d)

7. AND where sometime it chanceth that a woman, not having a right to demand dower, the heir being within age, doth purchase a writ of dower against a guardian, and the guardian endoweth the woman by favor, or maketh default, or by collusion defendeth the plea so faintly, whereby the woman is awarded her dower in prejudice of the heir, it is provided that the heir when he cometh to full age, shall have an action to demand the seizin of his ancestor against such a woman, like as he should have against any other deforcet; yet so that the woman shall have her exception saved against the demandant, to shew that she had right to her dower; which if she can shew, she shall go quit, and retain her dower; and if not, the heir shall recover his demand.(e)

8. IN like manner the woman shall be aided, if the heir or any other do implead her for her dower, if she lose her dower by default, in which case, the default shall not be so prejudicial to her, but that she shall recover her dower, if she have right thereto; and she shall have this writ:

COMMAND A. that justly, &c. he render to B. who was the wife of F. so much land, with the appurtenances in C., which she claims to be her reasonable dower, (or of her reasonable dower) and that the aforesaid A. deforceth her, &c.

AND to this writ the tenant shall have his exception, to shew that she had no right to be endowed, which if he can verify, he shall go quit, if not, the woman shall recover the land whereof she was endowed before.(e)

9. ALSO widows may bequeath the crop of their ground, as well of their dowers, as of other their lands and tenements.(e)

10. BUT, if a wife willingly leave her husband, and go away and continue with her adulterer, she shall be barred for ever of action to demand her dower, that she ought to have of her husband's lands, if she be convict thereupon, except that her husband willingly and without coercion, reconcile her, and suffer her to dwell with him; in which case she shall be restored to her action.(f)

11. ALSO, if any estate be conveyed by deed or will, either expressly or by averment, for the jointure of the wife; in lieu

(d) 1785, c. 65, § 3; 1792, editions

1794, 1803, and 1814, c. 94, § 6.

(e) 1785, c. 65, § 4; 1792, editions

1794, 1803, and 1814, c. 94, § 7, 8, 9.

(f) 1785, c. 65, § 5; 1792, editions

1794, 1803, and 1814, c. 94, § 10.

of her dower, to take effect in her own possession, immediately on the death of her husband, and to continue during her life at the least, determinable by such acts only as would forfeit her dower at the common law, such conveyance shall bar her dower of the residue of the lands, tenements, or hereditaments, which at any time were her said husband's. But, if the said conveyance were before the marriage, and during the infancy of the *feme*, or if it were made after marriage, in either case, the widow may, at her election, waive such jointure, and demand her dower.(g)

A. D. 1792.

A. R. C. 17.

12. WHEN any conveyance intended to be in lieu of dower, shall, through any defect, fail to be a legal bar thereto, and the widow availing herself of such defect, shall demand her dower, the estate and interest conveyed to such widow, with intention of to bar her dower, shall thereupon cease and determine.(h)

Widows not to have both dower and lands intended to be in lieu thereof.

13. IF a widow be lawfully expulsed or evicted from her jointure, or any part thereof, without any fraud or covin, by lawful entry or action, she shall be endowed of as much of the residue of her husband's lands, tenements, or hereditaments, whereof she was before dowable, as the same lands, tenements, or hereditaments, so evicted and expulsed, shall amount and extend unto.(i)

How recompensed when evicted of jointures, or any part thereof. *Ibid*, § 7.

14. ALL and every other act and acts, clause and clauses heretofore made, for or concerning any matter or thing within the purview of this act, shall be, and the same are hereby repealed: *Provided*, nothing in this act contained shall be construed to affect any right which may have accrued, or been vested, prior to the commencement of this act.

Repealing clause.

Proviso.

15. THIS act shall commence in force from the passing thereof.

Commencement.

C. 108.

*An act to reduce into one, the several acts concerning guardians, orphans, curators, infants, masters and apprentices.**

A. D. 1819.

A. R. C. 43.

[Passed February 18, 1819.]

1. *Be it enacted by the General Assembly*, That any father, even if he be not of twenty-one years of age, may, by deed or last will and testament, either of them being executed in the presence of two credible witnesses, grant or devise the custody and tuition of his child, (which had never been married,) although it be not born, during any part of the infancy of such child, to whomsoever he will; and such grant or devise heretofore or hereafter to be made, shall give the grantee or devisee the same power over the person of the child, as a guardian in

Fathers may grant or devise custody and tuition of infant children.

Nature of such guardianship. 12 Car. 2, c. 24, § 8, 9.

The British st. gives any parent the power of appointing a testamentary guardian; this act the father only.

(g) 1785, c. 65, § 5; 1792, editions 1794, 1803, and 1814, c. 94, § 6, 11.

(h) 1785, c. 65, § 5; 1792, editions 1794, 1803, and 1814, c. 94, § 7, 12.

(i) *Ibid*, § 8, 13.

* Former general laws on this subject; 1748, edi. 1752, c. 4, edi. 1769, c. 2; 1785, c. 36; 1792, edi. 1794, 1803, and 1814, c. 95.

A. D. 1819.
A. R. C. 43.

common socage hath, and authorise him, by actions of ravishment of ward, or trespass, to recover the child with damages for the wrongful taking or detaining of him or her, for his or her use, and for the same use to undertake the care and management, and receive the profits of the ward's estate, real and personal, and prosecute and maintain any such actions and suits concerning the same as a guardian in common socage may do.(a)

Testamentary guardian to give bond and security, unless will direct otherwise.

2. ANY guardian, so appointed by the last will and testament of any person, which shall be legally proved and recorded in any court, shall appear openly in such court, before the exercise of any authority over the minor or his estate, and declare his acceptance of the guardianship, which shall be recorded, and shall give bond and security in manner herein-after directed, unless the testator has otherwise directed by his will.(b)

Provision, in case guardian fail or refuse to qualify.

3. If any such guardian shall fail or neglect to appear in the court where such last will and testament shall be recorded, within the space of six months thereafter, he may be summoned and compelled to declare his acceptance or renunciation of such trust; and if every such guardian, appointed by any such last will and testament, shall renounce the same, which renunciation shall be recorded, the said court may and shall proceed to appoint and qualify some other person or persons to the guardianship.(c)

Powers of courts of chancery as to guardians and wards.

4. THE superior courts of chancery, generally, within their respective jurisdictions, and the county and corporation courts in chancery, within the limits of their jurisdictions, shall have power from time to time, to control guardians, and hear and determine all matters between them and their wards; to require security from any guardian in socage, when that caution shall seem necessary for prevention of any damage his ward may suffer, by neglect, mismanagement or malversation; and, if the security be refused or delayed, or if any guardian, of any description whatever, shall appear to have been guilty of a flagrant abuse of trust, to displace him, and appoint another in his stead; and to give such directions, and make such rules and orders, as they shall think fit, for the government, maintenance, and education of wards, and for the preservation of their estates, and the conduct of their guardians.(d)

Guardians appointed by courts to give bond and security.

5. EVERY guardian appointed by a court, as well as every testamentary guardian, shall, in the court by which he was appointed, or in which the acceptance of the trust reposed in him shall be recorded, give bond to the judge, judges, or justices of such court, with sufficient security, conditioned for the faithful execution of his office. And, if any court shall omit to take such bond, or take such security as shall not satisfy them of his or their sufficiency, which may be done as well by the surety's affidavit as otherwise, the ward, by an action on

Remedy against court for breach of duty in this respect.

(a) 1785, c. 86; 1792, editions 1794, 1803, and 1814, c. 95, § 1; from 1730, c. 8, § 15; 4 *Hen. st. at lar.* p. 285; 1748, ed. 1752, c. 4, § 1, and edition 1760, c. 2, § 1; these acts gave any parent the power of appointing a testamentary guardian; the act of 1785,

from which the present law is taken, the *father* only.

(b) From 1794, c. 14, § 1; editions 1794, 1803, and 1814, c. 172, § 1.

(c) *Ibid.*, § 3.

(d) 1785, c. 86; 1792, editions 1794, 1803, and 1814, c. 95, § 2.

the case, against the judges or justices so making default, may recover so much of the damages, which the guardian and security shall be answerable for, as they shall be unable to pay.(e)

A. D. 1819.

A. R. C. 43.

6. If any guardian refuse, or be unable to give the security required of him, the court may put the estate into the hands of a curator, the fittest they can prevail upon to undertake the care of it, to be accountable to such court; and, in that case, shall not be responsible for his ability.(f)

Curator, if guardian refuse, give security.

7. EVERY guardian and every curator, appointed by a court, shall, at the first or second session after he has qualified himself in manner herein-before directed, deliver into such court an inventory, upon oath, of all the estate he shall have received; and, within two successive courts after the receipt of any other estate of the ward, an inventory of such other estate, to be entered of record, in a separate book to be kept for that purpose; and every such guardian and curator shall exhibit to such court, once in every year, which, if it be a county or corporation court, shall be in September, or at the next session, if there be none in that month, or oftener if he be specially required, accounts of the produce of the estate, of the sales and disposition of such produce, and of the disbursements; which account shall be examined by the court, or by such persons as the court shall refer them to; and, being found and certified, or reported to be properly and fairly stated, and the articles to be justified by the vouchers, and the report in case of a reference being approved and confirmed by the court, shall, with the certificate or confirmation, be entered of record in the book aforesaid. And, if any article of such account shall, at any time thereafter, be excepted to by the ward or his representative, it shall be incumbent on him, to prove or shew the falsity or injustice thereof, unless notice on his behalf shall have been given, at the time of passing the accounts, that such article would be excepted to, and a memorandum of that notice shall have been entered on record, or desired to be entered.(g)

Guardians and curators to return inventories; and when.

Also, accounts; and how often.

Such accounts how to be examined and settled.

To be recorded.

Effect of such settlement.

8. EVERY guardian or curator, who shall not deliver in such inventory, and render such accounts, as aforesaid, shall, by order of the court to which he is amenable, be summoned, and if he remain in default, be compelled to perform his duty, or be displaced; for which purpose, the summons or other proper process may be directed to, and shall be executed by, the sheriff of any county wherein the guardian may be found. Every judge or justice of the court, sitting therein, at any time during the term of session, in which such process ought to have been ordered, if it be not ordered accordingly, shall be amerced.(g)

Guardians, &c. in default, may be summoned, and displaced.

How the summons may be executed.

Court bound to award it, under a penalty.

9. If the testator, in the case of a testamentary guardian, shall omit to direct the sum of money, or the fund, to be applied to the maintenance and education of his infant, and if the disbursements of such or any other guardian, being suitable to the

Balances due guardians to be debited in accounts of ensuing year, or paid out of ward's personal estate.

(e) Compiled of 1785, c. 86; 1792, edi. 1794, 1803, and 1814, c. 95, § 3; and 1794, c. 14, § 1; edi. 1794, 1803, and 1814, c. 172, § 1.

(f) 1785, c. 86; 1792, edi. 1794, 1803, and 1814, c. 95, § 4.

(g) 1785, c. 86; 1792, edi. 1794, 1803, and 1814, c. 95, § 5, 7; and 1794, c. 14, § 1, 4; edi. 1794, 1803, and 1814, c. 172, § 1, 4.

A. D. 1819.
A. R. C. 43.

When and how
such estate may be
sold for that pur-
pose.
Balances due
wards how dispos-
ed of.

When supple-
mental security
may be required
of guardians.

How their sure-
ties may obtain
counter-security,
or other relief.

Debt from guar-
dian to ward, of
highest dignity.

How guardians of
infant trustees or
mortgagees, may
act in their stead.
7 Ann. c. 19, § 1, 2.

Proviso, as to war-
rants or cove-
nants.

How guardians
may make or take
surrenders of for-
mer leases; or
new leases.
29 Geo. 2, c. 31.

estate and circumstances of the ward, shall exceed the profits of his or her estate in any year, the balance, with the allowance of the said court, may be debited in the account of a succeeding year, and paid out of the personal estate of the infant; and so much and such part thereof may, with the approbation of the court, be sold at public auction, to the highest bidder, after reasonable notice of the time and place of such sale has been given, as shall be necessary for that purpose. And the balance appearing on the contrary side, may be put out to interest for the benefit of the ward, upon such security as the court shall direct and approve; or the guardian, if it remain in his hands, shall account for the interest, to be computed from the time his account was, or ought to have been passed. (h)

10. THE court, at any time, when it shall know or have cause to suspect that the security of the guardian is failing, may require and compel such guardian to give supplemental security, or, if he refuse or neglect so to do, may displace him. (i)

11. If any surety for a guardian, by petition to the court before which he was bound, setting forth that he apprehends himself to be in danger of suffering thereby, shall pray that he may be relieved, the court, after a summons to answer the petition shall have been served upon the guardian, or a copy of such summons shall have been left at the place of his usual abode, shall order him to give counter security, or to deliver the ward's estate into the hands of the surety, or some other person; in either of which cases it shall take sufficient security; or it may make such other order for the relief of the petitioner, as to it shall seem just. (k)

12. THE estate of a guardian or curator, appointed under this act, not under a specific lien, shall, after the death of such guardian or curator, be liable for whatever may be due from him or her, on account of his or her guardianship, to his or her ward, before any other debt due from him or her. (l)

13. WHERE any person, under the age of twenty-one years, is or shall be seized or possessed of any lands, tenements or hereditaments, in trust, or by way of mortgage, the guardian of such infant, on petition of one or more of the parties interested to a superior court of chancery, having jurisdiction over the subject matter, by order of such court, made after hearing the parties, may execute any such deed or perform any such act as the trustee or mortgagee, if he were of full age, might have executed or performed, and such deed or other act shall be as valid; except that he shall not be bound by a warranty or other covenant contained in the deed. (m)

14. ALSO the said court may, in like manner, empower such guardian to make or take a surrender of a former lease, or to take or make a new lease, as the case may require, and as it shall seem most to the advantage of the infant; out of whose estate any fine that may be advanced, and all other just ex-

(h) 1785, c. 86; 1792, editions 1794, 1803, and 1814, c. 95, § 8; and 1794, c. 14, § 6; ed. 1794, 1803, and 1814, c. 172, § 6.
(i) 1785, c. 86; 1792, ed. 1794, 1803 and '14, c. 95, § 6.

(k) 1785, c. 86; 1792, ed. 1794, 1803 and '14, c. 95, § 9.

(l) *Ibid.*, § 10; and 1794, c. 14, § 5; ed. 1794, 1803 and '14, c. 172, § 5.

(m) 1785, c. 86; 1792, ed. 1794, 1803 and '14, c. 95, § 13.

penses that may be incurred, in order to obtain a new lease to him, shall be reimbursed; and the new lease shall not only be chargeable with such fine and expenses, but shall remain subject to all incumbrances, which the lease surrendered would have been subject to.⁽ⁿ⁾

15. It shall be lawful for a testamentary guardian, provided there be no prohibition in his testator's last will and testament, to make a lease of any lands, tenements or hereditaments belonging to his ward, reserving the best annual rent and most beneficial covenants, for any term ending when the ward shall arrive at the age of twenty-one years, or continuing beyond that time, as the ward shall elect; and it shall also be lawful for a guardian appointed by any court in manner aforesaid, to make a lease of any lands, tenements and hereditaments belonging to his ward for any term, so that the same does not exceed the period when the said ward shall arrive at the age of fourteen years.^(o)

16. 'WHEN the guardian of any infant shall think that the interest of his ward will be promoted by the sale of his real estate, or any part thereof, it shall be lawful for such guardian to exhibit his bill, for that purpose, in the superior court of chancery, for that district in which the real estate proposed to be sold, or part thereof, shall be. In the bill so exhibited, the guardian shall set forth, plainly and distinctly, all the estate, real and personal, to which such infant is entitled, and all the facts which, in his opinion, are calculated to shew whether the interest of his ward will be promoted by such sale or not. The bill shall be verified by the oath of the guardian; and the infant, together with those who would be heirs to the estate if he were dead, shall be made parties defendant thereto. It shall be the duty of the court to appoint some disinterested, intelligent and fit person, to be guardian *ad litem* for the infant, who shall answer such bill on oath: the infant, also, if above the age of fourteen years, shall answer the bill in proper person, on oath.'

A. D. 1819.
A. R. C. 43.
Fines, for renewal of leases, chargeable to ward's estate.
New leases, subject to former incumbrances.
Testamentary guardians empowered to lease lands of wards; how long.
Power of guardian appointed by court.

How guardian may proceed to obtain a sale of ward's real estate.
Bill to be filed.
What shall be stated therein.

The Oath required.

Parties.

Guardian *ad litem*.
Answer by infant in proper person.

17. 'WHETHER the answer to the plaintiff's bill admit the facts therein alleged or not, commissions for taking depositions shall be awarded; and, before the court shall have authority, under this act, to decree any sale, every fact, material to ascertain the propriety of the sale, shall be proved by clear and credible evidence, given by disinterested witnesses.'

Commissions to take depositions.
Evidence required.

18. 'No deposition or affidavit whatever shall be read in evidence on the hearing of the cause, unless it be taken in the presence of the guardian *ad litem*, or upon interrogatories agreed upon by him.'

Depositions, how taken.

19. If, upon the hearing of the cause, it shall be proved, that the satisfaction of the court, by evidence taken as aforesaid, that the interest of the infant manifestly requires the sale of his real estate, or any part thereof, and the court shall be of opinion, that by such sale the rights of others will not be violated; it shall be lawful to decree such sale in such manner, and upon such terms of credit, as the court think right; always retaining a *lien* upon such estate for the payment of the purchase money.'

Where sale may be decreed.

Lien to be retained.

20. 'THE proceeds of such sale shall be vested and applied,

(n) 1785, c. 86; 1792, edi. 1794, 1803 and '14, c. 95, § 14.

(o) 1794, c. 14, § 7, 8; edi. 1794, 1803 and '14, c. 172, § 7, 8.

- A. D. 1819.
A. R. C. 43.
Security required. ' for the benefit of the infant, either in the purchase of other real estate, or in such other manner as the court shall think best ; but, into whatever hands the proceeds of the sale may be placed, the court shall require ample security that they shall be faithfully applied in such manner as the court may direct.'
- Such proceeds decreedible as real estate. 21. ' If the infant, after such sale, shall die intestate, under the age of twenty-one years, the proceeds aforesaid, or so much thereof as may remain at his death, shall be considered as real estate, and shall pass accordingly to such person or persons, as would have been entitled to the estate sold, if it had not been sold.'
- Costs, by whom payable. 22. ' If a sale be decreed, the costs of the suit shall be paid out of the estate of the infant ; otherwise, the costs shall be paid by the plaintiff.'
- Guardian not to be a purchaser. 23. ' PROVIDED, That, in no case where a sale shall be decreed, shall the guardian of the said infant or infants, or the guardian *ad litem*, be admitted a purchaser, either by himself, or by another, or in any manner whatever become the owner of the said land during the infancy of any heir or devisee : And provided also, That no sale of any infant's real estate shall be decreed by virtue of this act, if the testator, from whom such estate is derived, shall, by his last will and testament, have expressly directed otherwise.'
- Sale not to be decreed, if will otherwise direct. 24. It shall be lawful for the court having cognizance of the accounts of any guardian, upon passing the same, to make such allowance to the guardian as it deems a reasonable compensation for his attention, care and trouble.(p)
- Compensation to guardian, on passing his accounts. 25. EVERY orphan, who hath no estate, or not sufficient for a maintenance out of its profits, shall, by order of the court of the county or corporation in which he or she resides, be bound apprentice by the overseers of the poor, until the age of twenty-one years, if a boy, or of eighteen years, if a girl, to some master or mistress, who shall covenant to teach the apprentice some art, trade or business, to be particularized in the indenture ; and also (except in the case of black and mulatto orphans,) reading and writing, and common arithmetic, including the rule of three, and to pay him or her twelve dollars at the expiration of the time. The indentures of such apprentices shall be filed in the office of the clerk of the county or corporation, and shall not be transferable to any person, without the approbation of such court.(q)
- Who may be bound apprentices by order of court ; and how. 26. WHEN an orphan shall have an estate, the profits of which are insufficient for his or her support, and yet is of such tender years that the overseers of the poor cannot prevail upon a proper person to accept of the same orphan as an apprentice, it shall and may be lawful for the guardian or curator, with the approbation of the court, to take from the personal estate of his ward such sums of money as are necessary for the immediate support of the orphan, until he or she shall arrive at an age when the overseers of the poor can find a suitable master or mistress for him or her. The courts of each county and corporation, res-
- Covenants in their indentures.
- Where to be filed and kept.
- When court may direct part of an orphan's estate to be taken for his support.

(p) 1794, c. 14, § 11 ; edi. 1794, 1803 and '14, c. 172, § 11.

(q) Compiled of 1785, c. 86 ; 1792, cdi. 1794, 1803 and '14, c. 95, § 11 ;

1804, c. 11, § 5 ; edi. 1808, c. 60, § 5 : am. at late revision, by striking out so much as confined instruction in arithmetic to boys only.

pectively, shall have full power, at their discretion, to direct the overseers of the poor to covenant with the master or mistress of any apprentice, bound to serve under their order, that a sum not exceeding twenty dollars shall be paid to such apprentice, instead of the aforesaid sum of twelve dollars.(r)

27. ANY guardian may, with the approbation of that court in which his appointment shall be recorded, and not otherwise, bind his ward apprentice to such person, for learning such art or trade, and with such covenants on the part of the master or mistress, as the said court shall direct; and every apprentice bound by order of court, with the like approbation, and every apprentice bound by his father, may, with the approbation of the court of that county 'or corporation,' in which the father 'or, (he being 'dead or not resident within the Commonwealth,) in which the 'apprentice' shall reside, after he shall be sixteen years of age, agree to serve until he shall be twenty-four years of age, or any shorter time; and such agreement, entered on record, shall bind him.(s)

28. THE court of any county, city, or borough, shall, at all times, receive the complaints of apprentices, being citizens of any one of the United States of America, who reside within the jurisdiction of such court, against their masters or mistresses, alleging undeserved or immoderate correction, insufficient allowance of food, raiment or lodging, or want of instruction, and may hear and determine such cause in a summary way, making such order thereupon as in their judgment will relieve the party injured in future, or removing the apprentices and binding them to other masters or mistresses when it shall seem necessary; and may also, in the same manner, hear and determine complaints of masters or mistresses, against their apprentices, for desertion without good cause, or other misconduct.(t)

29. 'If any apprentice shall desert from the service of his or her master or mistress, during the period for which he or she was lawfully bound, such master or mistress, if not otherwise compensated for the damages sustained thereby, shall be entitled to recover the same from such apprentice; and, to that end, the said master or mistress, his or her executors or administrators, may, at any time within five years after the expiration of the indenture, have and maintain an action against such apprentice, his or her executors or administrators; in which action, the infancy of such apprentice, at the time of desertion, or at the time of instituting the suit, shall be no bar or impediment.'

30. 'If any person shall knowingly harbor or conceal any apprentice who shall have deserted from his master or mistress, such person, besides being liable to an action for damages, shall forfeit and pay, to such master or mistress, the sum of three dollars for every day that he shall so conceal or harbor such apprentice.'

31. If the master or mistress of any apprentice shall die before the term of service of such apprentice shall expire, it shall be lawful for the executors or administrators of such master or mistress to transfer the indenture of such appren-

A. D. 1819.

A. R. C. 43.

How covenants may be made for payment of twenty dollars to apprentice.

How wards may be bound apprentices by their guardians.

Time of apprenticeship, how to be extended to age of twenty-four years.

Courts to hear complaints of apprentices against masters;

And of masters against apprentices.

Master's remedy by action, against apprentice, for desertion without cause.

Infancy no bar to such action.

Remedy against persons harboring or concealing such apprentice.

Indenture of apprenticeship transferable, in event of master's death; And how:

(r) 1794, c. 14, § 12; *edi.* 1794, 1803 and '14, c. 172, § 12.

(s) 1785, c. 86; 1792, *edi.* 1794, 1803 and '14, c. 95, § 12.

(t) *Ibid.* § 2; *Ibid.*, § 15.

A. D. 1819.

A. R. C. 43.

'tice to such person as the court of the county or corporation, in which such master or mistress resided, shall approve; and such assignment, so made, with the approbation of the court entered of record, shall be valid, and shall give to the assignee the same rights that the former master or mistress had, and shall bind the assignee to the performance of all the duties which such master or mistress was bound to perform: *Provided, however*, That, if such assignment be not made within three months after the death of such master or mistress, it shall be utterly void and of no effect.'

And when.

Infants may sue by next friend.

32. IN every case where such as be within age may sue, their next friend shall be admitted to sue for them.(v)

Repealing clause.

33. ALL and every act and acts, clause and clauses of acts, coming within the purview of this act, shall be and the same are hereby repealed; *saving, however*, all rights and remedies, which have or may have accrued under the same.

Commencement.

34. THIS act shall commence in force from and after the first day of January, eighteen hundred and twenty.

C. 109.

A. D. 1819.

A. R. C. 43.

*An act reducing into one act, all acts and parts of acts, making provision for the restraint, support and maintenance of idiots and lunatics, and the preservation and management of their estates.**

[Passed March 9, 1819.]

Directors of hospital for persons of unsound mind, incorporated; and vacancies to be supplied by executive.

1. *Be it enacted by the General Assembly*, That the present directors of the hospital for the reception of persons of unsound minds, and their successors, to be chosen, when vacancies happen, by the Governor, with the advice of the Council, are hereby constituted and appointed a body politic and corporate, to have perpetual continuance, by the name of "The Directors of the Hospital for the maintenance and cure of persons of unsound minds;" and by that name, may sue and be sued, and may and shall have and use a common seal, and are enabled to take and hold any estate, real or personal, given or to be given to the said hospital, or to themselves for the use thereof, so as the annual revenue or income of such donations exceed not three thousand dollars; any law or statute to the contrary notwithstanding.(a)

Annual income not to exceed \$3,000.

To choose a president.

Seven to form a court;

2. THE said directors shall and may, so often as it may be necessary, choose a president, to continue in office until his death, resignation or removal; and they, or any seven of them, shall form a court, and shall, from time to time, ordain regulations for the government of the said hospital, and appoint a keeper and matron thereof, with nurses and guards when they shall be necessary, and provide for the accommodation, maintenance and cure of the patients, remaining and to be received

(v) 1786, c. 66; 1792, edi. 1794, 1803 and '14, c. 95, § 16.

(a) 1785, c. 87; 1792, edi. 1794, 1803, and '14, c. 120, § 1.

* The lunatic hospital was founded in 1769, and trustees appointed by the same style in which the institution was afterwards incorporated in 1785: *vid. acts of* 1769, c. 28; edi. 1785, p. 13; 1785, c. 87. Former general laws on this subject; 1788, c. 56; 1790, c. 19; 1792, edi. 1794, 1803, and '14, c. 120; 1801, c. 11; edi. 1803, and '14, c. 294; *vid. also*, edi. 1785, p. 82, 118, 141, 181.

therein: *Provided, nevertheless,* That any five of the said directors shall form and constitute a court for the examination of idiots and lunatics, and shall have power, as may seem to them best, to receive or reject any applicant.^(b)

A. D. 1819.
A. R. C. 43.

Any five may examine idiots and lunatics.
Justices of peace to examine insane persons.

3. By warrant to be directed to the sheriff or serjeant, a justice of the peace shall order to be brought before him any person whose mind, from his own observation, or the information of others, he shall suspect to be unsound, and with two other justices, who at his request shall associate with him, shall enquire into the state of such person's mind; and the said justices shall write down, as well what shall appear to themselves, as what shall be testified by witnesses touching the supposed insanity; and if two of them adjudge the party to be such a person as ought to be confined in the hospital, and some friend will not become bound, with security, to restrain and take proper care of him or her, until the cause for confinement shall cease, the said justices, or two of them, shall order the insane to be removed to the said hospital, and there received, and, for that end, direct a warrant to the sheriff or serjeant, and a mittimus to the said keeper, transmitting therewith to the latter the examinations of the witnesses, and a relation of such facts as the said justices shall think pertinent to the subject, to be laid before the directors.^(c)

Proceedings on such occasions.

4. The said keeper, immediately after the person removed shall be delivered to him, the receipt of whom he shall acknowledge in writing signed by him, and delivered to the sheriff or serjeant, shall inform the president thereof, who shall require his colleagues to meet as soon as may be; and at such meeting, which shall not unnecessarily be delayed, the directors, if, having considered the case, they concur in opinion with the justices, shall register the insane as a patient; but they may, at any time afterwards, deliver him or her to a friend, becoming bound to restrain and take care of him or her, in the same manner as the justices might have done.^(d)

Duty of keeper on receiving person sent to him as insane.

Also of president and directors.

They may deliver insane to a friend becoming bound for him.

5. If, upon the examination of any person charged with being a lunatic or idiot, or otherwise insane, the said court shall be of opinion that he or she ought not to be confined, it shall be lawful for the said court forthwith to discharge him or her.^(e)

Or discharge him.

6. When any insane person shall be removed as aforesaid to the said hospital, the justices before whom such person was examined, shall cause a certificate of his estate, (if any there be,) and of the probable annual profits arising therefrom, to be sent to the said directors, together with the proceedings before directed to be transmitted to them; and shall also certify such removal and the insane's estate to the next court to be holden for the county, city or borough, whence such removal was. On receipt of such certificate, it shall be lawful for such court to appoint a committee, into whose hands shall be committed such insane's estate for the safe keeping and good management thereof; which committee shall have power to sue for, and recover all debts due to, and be liable to be sued for all debts

Certificate of estate of an insane to be transmitted by the justices, to the directors.

Also, to next county or corporation court.

Court to appoint a committee for safe keeping, &c. such estate.

Powers of such committee.

(b) 1785, c. 87; 1792, editions 1794, 1803, and '14, c. 120, § 2; and 1814, c. 22.

(c) 1785, c. 87; 1792, editions 1794, 1803, and '14, c. 120, § 3.

(d) 1785, c. 87; 1792, editions 1794, 1803, and '14, c. 120, § 4.

(e) 1788, c. 56; 1792, editions 1794, 1803, and '14, c. 120, § 5.

A. D. 1819.
A. R. C. 43.

Expense of removal and support to be defrayed out of profits of estate of the insane.

A reasonable support allowed his family; saving rights of creditors.

Bond and security to be required of committee.

Penalty on examining justices or court for neglect.

Committees to account with auditor for expenses.

Clerk of court to transmit to auditor copy of bond of committees, &c.

Certificates to be made by court of directors to auditor when insane person is received; And upon his discharge.

Such copies and certificates lawful evidence against committee.

due from, such insane person, in the same manner as executors to deceased persons are or may be; and, out of the profits of such insane person's estate, the said court may direct to be defrayed the expenses attending, as well the removal, as the annual support of every such person while remaining in the said hospital, to be paid to the said court of directors: *Provided*, That such county, city or borough court, may allow a reasonable support to the family of such insane person, (if any he hath,) out of his estate; so that neither the expenses attending such insane person, nor the allowance to his family, shall defeat the claims of his or her creditors. Upon the appointment of any such committee, by the court as aforesaid, such court shall take bond with good security, in a sufficient penalty, for the true and faithful performance of the trust thereby reposed in them; and, in case of failure in the examining justices to perform the duties by this act enjoined, or in case of failure in any such court to appoint committees as aforesaid, and to take such bond and security as is hereby required, the justices in either case, so refusing or neglecting, shall forfeit and pay, for every such refusal or neglect, one hundred and fifty dollars, to be prosecuted for, and recovered by the attorney general, in the name of the 'Commonwealth,' for the use of the literary fund.(f)

7. THE committee of the estate of an idiot or lunatic removed to the said hospital, shall account with the auditor of public accounts, and pay into the treasury, as well what he may be liable to pay for the expenses attending the removal of such idiot or lunatic, as for his or her annual support while in the hospital; and the bond of such committee shall, in all cases, be so conditioned as to make him account and pay as aforesaid; and the said committee shall account for and pay the said expenses of removal, and the first year's support of such idiot or lunatic, within twelve months after the date of his bond, and the allowance for his or her annual support, on or before the same day in each year thereafter, so long as the said idiot or lunatic shall remain in the hospital.(g)

8. THE clerk of the court, by whom the committee shall be appointed to an idiot or lunatic so removed as aforesaid, within six months thereafter shall transmit to the auditor a certified copy of the bond of such committee, and also, of the order of such court relative to said idiot or lunatic, and his estate; and the court of directors shall, whenever an idiot or lunatic shall be received into such hospital, certify to the auditor an account of the expenses attending his or her removal, and also the sum allowed for his or her annual support; and, when any such idiot or lunatic shall be discharged, the court of directors shall certify the same to the auditor of public accounts; which copy of the bond of a committee, with the order of the court aforesaid and the certificate of the court of directors, may be given, and shall be received as evidence against any such committee, on a motion made against him under this act; and if any such committee shall fail to account and pay into the treasury as aforesaid, the expense attending such removal, and the allowance for the annual support of such idiot or lunatic, so long as he or she shall remain in the

(f) 1790, c. 19, § 2; 1792, editions 1794, 1803, and '14, c. 120, § 6.

(g) 1801, c. 11, § 1; edi. 1803, and 1814, c. 294, § 1.

said hospital, then, and in that case, the auditor shall be and he is hereby authorised and required, forthwith to recover of such committee, by motion in the general court, the sum due on account of such idiot or lunatic; *Provided, always, That twenty days' previous notice be given, to such committee, of the said motion.*(h)

A. D. 1819.
A. R. C. 43.

Mode of recovery
against him.

9. If any person, possessing lands or other property in this Commonwealth, shall have removed, or shall hereafter remove out of the State, the superior court of chancery, or the court of the county or corporation in which the greater part of such person's property is, (on satisfactory proof being made that such person has become insane,) shall and may appoint a committee, into whose hands shall be committed such insane's estate, for the safe-keeping thereof, and for the necessary support of such insane, and his or her family; which committee shall give the like security, have the same powers, and be governed by the same rules as are prescribed for the committees appointed by virtue of a certificate from justices of the peace, who have examined insane persons agreeably to the directions of this act.(i)

By what court,
committee may be
appointed for es-
tate of a person,
who, after remov-
ing out of Com-
monwealth, be-
comes insane,
leaving property
therein.

10. In case an infant child, or ward, be suggested by the parent or guardian of such infant child or ward, to be of unsound mind, the court of the county, city or borough wherein such person may reside, shall appoint three justices to examine into the state of his or her mind; and, upon the report of the said justices, if the suggestion appear to be true, such court shall order the insane to be removed to the hospital, in the manner before directed, where he or she shall be received and registered.(k)

Provision in case
an infant be sug-
gested to be in-
sane.

11. The expense of maintaining and endeavoring to cure a registered insane, shall be paid by the public, and reimbursed out of his estate, (if any such there be;) and in case of an infant, not an orphan, shall be reimbursed by the parent, if of sufficient ability to support such infant; to be adjudged of and certified by the court of the county where the parent resides; and may, in either case, be recovered by an action, in the name of the directors, who shall account for what shall thus come to their hands.(l)

Expense of main-
taining, &c. an in-
sane, to be paid by
public, and reim-
bursed out of his
estate, &c.

12. The board of directors shall have power to appoint a treasurer, which shall be done annually, from whom, before entering on the duties of the office, they shall require bond with approved security, in the penalty of twenty thousand dollars, payable to the president and directors, and their successors in office, conditioned for the faithful discharge of the duties of his office, and for the settlement of his accounts, before the said board of directors, once in six months; which accounts the said board of directors are hereby required to cause to be certified to the auditor, to be audited as other public accounts. And the said board of directors shall have power and authority to draw, through their treasurer, for the whole amount, or any part of the annual appropriation, for which draft or drafts, when presented, the auditor of public accounts is hereby authorised and required to issue a warrant on the treasury; *Provided, however, That no such draft, made upon the appropriations of one year, shall be allowed, until all monies drawn*

Board of directors
may annually ap-
point treasurer,
who shall give
bond and security.

His account to be
certified to auditor.

Annual appropri-
ation for hospital,
to be drawn by
board.

Proviso.

(A) 1801, c. 11, § 2; ed. 1803, and 1814, c. 294, § 2.

(i) 1792, ed. 1794, 1803, and 1814, c. 130, § 7.

(k) 1785, c. 87; 1792, ed. 1794, 1803 and '14, c. 120, § 8.

(l) *Ibid*, § 9.

A. D. 1819.
A. R. C. 43.

Directors to en-
large persons cur-
ed.

Of what county
registered insane
to be deemed in-
habitant.

President pro tem-
pore.

How director may
vacate office.

Number of guards
allowed for remo-
ving insane person
to hospital.

Their compensa-
tion.

Course to be taken
by officer and
guard, where
court of directors
refuse to receive
person sent to
hospital.

Compensation
how obtained in
such case.

Provision where
necessary to con-
fine such insane in
county jail.

All expenses to be
reimbursed out of
his estate.

'on account of the appropriations of one year next preceeding
'shall have been duly accounted for by the treasurer of the
'hospital.'^(m)

13. THE directors shall enlarge every person confined in the hospital, who shall appear to them to be perfectly cured of insanity, and give such person a certificate thereof.⁽ⁿ⁾

14. A PERSON registered in the hospital, shall, nevertheless, during the time of his or her confinement, be deemed an inhabitant of that county, in which was his or her legal settlement, at the time of his or her removal to the hospital.⁽ⁿ⁾

15. IN case of the absence of the president of the directors, the members present may choose a president pro tempore.⁽ⁿ⁾

16. ANY director who shall remove to the distance of twenty miles or upwards, from the said hospital, shall be considered as having vacated his office.⁽ⁿ⁾

17. NOT more than two persons shall be paid as a guard for removing any insane person to the said hospital; which two shall have the same allowance made them for their services, as is at present allowed to guards employed in removing criminals, and who shall be paid by the court of directors, out of the monies appropriated for the use of the hospital.^(o)

18. WHEN the court of directors of the said hospital shall, for want of room, or other cause, refuse to receive any person sent to the said hospital, under this act, the officer and guard, to whom such idiot or lunatic, or supposed idiot or lunatic, was entrusted, shall carry him or her back to the magistrates, before whom the examination was had, who are authorised and required to give to the officer conducting such idiot or lunatic, or supposed idiot or lunatic, a certificate of the services so performed by himself and guard, and of the distance of the said hospital from the place whence such idiot or lunatic, or supposed idiot or lunatic, was sent; and, upon production of such certificate to the auditor of public accounts, he shall issue a warrant in favor of such officer and guard, for their services and travelling expenses; allowing each officer and guard eight cents per mile for going to the said hospital, and the same for returning, besides ferriages; and allowing, farther, to such officer, eight cents per mile for going, and the same returning, for each idiot or lunatic, or supposed idiot or lunatic, besides ferriages, to be paid out of any monies in the public treasury.^(p)

19. WHEN, upon the return of any insane person to the county whence he or she was sent, it shall be necessary to confine him or her in the jail thereof, the jailor shall be compelled to receive such person, and shall be paid, for each day's maintenance of him or her, in the same manner as jailors are now paid for prisoners confined for offences.^(q)

20. ALL expenses under this act shall be reimbursed, in the manner herein before directed, out of the estate of the insane person or persons, on whose account they were incurred, if any

(m) Altered from 1792, edi. 1794, 1803 and '14, c. 120, § 10.

(n) 1785, c. 87; 1788, c. 56; 1792, edi. 1794, 1803 and '14, c. 120, § 11, 12, 13, 14.

(o) 1790, c. 19, § 4; 1792, edi. 1794, 1803 and '14, c. 120, § 15.

(p) 1806, c. 11, § 1; edi. 1808, c. 92, § 1; 1808, c. 68, § 2; edition 1812, c. 116, § 2.

(q) 1806, c. 11, § 2, 3; edi. 1808, c. 92, § 2, 3.

he, she or they may have; *Provided*, such person or persons be found insane by the said court of directors.(g)

A. D. 1819.

A. R. C. 43.

21. WHERE any person of unsound mind is or shall be seized or possessed of any lands, tenements or hereditaments, in trust, or by way of mortgage, the committee appointed for the care of such person, on the petition of one or more of the parties interested, and, after hearing them all, may execute any such deed, or perform any such act, as the trustee or mortgagee, if he were of sound mind, might have executed or performed. And such deed or other act shall be as valid; except that he shall not be bound by a warranty or other covenant contained in the deed. Such committee may also make or take a surrender of a former lease, or take or make a new lease, as the case may require, and as it shall seem most for the advantage of such insane person; out of whose estate, any fine that may be advanced, and all other just expenses that may be incurred, in order to obtain a new lease to him, shall be reimbursed; and the new lease shall not only be chargeable with such fine and expense, but shall remain subject to all incumbrances which the lease surrendered would have been subject to.(r)

Powers vested in committee of insane trustee or mortgagee of lands.

His powers in relation to leases.
29 Geo. 2, c. 31.

22. THE lands, tenements and chattels, of all idiots and lunatics whatsoever, 'not sent to the lunatic hospital, and the custody of the persons of such idiots and lunatics, shall be committed, by the court of the county or corporation in which such idiots or lunatics may be, to a proper committee, who, having given bond and security, in such court, for the faithful discharge of his duties, shall have right to control and govern the persons of the said idiots or lunatics, to take possession of their estates, to sue and be sued in relation thereto; and the estates of such idiots and lunatics shall be kept, in like manner as is herein before directed in the case of such as be sent to the hospital, safely, without waste or destruction; and they and their household shall live and be maintained competently, with the profits of the same; and the residue, besides their sustentation, shall be kept for their use, to be delivered unto them when they come to right mind; and, if they die in such state, their lands and chattels shall be distributed in the manner directed by the act, entitled, *an act to reduce into one the several acts directing the course of descents*: *Provided, however*, That, when the committee of any idiot or lunatic, whether sent to the hospital or not, shall think that the interest of such idiot or lunatic would be promoted by the sale of the real estate of such idiot or lunatic, or of any part thereof, it shall be lawful for such committee to exhibit a bill, in the superior court of chancery, for that purpose; and, proceeding, in all respects, in the manner prescribed for the sale of infants' estates in the act, entitled, *an act reducing into one the several acts concerning guardians, orphans, curators, infants, masters and apprentices*, he may, in like manner, under the like limitations and restrictions, in all respects, obtain a decree for the sale thereof, and the investiture of the proceeds of the sale, in such manner as the court may direct. But it shall not be ne-

General provision concerning estates and appointment of committees of idiots and lunatics not sent to hospital.

Sale of real estate of lunatics, &c.

(g) 1806, c. 11, § 2, 3; ed. 1803, c. 92, § 2, 3.

(r) 1785, c. 85; 1792, edition 1794, 1803 and '14, c. 120, § 16.

(s) Altered from 1785, c. 86; 1792, ed. 1794, 1803, and '14, c. 120, § 17.

A. D. 1819.
A. R. C. 43.

‘ necessary for the idiot or lunatic to answer the bill. At the death
‘ of such idiot or lunatic, intestate, the proceeds of such sale, or
‘ so much thereof as may remain, shall be considered as real es-
‘ tate, and shall pass accordingly, to such person or persons as
‘ would have been entitled to the estate sold, if it had not been
‘ sold.’

Suits against idiots
or lunatics not to
abate, but *scire*
facias to be issued
against their com-
mittees, or them-
selves when dis-
charged.

23. WHEN an idiot or lunatic shall be sent to the hospital, and a committee shall be appointed, ‘ or when a committee shall be appointed to any idiot or lunatic not sent to the hospital,’ no suit or action depending against such idiot or lunatic shall abate; but, a *scire facias* shall issue against the committee; and the same proceedings shall be had thereupon, against such committee, as if the said suit or action had originally been brought against him; and the judgment shall be entered up against him, upon which a *feri facias* only shall issue, to be levied of the goods and chattels of the idiot or lunatic in the hands of such committee. And, when an idiot or lunatic shall be discharged from the hospital, ‘ or from his committee,’ no suit depending against his committee shall abate, but a *scire facias* as aforesaid shall issue against the person so discharged; and the same judgment shall be had against him or her, in the same manner, as if such suit had been originally brought against him or her.(t)

Repealing clause.

24. ALL acts and parts of acts, coming within the purview of this act, shall be and the same are hereby repealed: *Saving, however,* to all persons whatever, every right or remedy to which they may be entitled under such acts, or parts of acts, in like manner as if this act had never been passed.

Commencement.

25. THIS act shall commence and be in force, from and after the first day of April, one thousand eight hundred and nineteen.

C. 110.

A. D. 1792.
A. R. C. 17.

An act reducing into one, the several acts concerning Servants.

[Passed December 26, 1792.]

What servants
shall specifically
perform their con-
tracts.

1. *BE it enacted by the General Assembly,* That all white persons, not being citizens of any of the confederated states of *America*, who shall come into this Commonwealth under contract, to serve another in any trade or occupation, shall be compellable to perform such contract, specifically, during the term thereof, or during so much of the same as shall not exceed seven years. Infants under the age of fourteen years, brought in under the like contract, entered into with the consent of their father or guardian, shall serve till their age of twenty-one years only, or for such shorter term as the said contract shall have fixed.(a)

Master's duty to
servants.

2. THE said servants shall be provided by their master with wholesome and sufficient food, cloathing and lodging; and, at the end of their service, if they shall not have contracted for

(t) 1801, c. 11, § 4; edi. 1803, and 1814, c. 294, § 4.

(a) 1785, c. 83, § 1; 1792, edi. 1794, 1803, and 1814, c. 132, § 1.

† Former general laws touching this subject; 1705, edi. 1733, c. 49; 3 *Hen. st. at lar.* p. 447; 1748, edi. 1752, c. 15; 5 *Hen. st. at lar.* p. 547; 1753, edi. 1769, c. 2; 6 *Hen. st. at lar.* p. 356; 1785, c. 83; 1792, edi. 1794, 1803, and 1814, c. 132.

any reward, other than transportation, food, cloathing and lodging, shall receive from him, one new and complete suit of cloathing, suited to the season of the year; to wit; a coat, waistcoat, pair of breeches and shoes, two pair of stockings, two shirts, a hat and blanket.(b)

A. D. 1792.
A. R. C. 17.

3. THE benefit of the said contract of service, shall be assigned by the master to any person to whom the servant shall, in the presence of a justice of the peace, freely consent that it shall be assigned, (the said justice attesting such free consent in writing,) and shall also pass to the executors, administrators, and legatees of the master.(c)

Contracts for service, how assignable.

4. ANY such servant, being lazy, disorderly, guilty of misbehaviour to his master, or in his master's family, shall be corrected by stripes, on order from a justice of the county, city, or corporation wherein he resides; or, refusing to work, shall be compelled thereto in like manner, and moreover shall serve two days for every one he shall have so refused to serve, or shall otherwise have lost, without sufficient justification. All necessary expenses incurred by any master for apprehending and bringing home any absconding servant, shall be repaid by further service, after such rates as the court of the county, city, or corporation shall direct; unless such servant shall give security, to be approved of by the court, for repayment in money, within six months after he shall be free from service, and shall accordingly pay the same.(d)

How lazy and disinclined servants may be punished.

Shall compensate by further service, for time lost, and for expenses of bringing home when absconding.

5. If any master shall fail in the duties prescribed by this act, or shall be guilty of injurious demeanor towards his servant, it shall be redressed on motion, by the court of the county, city, or corporation, wherein the servant resides, by immediate discharge from service, if the injury were gross, or by a specific order for a change in his demeanor, and a discharge from service, if such order be disobeyed.(e)

County courts to hear servants' complaints, on motion.

6. ALL contracts between master and servant during the time of service, shall be void.(f)

Contracts between masters and servants during service, void.

7. THE court of every county, city, or borough, shall at all times receive the complaints of servants, being citizens of any one of the confederated states of America, who reside within the jurisdiction of such court, against their masters or mistresses, alleging undeserved or immoderate correction, insufficient allowance of food, raiment, or lodging, and may hear and determine such cases in a summary way, making such orders thereupon, as in their judgment will relieve the party injured in future; and may also in the same manner hear and determine complaints of masters or mistresses against their servants, for desertion, without good cause, and may oblige the latter, for loss thereby occasioned, to make retribution, by further services, after expiration of the times for which they had been bound.(g)

Proceedings on complaints of servants against masters, and of masters against servants.

8. If any servant shall, at any time, bring in goods or money, or, during the time of their service, shall, by gift or any other lawful means, acquire goods or money, they shall have the property and benefit thereof to their own use. And if any servant shall be sick or lame, and so become useless or chargeable, his or

Servants shall have the property of their effects.

(b) 1785, c. 83, § 2; 1792, ed. 1794, 1803, and 1814, c. 132 § 2.

(c) *Ibid*, § 3.

(d) *Ibid*, § 4.

(e) 1785, c. 83, § 5; 1792, ed. 1794, 1803, and '14, c. 132, § 5.

(f) *Ibid*, § 6.

(g) *Ibid*, § 7.

A. D. 1792.

[A. R. C. 17.]

Sick or lame servants may not be discharged.

Who may not have white servants.

Penalty for dealing with servants without leave.

Punishment of servants for breach of penal laws.

Servants when free shall have certificates thereof.

Penalty for harbouring servants without such certificate.

Punishment of servants using forged or stolen certificates.

her master or owner shall maintain such servant until his or her whole time of service shall be expired. And if any master or owner shall put away a lame or sick servant, under pretence of freedom, and such servant becomes chargeable to the county, such master or owner shall forfeit and pay thirty dollars to the overseers of the poor, of the district wherein such offence shall be committed, to the use of the poor of the district; recoverable with costs, by action of debt, in any county or corporation court of this Commonwealth; and moreover shall be liable to the action of the said overseers of the poor at the common law, for damages.^(h)

9. No negro, mulatto, or *Indian*, shall at any time purchase any servant, other than of their own complexion; and if any of the persons aforesaid shall, nevertheless, presume to purchase a white servant, such servant shall immediately become free, and be so held, deemed and taken.⁽ⁱ⁾

10. No person whatsoever shall buy, sell, or receive of, to, or from any servant, any coin or commodity whatsoever, without the leave or consent of the master or owner of such servant; and, if any person shall presume to deal with any servant, without such leave or consent, he or she so offending shall forfeit and pay to the master or owner of such servant, four times the value of the thing so bought, sold or received; to be recovered with costs, by action upon the case, in any county or corporation court of this Commonwealth; and shall also forfeit and pay the further sum of twenty dollars, to any person who will sue for the same; to be recovered with costs, by summons and petition, or receive on his or her bare back, thirty-nine lashes, well laid on, at the public whipping-post, but shall nevertheless be liable to pay the costs of such petition and summons.^{(k)*}

11. IN all cases of penal laws, where free persons are punishable by fine, servants shall be punished by whipping, after the rate of twenty lashes for every eight dollars, so that no servant shall receive more than forty lashes at any one time; unless such offender can procure some person to pay the fine.^(l)

12. EVERY servant, upon expiration of his or her time, and proof thereof made before the court of the county where he or she last served, shall have his or her freedom recorded, and a certificate thereof under the hand of the clerk, which shall be sufficient to indemnify any person for entertaining or hiring such servant; and, if such certificate shall happen to be torn or lost, the clerk, upon request, shall issue another, reciting therein the loss of the former. And, if any person shall harbour or entertain a servant, not having and producing such certificate, he or she shall pay to the master or owner of such servant, one dollar for every natural day he or she shall so harbour or entertain such runaway; recoverable with costs, by action of debt, in any county or corporation court of this Commonwealth. And, if any runaway shall make use of a forged

(h) 1748, edi. 1752, c. 14, § 7; 1753, edi. 1769, c. 2, § 7; 1792, edi. 1794, 1803, and 1814, c. 132, § 8.

(i) *Ibid*, § 9.

(k) *Ibid*, § 10.

(l) 1748, edi., 1752, c. 14, § 12; 1753, ed. 1769, c. 2, § 2; 1792, edi. 1794, 1803, and 1814, c. 132, § 11.

* Recoverable now before a single magistrate, by act of 1806, c. 7, (*vid. ante* c. 71, § 7,) which abolished the proceeding by petition and summons.

certificate, or, after delivery of a true certificate to the person hiring him or her, shall steal the same; and thereby procure other entertainment, the person entertaining or hiring shall not be liable to the said penalty, but such runaway, besides making reparation for loss of time, and charges of recovery, shall stand two hours in the pillory, on a court day, for making use of such forged or stolen certificate; and the person forging the same shall forfeit and pay thirty dollars; one moiety to the Commonwealth, and the other moiety to the owner of such runaway, or the informer, recoverable with costs, in any county or corporation court of this Commonwealth; and, on failure of present payment, or security for the same within six months, such offender shall receive thirty-nine lashes on his or her bare back, well laid on, at the common whipping-post. And where a runaway shall happen to be hired upon a forged certificate, and afterwards denies the delivery thereof, the *onus probandi* shall lie upon the party hiring such runaway.(m)

A. D. 1792.
A. R. C. 17.

And of the persons forging.

13. ALL acts and parts of acts, coming within the purview of this act, shall be, and are hereby repealed: *Provided, always*, That nothing in this act shall be construed to affect any rights, remedies, fines, forfeitures, penalties, or amercements, which have accrued, been vested, or incurred, prior to the commencement of this act.

14. THIS act shall commence in force, from and after the passing thereof.

C. 111.

*An act reducing into one, the several acts concerning Slaves, Free Negroes and Mulattoes.**

A. D. 1819.
A. R. C. 43.

[Passed March 2, 1819.]

1. *Be it enacted by the General Assembly*, That no persons shall henceforth be slaves within this Commonwealth, except such as were so on the seventeenth day of October, in the year one thousand seven hundred and eighty-five, and the descendants, of the females of them,(a) 'and such persons and their descendants, being slaves, as since have been, or hereafter may be brought into this State, or held therein pursuant to law.'

2. *HEREAFTER* it shall be lawful to bring into this State, and to hold therein, any slave or slaves, born within the United States, or any territory thereof, or within the District of Co-

Importation of what slaves permitted.

(m) 1748, edi. 1752, c. 14, § 12; 1753, edi. 1769, c. 2, § 12; 1792, edi. 1794, 1803, and 1814, c. 132, § 12, 16.

(a) 1785, c. 77, § 1; from act of Oct. 1778, c. 1, for preventing the farther importation of slaves; 1792, edi. 1794, 1803, and 1814, c. 103, § 1.

The amendments made at the late revision, are distinguished, as far as practicable, by being printed within single inverted commas. Slaves (negroes) were first brought into Virginia, by a Dutch ship about the year 1619--20; *Ber. Hist. Virg.* p. 51; *Burk's Hist. Virg.* vol. 1, p. 211; *Smith's Hist. Virg.* p. 126. The free importation of slaves was thenceforth permitted till the revolution: the Colonial Assembly passed several laws to prohibit the importation, but the crown constantly withheld its assent. See *preamble to Const. Virg. ante.* c. 4. As to the persons who might be imported into the colony as slaves, see note on the title, *ante.* c. 25.

A. D. 1819.
A. R. C. 43.

Exceptions.

What slaves may
not be imported.
Penalty for unlaw-
ful importation.

Proviso in favour
of travellers, or
temporary resi-
dents.

Penalties, &c., for
such importations
as this act autho-
rises, remitted.

Where negroes or
mulattoes may be
witnesses; and
where not.

Slaves not to go
from home with-
out pass.
Punishment for
doing so.

Power of owner
&c. of plantation,
to punish slave
coming without
pass, and not on
lawful business.

lumbia; except such slaves as, at the time of their removal, were resident out of the limits aforesaid, and such as shall have been convicted of any offence, and transported therefor, under the laws of this State, or of any other state, territory or district.

3. 'It shall not be lawful for any person whatsoever, to bring into this State, or to hold therein, any slave or slaves born or resident out of the limits aforesaid, or any slave or slaves that shall have been convicted of any offence, and therefor transported by the laws of this State, or of any state, territory, or district aforesaid; and, if any person shall bring into this State, contrary to the provisions of this act, any such slave or slaves, or shall sell, purchase, or hold, in this State, any such slave or slaves, knowing such slave or slaves to have been brought into this State contrary to the provisions of this act, every such offender shall forfeit and pay to the Commonwealth, for the use of the literary fund, for each slave so brought in, sold, purchased, or held, a fine of one thousand dollars: *Provided, however*, That the penalty aforesaid shall not be incurred by any person bringing into this State any slave or slaves, for the purpose only of passing through, or for a short time abiding therein, if such slave or slaves be not kept within this State for one whole year, or sold or offered for sale therein.'

4. 'If any person shall heretofore have brought into this State, or held therein, any slave or slaves, such as, under the provisions of this act, he might lawfully bring or hold therein, and shall thereby have incurred any penalty or forfeiture not yet recovered or enforced, such penalty or forfeiture shall be, and the same is hereby remitted.'

5. ANY negro or mulatto, bond or free, shall be a good witness in pleas of the Commonwealth for or against negroes or mulattoes, bond or free, or in civil pleas where free negroes or mulattoes shall alone be parties, and in no other cases whatever.^(b)

6. No slave shall go from the tenements of his master or other person with whom he lives, without a pass or some letter or token, whereby it may appear that he is proceeding by authority from his master, employer or overseer: if he does, it shall be lawful for any person, to apprehend and carry him before a justice of the peace, to be by his order punished with stripes, or not, in his discretion. And, if any slave shall presume to come and be upon the plantation of any person whatsoever, without leave in writing from his or her owner, employer or overseer, not being sent upon lawful business, it shall be lawful for the owner or overseer of such plantation, to give

(b) 1785, c. 77, § 2; 1792, ed. 1794, 1803 and '14, c. 103, § 5, amended by act of 1800, c. 70, § 4; ed. 1803 and '14, c. 283, § 4.

† The act of Oct. 1778, c. 1, 1785, c. 77, ed. '93, 1803 and '14, c. 103, prohibited the further importation of slaves; with provisos, however, in favor of persons removing into the Commonwealth, with intention to reside, and persons claiming slaves by descent, marriage or devise. By act of 1805, c. 63, § 1, it was enacted, that slaves brought into this State should be forfeited, and the provisos of the former laws were repealed. This policy was relaxed by act of 1810, c. 14, amended and perpetuated by act of 1812, c. 18, and by act of 1816, c. 21. The amendments touching this subject, made at the late revision (§ 2, 3, 4, of this act) leave fewer restrictions on the importation of slaves, than any pre-existing laws since the revolution.

or order such slave, ten lashes on his or her bare back for every such offence: (c) 'and, if any negro or mulatto bond or free, shall furnish a pass or permit to any slave, without the consent of the master, employer or overseer of such slave, he or she so offending shall, on conviction thereof before any magistrate of this Commonwealth, receive on his or her bare back, well laid on, any number of lashes not exceeding thirty nine, at the discretion of such magistrate.'

A. D. 1819.
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Punishment of negro, &c., bond or free, giving slave a pass, without master's or overseer's consent.

7. No negro or mulatto slave whatsoever shall keep or carry any gun, powder, shot, club or other weapon whatsoever, offensive or defensive; but all and every gun, weapon and ammunition found in the possession or custody of any negro or mulatto, may be seized by any person, and, upon due proof thereof, made before any justice of the peace of the county or corporation where such seizure shall be, shall by his order be forfeited to the seizer for his own use; and, moreover, every such offender shall have and receive, by order of such justice, any number of lashes not exceeding thirty-nine, on his or her bare back, well laid on, for every such offence: *Provided*, That slaves living at any frontier plantation, may be permitted to keep and use guns, powder, shot, and weapons, offensive or defensive, by license from a justice of the peace of the county wherein such plantation lies; to be obtained upon application of the owners of such slaves. (d)

Slaves not to keep weapons or ammunition.

Such weapons and ammunition may be seized, and forfeited.

Punishment for such offence.

Exception to this rule.

8. No free negro or mulatto, shall be suffered to keep or carry any fire-lock of any kind, any military weapon, or any powder or lead, without first obtaining a license from the court of the county or corporation in which he resides, which license may, at any time, be withdrawn by an order of such court. Any free negro or mulatto who shall so offend, shall, on conviction before a justice of the peace, forfeit all such arms and ammunition to the use of the informer. (e)

Free negroes, &c. not to keep weapons or ammunition without license from court, which may be withdrawn at any time.

Penalty for breach of this regulation.

9. It shall be the duty of every constable, to give information against, and prosecute, every free negro or mulatto, who shall keep or carry any arms or ammunition, contrary to this act. (f)

Constable's duty in relation thereto.

10. If any free negro or mulatto, who shall have been convicted of keeping or carrying arms or ammunition, shall a second time offend in like manner, he shall, in addition to the forfeiture aforesaid, be punished with stripes, at the discretion of a justice, not exceeding thirty-nine. (g)

Punishment for second offence.

11. Every person other than a negro, of whose grandfathers or grand mothers any one is, or shall have been a negro, although all his other progenitors, except that descending from the negro, shall have been white persons, shall be deemed a mulatto; and so, every such person, who shall have one fourth part or more of negro blood, shall in like manner be deemed a mulatto. (h)

Who shall be deemed mulattoes.

12. Riots, routs, unlawful assemblies, trespasses and seditious speeches, by a slave or slaves, shall be punished with stripes,

Riots, routs, unlawful assemblies, trespasses and seditious speeches, by slaves, how punishable.

(c) 1748, edi. 1769, c. 31, § 17, 18; 1785, c. 77, § 3; 1792, edi. 1794, 1803 and '14, c. 103, § 6, 7.

(d) 1748, edi. 1769, c. 31, § 19; 1792, edi. 1794, 1803, and 1814, c. 103, § 8.

(e) 1805, c. 91, § 1; edi. 1808, c. 83, § 1.

(f) *Ibid*, § 2.

(g) 1805, c. 94, § 3; edi. 1808, c. 83, § 3.

(h) 1785, c. 78; 1792, edi. 1794, 1803, and '14, c. 103, § 10.

A. D. 1819.

A. R. C. 43.

at the discretion of a justice of the peace,⁽ⁱ⁾ 'and should any 'quarrel or fight take place with any free negro or mulatto and 'any slave or slaves, such free negro or mulatto, being proved before a justice of the peace to be the aggressor in such quarrel or 'fight, shall be punished with stripes, at the discretion of said 'justice, not exceeding thirty lashes, and he who will may apprehend and carry him, her, or them, before such justice.'

Unlawful meetings
of slaves, what and
how punishable?

13. AND to prevent the inconveniences arising from the meetings of slaves; *Be it further enacted*, That if any master, mistress, or overseer of a family, merchant, tavern-keeper, or any other person, shall knowingly permit or suffer any slave, not belonging to him or her, to be and remain upon his or her plantation, 'lot or tenement,' above four hours at any one time, without leave of the owner or overseer of such slave, he or she, so permitting, shall forfeit and pay three dollars for every such offence; and every owner or overseer of a plantation, merchant, tavern-keeper, or other person, who shall so permit or suffer more than five negroes or slaves, other than his or her own, to be and remain upon his or her plantation or quarter, lot or tenement, at any one time, shall forfeit and pay one dollar for each negro or slave above that number; which said several forfeitures shall be to the informer, and recoverable with costs, before any justice of the peace of the county or corporation where such offence shall be committed.^(k)

Penalties how appropriated, and recoverable.

Proviso.

14. *PROVIDED, always*, That nothing herein contained shall be construed to prohibit the negroes or slaves of one and the same owner, though seated at different quarters, from meeting with their owner's or overseer's leave, upon any plantation to such owner belonging; nor to restrain the meeting of slaves on their owner's or overseer's business, at any public mill, so as such meeting be not in the night time, nor on a Sunday; nor to prohibit their meeting on any other lawful occasion, by license in writing from their owner or overseer; nor their going to church and attending divine service on the Lord's day, or any other day of public worship.^(l)

Exceptions, in cases of meetings, at public mills, or on other lawful occasions, with license from owner or overseer, or for religious worship.

15. AND, whereas it is represented to the General Assembly, that it is a common practice, in many places within this Commonwealth, for slaves to assemble in considerable numbers, at meeting-houses, and places of religious worship, in the night, 'or at 'schools for teaching them reading or writing,' which, if not restrained, may be productive of considerable evil to the community;

All meetings of slaves, or free negroes, &c. with slaves, in the night, or at schools by day or night, prohibited, and to be suppressed.

BE it therefore enacted, That all meetings or assemblages of slaves, 'or free negroes or mulattoes mixing and associating 'with such slaves,' at any meeting-house or houses, or any other place or places, in the night, 'or at any school or schools 'for teaching them reading or writing, either in the day or night,' under whatsoever pretext, shall be deemed and considered as an unlawful assembly; and any justice of the county or corporation wherein such assemblage shall be, either from his own knowledge, or the information of others, of such un-

(i) 1785, c. 77, § 4; 1792, edi. 1794, 1803, and '14, c. 103, § 11.

(k) 1748, edi. 1769, c. 31, § 13; 1792, edi. 1794, 1803, and '14, c. 103, § 12.

(l) 1748, edi. 1769, c. 31, § 15; 1792, edi. 1794, 1803, and '14, c. 103, § 13.

lawful assemblage or meeting, may issue his warrant directed to any sworn officer or officers, authorising him or them to enter the house or houses, where such unlawful assemblages or meetings may be, for the purpose of apprehending or dispersing such slaves, and to inflict corporal punishment on the offender or offenders, at the discretion of any justice of the peace, not exceeding twenty lashes.^(m)

A. D. 1819.
A. R. C. 43.

Punishment of offenders.

16. AND the said officer or officers shall have power to summon any person, to aid and assist in the execution of any warrant or warrants directed to him or them, for the purpose aforesaid, who, on refusal, shall be subject to a fine at the discretion of the justice, not exceeding ten dollars: *Provided*, That nothing herein contained shall be so construed as to prevent the masters or owners of slaves from carrying or permitting his, her or their slave or slaves to go with him, her or them, or with any part of his, her or their white family, to any places whatever, for the purpose of religious worship; *provided*, that such worship be conducted by a regularly ordained or licensed white minister; nor shall any thing herein contained be considered as in any manner affecting white persons, who may happen to be present at any meeting or assemblage, for the purpose of religious worship, so conducted by a white minister as aforesaid, at which there shall be such a number of slaves, as would, as the law has been heretofore construed, constitute an unlawful assembly of slaves.⁽ⁿ⁾

Officers' power to summon persons to assist.

Penalty for refusal.

Proviso, in favor of masters permitting slaves to go with them to meetings for religious worship;

And white persons present with slaves, at such meetings.

17. If any white person, free negro, mulatto, or Indian, shall at any time be found in company with slaves at any unlawful meeting, such person, being thereof convicted before any justice of the peace, shall forfeit and pay three dollars for every such offence, to the informer, recoverable with costs, before such justice; or, on failure of present payment, shall receive on his or her bare back, twenty lashes, well laid on, by order of the justice, before whom such conviction shall be.^(o)

Penalty on white persons, free negroes, &c. present at unlawful meetings of slaves.

18. AND every justice of the peace, upon his own knowledge of such unlawful meeting, or information thereof to him made within ten days after, shall issue his warrant to apprehend the persons so met or assembled, and cause them to be brought before himself, or any other justice of his county or corporation, to be dealt with as this act directs; and every justice failing herein, shall forfeit and pay eight dollars for every such failure; and every sheriff, or other officer, who shall fail, upon knowledge or information of such meeting, to endeavor to suppress the same, and bring the offenders before some justice of the peace, to receive due punishment, shall be liable to the like penalty of eight dollars; both which penalties shall be to the informer, and recoverable with costs, before any justice of the county or corporation, wherein such failure shall be; and every under-sheriff, serjeant or constable, who, upon knowledge or information of such meeting, shall fail to perform his duty in suppressing the same, and apprehending the persons so assembled.

Duty of justices of peace to suppress such meetings.

Penalty for neglect.

Also, on sheriff or other officer failing to endeavor to suppress, &c.

How appropriated and recoverable.

Penalty on under-sheriff, serjeant or constable, for similar neglect.

^(m) 1803, c. 119, § 1; edition 1808 a. 35, § 1.

⁽ⁿ⁾ *Ibid*, § 2; and 1804, c. 12, § 1, 2; edi. 1808, c. 47, § 1, 2

^(o) 1748, edi. 1769, c. 31, § 15, 16; 1792, edi. 1794, 1803, and 1814, c. 103, § 14, 15.

A. D. 1819.
A. R. C. 43.

How appropriated
and recoverable.
Trading with slave
without leave of
master or over-
seer, forbidden.
Forfeiture to mas-
ter or overseer.
How recoverable.
Farther penalty.

How appropriated
and recoverable.
Punishment on
failing to pay pe-
nalty.
Costs.

Additional penalty
for trading on the
sabbath-day with a
slave, without
leave, &c., or
with any free ne-
gro or mulatto.

Court or justice
may bind to good
behaviour, per-
sons guilty of such
unlawful trading.

How long.

Imprisonment, on
failing to give
surety for good
behaviour.

Punishment of ne-
gro or mulatto,
bond or free, for
abusive language
to, or assaulting, a
white person.

Exception.

bled, shall forfeit and pay four dollars for every such failure, to the informer, recoverable with costs, before any justice of the county or corporation wherein such failure shall be. (o)

19. No person whatsoever shall buy, sell, or receive of, to, or from a slave, any commodity whatsoever, without the leave or consent of the master, owner or overseer of such slave: and if any person shall presume to deal with any slave without such leave or consent, he or she so offending, shall forfeit and pay, to the master or owner of such slave, four times the value of the thing so bought, sold or received, to be recovered with costs, by action upon the case in any court of record within this Commonwealth; and shall also forfeit and pay the further sum of twenty dollars to any person who will sue for the same; to be recovered, with costs, by warrant before a justice of the peace in the same manner as other debts not exceeding twenty dollars, or receive on his or her bare back, thirty-nine lashes, well laid on, at the public whipping-post; but shall, nevertheless, be liable to pay the costs of such warrant. (p)

20. ANY person who shall, on the sabbath-day, buy, sell, or receive of, to, or from a slave, any commodity whatsoever, without the leave or consent of the master or overseer of such slave, given in writing, or shall buy, sell, or receive of, to, or from any free negro or mulatto, any commodity whatsoever, on the day aforesaid, shall, in addition to the penalties aforesaid, forfeit and pay the sum of ten dollars, to be recovered by warrant from any magistrate, of the county or corporation, by any person who will prosecute for the same. (q)

21. ' If it shall be proved to the satisfaction of any court of law, or justice of the peace, that any person hath been guilty of any of the offences of buying, selling or receiving, to or from any slave without the consent of his or her owner or overseer, or of buying, selling or receiving, to, or from any free negro or mulatto, contrary to the true intent and meaning of this act, it shall be lawful for such court or justice to rule such person to give security for his good behaviour, for one year or longer, at the discretion of such court or justice; and on failure of such person to give the security required, he or she shall be committed to jail, there to remain 'till the security be given, or 'till he or she be otherwise discharged by due course of law.'

22. If any negro or mulatto, bond or free, shall at any time use abusive and provoking language to, or lift his or her hand in opposition to any person not being a negro or mulatto, he or she so offending shall, for every such offence, proved by the oath of the party before a justice of the peace of the county or corporation where such offence shall be committed, receive such punishment as the justice shall think proper, not exceeding thirty lashes, on his or her bare back, well laid on; except in those cases, where it shall appear to such justice, that such

(o) 1748, edi. 1769, c. 31, § 15, 16; 1792, edi. 1794, 1803, and 1814, c. 103, § 14, 15.

(p) From 1785, c. 77, § 6; 1792, edi. 1794, 1803, and 1814, c. 103, § 16, am. at the late revision, by making the

penalty of § 20, recoverable by warrant, instead of summons and petition, which last remedy had been abolished.

(q) 1801, c. 21, § 3; edi. 1803, and 1814, c. 305, § 3.

negro or mulatto was wantonly assaulted, and lifted his or her hand in his or her defence.(r)

A. D. 1819.
A. R. C. 43.

23. If any negro or other slave shall, at any time, consult, advise or conspire to rebel, or make insurrection, or shall plot or conspire the murder of any 'free white' person or persons whatsoever, every such consulting, plotting or conspiring, shall be adjudged and deemed felony, and the slave or slaves, convicted thereof in manner herein-after directed, shall suffer death, and be utterly excluded all benefit of clergy.(s)

Punishment of slaves conspiring to rebel, or to murder any free white person.

24. If any free person shall advise or conspire with a slave, to rebel or make insurrection, or shall in any wise aid, assist or abet any slave or slaves making rebellion or insurrection, or shall advise or assist such slave in the murder of any person whatsoever, or shall consult, advise or conspire with any other free person, or with any negro or other slave, to induce, entice or excite any slave or slaves to rebel or make insurrection, every such free person so counselling, advising, plotting or conspiring, or so aiding, assisting or abetting, on conviction of any of the said offences, shall be held and deemed a felon, and shall suffer death without benefit of clergy, by hanging by the neck.(t)

Of free person advising or conspiring with a slave in rebellion or murder.

25. If any slave, 'free negro or mulatto' shall prepare, exhibit or administer any medicine whatsoever, he or she so offending shall be judged guilty of felony, and suffer death without benefit of clergy.(v)

Of slave, free negro, &c. administering medicine.

26. *PROVIDED, always,* That, if it shall appear to the court, before whom such slave, 'free negro, or mulatto' shall be tried, that the medicine was not prepared, exhibited or administered with an ill intent, nor attended with any bad consequences, such slave, 'free negro, or mulatto' shall be acquitted.(v)

Proviso.

27. *AND provided also,* That nothing herein contained shall be construed to extend to any slave or slaves, administering medicines by his or her master's or mistress's order, in his or her family, or the family of another, with the mutual consent of the owner of such slave, and the master or mistress of such family, (v) 'nor to any free negro or mulatto, administering 'medicines in any family, by the consent of the master or mistress thereof.'

Exceptions.

28. If any person shall hereafter be guilty of stealing or selling any free person for a slave, knowing the said person so sold to be free, and thereof shall be lawfully convicted, the persons so convicted shall undergo a confinement in the public jail and penitentiary house for a term not less than one, nor more than ten years.(w)

Punishment for stealing or selling a free person for a slave.

29. If any person or persons shall hereafter be guilty of stealing any negro or mulatto slave whatsoever, and be thereof lawfully convicted, whether the said slave or slaves so stolen shall have been taken out of or from the actual or immediate

For stealing a slave.

(r) From 1748, edi. 1769, c. 31, § 20; am. at rev. of 1792, edi. 1794, 1803, and 1814, c. 103, § 17, and further amended at the late revisal.

(s) 1748, edi. 1769, c. 31, § 2; 1792, edi. 1794, 1803, and 1814, c. 103, § 21.

(t) 1797, c. 4, § 1; edi. 1803, and 1814, c. 222, § 1; 1816, c. 15, § 4.

(v) 1748, edi. 1769, c. 31, § 3, 4, 5; 1792, edi. 1794, 1803, and 1814, c. 103, § 22, 23, 24.

(w) From 1787, c. 37, § 2; 1792, edi. 1794, 1803 and 1814, c. 103, § 28.

A. D. 1819.
A. R. C. 43.

possession of the owner or overseer of such slave or slaves, or shall have been elsewhere found, he or they shall be adjudged guilty of felony, and shall undergo a confinement in the penitentiary for a period not less than three nor more than eight years.(x)

For carrying a slave out of the state, county or corporation, without owner's consent, with fraudulent intent.

30. WHosoever shall hereafter carry, or cause to be carried, any slave or slaves out of this Commonwealth, or who shall carry, or cause to be carried, any slave or slaves out of any county or corporation within this Commonwealth, into any other county or corporation within the same, without the consent of the owner or owners of such slave or slaves, or of the guardian of such owner or owners, if he, she, or they be a minor or minors, and with intention to defraud or deprive such owner or owners of such slave or slaves, shall be adjudged guilty of felony, and subject to prosecution as in other cases of felony, and upon conviction thereof shall be punished by a fine not less than one hundred, nor more than five hundred dollars, and shall also be imprisoned in the jail or penitentiary house, for a period not less than two, nor more than four years; which fine and imprisonment shall be fixed and ascertained by a jury. And the person offending herein shall moreover be subjected to pay to the owner or owners of the slave or slaves, carried away as aforesaid, double the value of such slave or slaves, together with double the amount of all costs and expenses, by him, her or them incurred, in regaining or attempting to regain such slave or slaves: to be recovered by an action on the case, in any court of record in this Commonwealth, having original jurisdiction over such actions. In all actions instituted for the recovery of the penalty imposed by this section, bail may be required of the defendant or defendants, as of right.(y)

Fine and imprisonment.

Forfeiture, of double value, costs & expenses, to owner.

Recoverable by action on the case.

Bail required.

What shall be considered such a carrying away by masters of vessels and others.

31. AND, as doubts may arise, as to what shall be considered such a carrying away or removal, within the meaning of the last section; *Be it further enacted*, That not only all those who shall willingly and designedly carry away slaves as aforesaid, but all masters of vessels, who, having a slave or slaves on board their said vessels, shall sail beyond the limits of any county, with such slave or slaves on board, shall be considered as carrying off or removing such slave or slaves, within the true intent and meaning thereof. And, any person travelling by land, who shall give countenance, protection or assistance to such slave or slaves, for the purpose of preventing him, her or them, from being stopped or apprehended, shall also be considered as carrying off or removing such slave or slaves, within the true intent and meaning thereof.(y)

Provision against travellers protecting such slaves from being stopped or apprehended.

Mode of trial of slaves for felony.

Time of trial.

32. THE justices of every county or corporation shall be justices of *oyer and terminer*, for trying slaves charged with felony; which trials shall be by five at least, without juries, upon legal evidence, at such times as the sheriffs or other officers shall appoint, not being less than five, nor more than ten days after the offenders shall have been committed to jail.

(x) 1753, *edi.* 1769, c. 2, § 28; 1792, *edi.* 1794, 1803, and 1814, c. 103, § 29; *am.* by act of 1798, c. 6, § 1; editions 1803, and 1814, c. 244, § 1.

(y) From 1748, *edi.* 1769, c. 17, § 1,

2; 1792, *edi.* 1794, 1803, and 1814, c. 103, § 50; *am.* by 1804, c. 11, § 1, 2; *edi.* 1808, c. 60, § 1, 2; further amended, and the offence declared felony, by 1812, c. 27.

No slave shall be condemned in any such case, unless all of the justices, sitting upon his or her trial, shall agree in opinion, that the prisoner is guilty, after assigning him or her counsel, in his or her defence, whose fee, amounting to not less than five, nor more than twenty-five dollars, at the discretion of the justices sitting upon said trial, shall be paid by the owner of the slave; *Provided always*, That, when judgment of death shall be passed upon any such offender, there shall be thirty days at least between the time of passing judgment and the day of execution, except in cases of conspiracy, insurrection or rebellion.(z) *

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Court, to condemn, must be unanimous.
Counsel to be assigned.
His fee;
And how payable.
Time allowed, between sentence of death and execution.

33. AND, if the said court shall fail to meet at the day to which it was called for the trial of such slave or slaves, all recognizances entered into by any person or persons, to appear at such called court, shall stand obligatory to the next court of such county or corporation, when such trial shall be had before the same number of magistrates, and in the same manner as is before directed.(a)

Provision, in case of court's failing to meet.

34. ANY court, summoned for the trial of a slave charged with any criminal offence, shall have power, for good cause shewn, to adjourn to any subsequent time: *Provided*, That such adjournment be either to the next court of the county or corporation, as the case may be, whether a quarterly or monthly term, or to some earlier day.(b)

Court adjournable.

To what time.

35. UPON such adjournment to the next court of the county or corporation, the trial shall be had before the same number of magistrates, and in the same manner as if the called court had altogether failed to meet. The county or corporation court shall have power, for good cause shewn, to continue such trial from term to term: *Provided*, That such continuance, unless on the application of the prisoner, shall not be beyond the third term after he or she shall have been committed for trial.(b)

Effect of adjournment to next county or corporation court.
Trial may be continued from term to term.
But not beyond the third term, unless for the prisoner.

36. AND whereas doubts have arisen, whether the power of the magistrates of county and corporation courts summoned as courts of *oyer and terminer*, to decide upon the cases of slaves charged with the commission of felony, can extend to the identifying of such slaves, who shall escape after condemnation, and before the day of execution, and are re-taken; *Be it further enacted*, That, in all such cases, it shall and may be lawful for the sheriff to summon the magistrates of the county or corporation, for the purpose of identifying such criminal, in like manner as the court was summoned for his or her trial, and upon such identity being proven, to carry into effect the sentence of the former court, by ordering such farther day for the execution of the said slave, as to them shall seem proper.(c)

Courts may be called to identify slaves condemned, re-taken after escape.

Power of such courts.

(z) 1786, c. 58; 1790, c. 64, § 1.

(b) 1811, c. 30, § 3; edi. 1812, p. 110,

(a) 1799, c. 58, § 2; edi. 1803 and '14, c. 264, § 2.

§ 3.

(c) 1797, c. 4, § 4; edi. 1803 and '14, c. 222, § 4.

* Altered from 1748, edi. 1769, c. 31, § 6; by which, commission of *oyer and terminer* was issued by the governor. Amended at revision of 1792, edi. 1794, 1803 and '14, c. 103, § 20, by allowing counsel to the prisoner, and fixing fee at \$ 5; and further amended at the late revision, by increasing fee to sum not less than \$ 5, nor more than \$ 25.

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Value of slave
condemned to die,
to be paid to own-
er.

Exceptions, in cas-
es of slaves import-
ed contrary to law,
or passing through
State ;

Or where owner is
convicted as prin-
cipal or accessory.

Executive may
sell slaves under
sentence of death.

Purchaser to give
bond and security
for transportation.

Sale to operate as
reprieve.
Sentence to be ex-
ecuted on return
into State,

And owner not to
be paid value.

Where slave is
convicted of capi-
tal crime, evidence
to be recorded,
and copy sent ex-
ecutive.

Owners of slaves
so sold, to be paid
as for slaves ex-
ecuted.

Person suing for
freedom, how pro-
secuted and tried.

37. THE value of a slave condemned to die, who shall suf-
fer accordingly, or, before execution of the sentence, perish,
'escape,' or be sold for transportation by the Executive, to be
estimated by the justices triers, shall be paid by the public to
the owner. (d)

38. But any slave who hath been, or hereafter shall be,
brought into this State, contrary to law, or who shall be passing
through the State, by land or water, and shall commit a capital
crime, and be tried and executed therefor within this Common-
wealth, shall not be valued by the court condemning him or her,
nor paid for out of the public treasury. Nor shall any slave be
paid for, who shall be convicted and executed for the commis-
sion of a crime, in the perpetration of which the owner shall be
either a principal or accessory, and be thereof convicted. (e)

39. THE Governor, with the advice of Council, shall be and
is hereby authorised, when it shall be deemed expedient, to
contract and agree with any person or persons, for the sale and
purchase of all those slaves who may be under sentence of
death, for conspiracy, insurrection or other crimes. The per-
son or persons, at the time of making such purchase, shall enter
into bond, with sufficient security, in the penalty of one thou-
sand dollars for each slave, payable to the Governor and his suc-
cessors, for the use of the literary fund, with condition that he
or they will carry out of the United States, all the slaves by
him or them purchased, who may be under sentence of death ;
and the sale and disposal of every such slave shall amount to
a reprieve of him or them from such sentence of death ; *Pro-
vided always*, That if any slave, sold pursuant to this act,
shall return into this State, he shall be apprehended and ex-
ecuted under the condemnation of the court, as if no reprieve
had taken place. (f) ' And the owner or owners of any slave
'so executed, shall not be entitled to receive compensation
'from the public for his or her value.'

40. AND in all cases where any slave or slaves shall be tried
and convicted for any crime, which may affect life, the court
before whom such trials shall be had, shall cause the testimony
for and against every such slave to be entered of record, and
a copy of the whole proceedings to be transmitted forthwith to
the Executive. (f)

41. THE owners of slaves so sold or transported, shall be
paid in the same manner as for slaves executed ; which pay-
ment shall be immediately made, in the same manner as for
slaves executed, so soon as the Executive shall determine on
the sale or transportation of them. (g)

42. ONE being detained in slavery, and having commenced
an action to assert his freedom, shall be prosecuted and tried
for any such crime, in the same manner as a free man ought to
be prosecuted and tried. (h)

(d) Compiled of 1748, edi. 1769,
c. 31, § 10 ; 1786, c. 58 ; 1792, edi.
1794, 1803 and '14, c. 103, § 31 ; 1800,
c. 43, § 1, 2 ; edi. 1803 and '14, c. 274,
§ 1, 2 ; 1801, c. 4 ; edi. 1803 and '14,
c. 288.

(e) 1805, c. 63, § 9 ; edition 1808,
c. 62, § 9.

(f) 1800, c. 43, § 1 ; edi. 1803 and
'14, c. 274, § 1.

(g) *Ibid*, § 2 ; and 1801 c. 4 ; edi.
1803 and '14, c. 288.

(h) 1786, c. 58 ; 1792, edition 1794,
1803 and '14, c. 103, § 31, 32.

43. No person having interest in a slave, shall sit upon the trial of such slave.^(h) A. D. 1819.
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44. AND for a declaration of what shall be deemed to be legal evidence in such cases, *It is further enacted*, That the court may take for evidence the confession of the offender, the oath of one or more credible witnesses, or such testimony of negroes or mulattoes, bond or free, with pregnant circumstances, as to them shall seem convincing.⁽ⁱ⁾ Person interested, not to sit on trial of slave.
What evidence admissible.
45. WHEN any negro or mulatto whatsoever shall be convicted of any offence within the benefit of clergy, judgment of death shall not be given against him or her, upon such conviction, but he or she shall be burnt in the hand by the jailor, in open court, and suffer such other corporal punishment as the court shall think fit to inflict; except where he or she once had the benefit of this act, and, in those cases, such negro or mulatto shall suffer death, without benefit of clergy.^(j) Negroes or mulattoes, convicted of clergyable offences, how punishable.
Exception.
46. WHERE any negro or mulatto shall be found, upon due proof made to any county or corporation court of this Commonwealth, to have given false testimony, every such offender shall, without farther trial, be ordered by the said court to have one ear nailed to the pillory, and there to stand for the space of one hour, and then the said ear to be cut off, and thereafter the other ear nailed in like manner, and cut off at the expiration of one other hour, and moreover to receive thirty-nine lashes on his or her bare back, well laid on, at the public whipping post, or such other punishment as the court shall think proper, not extending to life or limb. And whenever it shall be necessary to examine any slave, free negro or mulatto, as a witness on any trial, it shall be the duty of the court or justice sitting on such trial, before such witness shall be examined, to charge him to declare the truth, in the manner following, to wit: *You are brought hither as a witness, and, by the direction of the law, I am to tell you, before you give your evidence, that you must tell the truth, the whole truth and nothing but the truth; and that, if it be found hereafter that you tell a lie, and give false testimony in this matter, you must for so doing, have both your ears nailed to the pillory and cut off, and receive thirty-nine lashes on your bare back, well laid on, at the common whipping-post.*^(k) Punishment of negro or mulatto, for perjury.
Charge to slave, free negro or mulatto, before sworn as witness.
Form of charge.
47. ALL negro and mulatto slaves, in all courts of judicature within this Commonwealth, shall be held, taken and adjudged to be personal estate.^(l) Slaves declared personal estate.
48. If any person or persons possessed of a life estate in any slave or slaves, shall remove, or voluntarily permit to be removed, out of this Commonwealth, such slave or slaves, or any of their increase, without the consent of him or her in reversion 'or remainder,' such person or persons shall forfeit every such slave or slaves so removed, and the full value thereof, unto the person or persons that shall have the reversion 'or

(h) 1786, c. 58; 1792, edi. 1794, 1803 and '14, c. 103, § 31, 32.

(i) 1748, edi. 1769, c. 31, § 6, 8; 1782, edi. 1794, 1803 and '14, c. 103, § 33, 34.

(k) Altered from 1748, edi. 1769, c. 31, § 9; 1792, edi. 1794, 1803 and '14, c. 103, § 35.

(l) 1792, edi. 1794, 1803 and '14, c. 103, § 43.

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Such forfeiture,
where tenant is
feme covert, to be
for life of husband.

Farther remedy,
by action against
husband.

Slaves descending
from intestate,
may be sold, &c.
by decree in chan-
cery, where equal
division cannot be
made.

Proviso.

Gifts of slaves, not
good, unless by
will, or deed pro-
ved, &c. and re-
corded.

Exception, if pos-
session be deliver-
ed to donee.

Regulations, con-
cerning exporta-
tion of negroes or
mulattoes, by
masters of vessels.

'remainder' thereof; any law, custom or usage to the contrary notwithstanding.(m) *

49. If any 'female,' possessed as aforesaid, shall be married to a husband, who shall remove, or voluntarily permit to be removed, out of this Commonwealth, any such slave or slaves, or any of their increase, without the consent of him or her in reversion 'or remainder,' in such case it shall be lawful for him or her, in reversion 'or remainder,' to sue for, recover and possess such slave or slaves so removed, for and during the life of the said husband(m); 'who shall moreover be liable to the 'action of the person or persons entitled to the reversion or 'remainder thereof, for the full value of the slave or slaves so 'removed.'*

50. WHERE one or more slaves shall descend from a person dying intestate, and an equal division thereof cannot be made in kind, on account of the nature of the property, it shall be lawful for the *hight* court of chancery, or the court of the county or corporation, by which the administration to the estate of the intestate was granted, to direct the sale of such slave or slaves, and the distribution of the money arising therefrom, according to the rights of each claimant: *Provided, always*, That each claimant shall be first duly summoned to shew cause, if any he can, against such sale.(n)

51. No gift or gifts of any slave or slaves, shall be good or sufficient to pass any estate in such slave or slaves, to any person or persons whatsoever, unless the same be made by will, duly proved and recorded, or by deed, in writing, to be proved by two witnesses at the least, or acknowledged by the donor, and recorded according to law. This section shall be construed to extend only to gifts of slaves, whereof the donors have, notwithstanding such gifts, remained in the possession, and not to gifts of such slaves as have at any time come into the actual possession of, and have remained with the donee or some person claiming under such donee.(o)

52. No master or skipper of a vessel shall hereafter transport, or attempt to transport, any negro or mulatto out of this

(m) Altered from 1705, edi. 1769, c. 3, § 11; 1785, c. 61, § 22, 23; 1792, edi. 1794, 1803 and 1814, c. 103, § 44, 45.

(n) 1790, c. 13, § 2; 1792, edition 1794, 1803 and '14, c. 103, § 46.

(o) 1758, edi. 1769, c. 1, § 1, explained and amended by act of 1787, c. 22; 1792, edition 1794, 1803, and 1814, c. 103, § 47, 48: the *proviso* which constituted § 3, of the act of 1787, and § 49, of the revival of 1792, was struck out at the late revival.

* By act of 1705, edi. 1769, c. 3, slaves were declared *real* estate; but the act of 1727, edi. 1769, c. 4, made important changes in the nature of this kind of property, and made it in most respects *personal*. An act passed in 1748, declared it *personal*; *vid.* edi. 1752, c. 2, 5 *Hen. st. at lar.* p. 432. But this act, with several others, was repealed, by royal proclamation; *vid.* edi. 1752, list of acts at the end, and 6 *Hen. st. at lar.* p. 215. The revisors of 1792 reported the acts of 1705 and 1727; *vid. report, part I.* p. 177; but the legislature substituted this section for the provisions of those acts. The former laws provided for the cases of *reversioners* against *widows* holding *dower* slaves: these sections, as amended at the late revival, apply to *all persons* holding a life estate in slaves, and secure the rights of *remaindermen* as well as *reversioners*: the former laws declared a forfeiture of the *whole* dower interest; these, of the *slaves only*, and *their value*; and, in section 49, *female* is substituted for *widow*; and the *right to recover the slaves removed*, is given instead of the *right of entry*, as in the former laws.

† So in the roll for *superior court of chancery*.

Commonwealth, on any pretext whatsoever, until he shall have produced the said negro or mulatto before some magistrate of a county adjoining to the river, in which his vessel shall lie, and shall have made out, and lodged with the said magistrate, a description of the said negro or mulatto, his or her name, probable age, and alledged place of birth, and a declaration of the place or port to which the said master or skipper may be bound; and until he shall also have produced to the said magistrate the certificate of freedom granted to the said negro or mulatto, by the clerk of the court in which he or she was registered, or the written direction of the owner of such negro or mulatto, commanding or permitting such master or skipper to carry him or her out of this Commonwealth. And when the said master or skipper shall so have done, it shall be the duty of the magistrate to grant him a written certificate thereof. And every master or skipper of a vessel, neglecting or refusing to perform the requisites hereby imposed, shall forfeit and pay the sum of five hundred dollars, for every negro or mulatto, by him so carried or attempted to be carried out of this Commonwealth, to be recovered by action of debt by any person who will sue for the same; and shall be, moreover, liable to the action of the owner of such negro or mulatto, for the value of the negro or mulatto thus carried or attempted to be carried out of the Commonwealth.(p) And no master of any ship or other vessel shall transport or carry any servant whatsoever, out of this Commonwealth, without the consent or permission of the person or persons to whom such servant doth of right belong, upon penalty of forfeiting and paying one hundred and fifty dollars, for every such servant transported or carried hence, contrary to this act, one moiety to the Commonwealth for the use of the literary fund, and the other moiety to the owner of such servant, to be recovered with costs, by action of debt or information, in any court of record in this Commonwealth; and, moreover, such master shall be liable to the suit of the party grieved for his or her damages. And, in any suit or action, brought against any master or skipper of a vessel under this section, the defendant shall not be allowed to plead in bar, or give in evidence, any act or statute of limitations, any former or other law to the contrary notwithstanding.(q)

53. It shall be lawful for any person, by his or her last will and testament, or by any other instrument in writing, under his or her hand and seal, attested and proved, in the county or corporation court, by two witnesses, or acknowledged by the party in the court of the county where he or she resides, to emancipate and set free his or her slaves, or any of them, who shall thereupon be entirely and fully discharged from the performance of any contract entered into during servitude, and

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Description to be lodged with magistrate.

Certificate of freedom produced.

Or written permission of owner of slave.

Certificate from magistrate.

Penalty for breach of these regulations.

Action by owner of slave.

Masters of vessels not to carry servants out of state, without masters' consent.

Penalty.

How appropriated and recoverable.

Action by party injured.

Act of limitation not pleadable to any action under this section.

How owners may emancipate slaves.

Effect of emancipation.

(p) 1797, c. 4, § 6; editions 1803, and 1814, c. 222, § 6.

(q) 1748, edi. 1769, c. 17, § 1, 2; '92, edi. 1794, 1803, and 1814, c. 103, § 50, 51; 1797, c. 4, § 7; edi. 1803, and 1814, c. 222, § 7.

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Slaves emancipated, liable to execution for previous debts of owner.

Person emancipating to maintain them, if not of sound mind or body, &c.

Courts' power to compel.

Copy deed of emancipation to each slave liberated.

Clerk's fee.

Penalty for neglecting, or refusing such copy.

Emancipated slave travelling out of county without it, may be committed to jail.

How long to be confined.

Free negro or mulatto failing to pay taxes and levies, may be hired out by order of court.

Proviso.

enjoy as full freedom as if they had been particularly named and freed by this act.(r)*

54. *PROVIDED, nevertheless*, That all slaves so emancipated shall be liable to be taken by execution, to satisfy any debt contracted by the person emancipating them, before such emancipation is made.(s)

55. *PROVIDED, also*, That all slaves so emancipated, not being, in the judgment of the court, of sound mind and body, or being above the age of forty-five years, or being males under the age of twenty-one, or females under the age of eighteen years, shall respectively be supported and maintained by the person so liberating them, or by his or her estate; and upon neglect or refusal so to do, the court of the county or corporation, where such neglect or refusal may be, is hereby empowered and required, upon application to them made, to order the sheriff or other officer, to distrain and sell so much of the person's estate, as shall be sufficient for that purpose.(t)

56. *PROVIDED, also*, That every person, by written instrument in his lifetime, or, if by last will and testament, the executors of any person, freeing any slave, shall cause to be delivered to him or her, a copy of the instrument of emancipation, attested by the clerk of the court of the county or corporation, who shall be paid therefor, by the person emancipating, eighty-three cents, to be collected in the manner of other clerks' fees. Every person neglecting or refusing to deliver to any slave, by him or her set free, such copy, shall forfeit and pay thirty dollars, to be recovered with costs, in any court of record, one half thereof to the person suing for the same, and the other to the person to whom such copy ought to have been delivered.(t)

57. It shall be lawful for any justice of the peace, to commit to the jail of his county or corporation, any emancipated slave travelling out of the county of his or her residence, without a copy of the instrument of his or her emancipation; there to remain, till such copy is produced, and the jailor's fees paid.(t)

58. In case any free negro or mulatto shall neglect, in any year, to pay all taxes and levies imposed, or to be imposed by law, the court of the county or corporation shall order the sheriff or serjeant, to hire out him or her, for so long a time as will raise the said taxes and levies; *provided*, sufficient dis-

(r) May 1782, c. 21, § 1; 1792, ed. 1794, 1803, and 1814, c. 103, § 36.
(s) 1792, ed. 1794, 1803, and 1814, c. 103, § 37.

(t) May 1782, c. 21, § 2; 1792, ed. 1794, 1803, and 1814, c. 103, § 38, 39, 40.

* The practice of emancipating slaves, seems to have been exercised prior to the year 1691; for, by an act of that year, it was provided, that no negro or mulatto should thereafter be set free, unless the person emancipating, should provide for sending his freedman out of the country within six months, in default of which, the freedman might be apprehended and sold by the church wardens: but the method of emancipation does not appear; *Vid. 3 Hen. st. at lar.* p. 87. It was enacted by the act of 1723, that no slave should be emancipated, but for meritorious services, to be judged of by the Governor and Council, 4 *Id.* p. 132, and so the law continued till the revolution; 1748, ed. 1769, c. 31, § 26. The general right of emancipation was given by act of 1782, c. 21, ed. 1785, p. 159; and modified by act of 1805, c. 10, and by subsequent laws referred to in the sequel.

treſs cannot be made upon his or her eſtate: (v) ' *And provided* ' *also*, That the perſon hiring ſuch free negro or mulatto, ſhall not be authoriſed to carry him or her out of the county or corporation, in which he or ſhe may be ſo hired out, but in ſuch a caſe, beſides forfeiting all title to the ſervices of ſuch free negro or mulatto, ſhall incur all the penalties to which they are ſubject, by the *twenty-eighth** ſection of this act, who carry any ſlave or ſlaves out of any county or corporation, with the intent to deprive the owner or owners, of ſuch ſlave or ſlaves: *And provided also*, That no free negro or mulatto ſhall be hired out for a longer period than will be ſufficient to diſcharge his taxes or levies, at the rate of ſixteen cents wages by the day. And where any free negro or mulatto ſhall have been hired out for a longer period, ſuch free negro or mulatto, upon application to the court of the county or corporation in which he may reſide, ſhall be diſcharged by ſuch court from farther ſervice; but the hirer or poſſeſſor of ſuch free negro or mulatto ſhall have ten days previous notice of ſuch application.'

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Person hiring not to carry out of county or corporation. Forfeitures and penalties for doing so.

How long ſuch free negro, &c. may be hired.

How relievable, if hired for longer time.

59. *SAVING*, nevertheless, to all and every perſon and perſons, bodies politic or corporate, and their heirs and ſucceſſors, other than the perſon or perſons claiming under thoſe ſo emancipating their ſlaves, all ſuch right and title, as they or any of them could or might claim if this act had never been made. (w)

Saving rights of others, not claiming under perſons emancipating.

60. *AND*, whereas it is doubted, whether a widow who ſhall, within one year from the death of her huſband, declare, in the manner preſcribed by law, that ſhe will not take or accept the provision made for her by her huſband's will, or any part thereof, and renounce all benefit which ſhe might claim by the ſame will, be entitled to one-third part of the ſlaves, whereof her huſband died poſſeſſed, and which by his will are directed to be emancipated and ſet free; for removing ſuch doubts in future, and for a plain declaration of the law herein; *Be it enacted*, That, in all ſuch caſes, the widow ſhall be entitled to one-third part of the ſlaves whereof her huſband died poſſeſſed, notwithstanding they may be emancipated by his will: *Provided*, nevertheless, That, where part of the ſlaves only ſhall be emancipated, the widow's part ſhall be taken out of thoſe which are not ſet free, if there be enough to make one-third part of the whole number whereof the huſband died poſſeſſed: and the widow, in all ſuch caſes, ſhall recover, by preferring her bill in chancery againſt the executor or adminiſtrator with the will annexed, one-third part of ſuch ſlaves; which one-third, ſo to be allotted to her, ſhall be aſcertained by caſting lots: *Provided, also*, That, in all ſuch caſes, where the perſonal eſtate of the huſband, after payment of debts and juſt expenſes, ſhall be ſufficient to compensate the widow for the value of her third part of the ſlaves, whereof her huſband

Emancipation of ſlaves by will, not to deprive widow of third part, if ſhe renounce the will.

Proviso, where part only emancipated, widow's part to be taken out of others.

Widow's remedy, by bill in chancery.

Lots to be caſt.

Widow where compensated in money, for her third of ſuch ſlaves.

(v) From May 1782, c. 21, § 3; 1792, edi. 1794, 1803, and '14, c. 103, § 41, amended at the late revival, by ſubſtituting the words, "free negro or

mulatto," in the firſt line, for "ſlave ſo liberated," in the former acts.

(w) May 1782, c. 21, § 3; 1792, edi. 1794, 1808, and '14, c. 103, § 42.

* So in the roll: but the ſection referred to is the 30th ſection of this act, the difference in the enumeration of the ſections having been produced by the inſerſion of the amendments of the Senate.

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Slave emancipated to forfeit freedom, by staying more than 12 months, and may be sold by overseers of poor.

Exception, in favor of infants.

Slave emancipated since May 1, 1806, for act of extraordinary merit, may apply to court of county or corporation for permission to reside therein.

Court to consist of majority of acting magistrates.

Proof to be exhibited.

Court's power.

Good general character and conduct not sufficient. Notice of application.

Commonwealth's attorney to appear &c.

Magistrates to be unanimous.

Record of extraordinary good character, and act or acts of extraordinary merit.

Effect of court's permission of residence.

died possessed, the executor, or administrator with the will annexed, shall pay to her such sum as shall be equivalent to her life-estate in one-third part of such slaves; which sum shall be ascertained by persons to be appointed for that purpose, by the court, upon the application of the parties.(x)

61. If any slave hereafter emancipated, shall remain within this Commonwealth, more than twelve months after his or her right to freedom shall have accrued, he or she shall forfeit all such right, and may be apprehended and sold by the overseers of the poor of any county or corporation, in which he or she shall be found, for the benefit of the literary fund :(y) ' But ' this provision shall not extend to any infant slave or slaves, ' who shall be emancipated, until such slave or slaves shall ' have remained within this Commonwealth twelve months ' after he, she or they shall have attained the age of twenty-one ' years.'

62. ANY slave who, since the first day of May eighteen hundred and six, hath been emancipated for 'an act, or acts of' extraordinary merit, and any slave who may be hereafter emancipated for 'an act, or acts of' extraordinary merit, shall be at liberty to apply to the court of any county or corporation within this Commonwealth, for permission to reside within such county or corporation; and the court to which such application shall be made, a majority of the acting magistrates being present, shall have power, upon satisfactory proof made to them of such 'act or acts of' extraordinary merit of the applicant, and of his or her general good character and conduct, to grant to him or her permission to remain within this Commonwealth, and to reside within such county or corporation: *Provided, however,* That no such permission shall be granted 'upon proof of good general character and conduct 'alone, however excellent such general character and conduct 'may be; nor' unless notice of the application shall have been posted at the front door of the court-house of the county or corporation, for at least five weeks, immediately preceding such application; 'nor unless the Commonwealth's attorney for 'such county or corporation, or, in his absence, some other 'attorney to be appointed by the court for that purpose, shall 'appear on behalf of the Commonwealth, and defend such 'application; nor unless the magistrates present shall be unanimous; nor shall any order made as aforesaid, have any 'validity or effect, unless it appear, on the face thereof, that 'such attorney did appear on behalf of the Commonwealth.' Every application, made as aforesaid, shall be duly entered of record: and, if the permission be granted, there shall at the same time be entered of record, as the authority therefor, the extraordinary good character of the applicant, and the 'act or 'acts of' extraordinary merit for which he or she may have been emancipated; otherwise, any permission granted by the said court shall be null and void. A permission so granted and recorded shall authorise the person, in whose favour it is, to reside, as a free person, within the limits of the county or

(x) 1795, c. 11, § 4; ed. 1803, and 1814, c. 189, § 4.

(y) 1805, c. 63, § 10; ed. 1808, c. 69, § 10.

corporation, the court of which shall have granted it, and shall be a full protection to such person travelling in any part of the Commonwealth; but it shall not authorise him or her to reside within any other county or corporation. When permission shall have been so granted to any emancipated slave, to reside as a free person within any county or corporation of this Commonwealth, on account of 'any act or acts of' extraordinary merit as aforesaid, it shall be lawful for the same court to extend the like permission to his or her emancipated wife or husband, or to his or her emancipated children: *Provided*, That a like notice of the application be posted at the door of the court-house; and that satisfactory evidence be adduced to the court, of the general good character and conduct of such wife or husband and of such children. When any application for leave of residence within this Commonwealth, made by any emancipated slave, shall be rejected, the rejection thereof shall be recorded, and shall be final, insomuch that no appeal shall be taken therefrom, and that any such permission granted by any court thereafter shall be null and void.(z)

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Like permission extendible to emancipated wife, husband or children.

Notice of application.

Evidence of good character.

Effect of rejection of any such application.

No appeal.

No permission grantable thereafter.

Emancipated slave having such permission may forfeit right of residence, by conviction of any offence.

Proceeding to revoke.

Effect of revocation.

Any descendant of a female slave who obtains such permission, may forfeit in like manner.

What court may revoke in such case.

Effect of revocation.

63. If any emancipated slave, having obtained leave of residence as aforesaid, shall afterwards be convicted, by the verdict of a jury and the judgment of a court, of any offence against the laws of this Commonwealth, it shall be lawful for any county or corporation court, having granted such leave, a majority of the acting magistrates being present, or having been summoned therefor, and such emancipated slave having been duly summoned to shew cause against it, to revoke the leave of residence granted as aforesaid, if to them it shall seem expedient. If, after such revocation, such emancipated slave shall remain within this Commonwealth more than twelve months, he or she shall forfeit his or her right to freedom, and may be apprehended and sold in the manner herein provided. If any descendant, however remote, of any such female slave as may have obtained leave of residence as aforesaid, shall, at any time, be convicted in manner aforesaid, of any offence against the laws of this Commonwealth, it shall be lawful for the court of that county or corporation, within which the conviction may be had, or for the court of the county or corporation, in which such descendant may reside, in like manner, to revoke the leave of residence of such descendant, and to order him or her to depart this Commonwealth: and, if he or she shall remain within this Commonwealth more than twelve months after such order made, he or she shall forfeit his or her right to freedom, and may be, in like manner, apprehended and sold.(a)

64. It shall not be lawful for any free negro or mulatto, to migrate into this Commonwealth; and every free negro or mulatto, who shall come into this Commonwealth, contrary to this act, shall and may be apprehended and carried by any citizen before some justice of the peace of the county where he shall be taken; which justice is hereby authorised to examine, send and remove every such free negro or mulatto out of

No free negro or mulatto to migrate into this State.

Such person may be apprehended and carried before a justice of peace.

His power to send out of State.

(z) 1815, c. 24, § 1; amended at the late revision.

(a) 1815, c. 24, § 2, 3.

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Sheriff, &c. to be employed.

Expenses how payable.

Provision in case of free negro, &c. brought in by water.

Charge of exportation to be paid by importer.

How recoverable.

Punishment of free negro exported, for returning.

Such punishment may be repeated; how often, & how long.

Penalty on master of vessel, or other person, importing any free negro, or mulatto.

How appropriated and recoverable.

Defendant to give special bail.

Exceptions, in case of free negroes &c. employed on board vessels, and servants to travellers.

Free negroes and mulattoes to be registered.

What such register shall specify.

Clerk to furnish copy to person registered.

County seal annexed.

Clerk's fee.

No tax for annexing county seal.

this Commonwealth, into that state or island, from whence it shall appear he or she last came; and for this purpose, the sheriff or other officer, and other persons, may, by such justice, be employed within the Commonwealth, upon the same terms as are by law directed in the removal of criminals from one county to another; 'and the expenses and charges of such removal, to be audited and paid out of the treasury as other public charges.' And every free negro or mulatto, who shall come, or be brought into this Commonwealth by water, from any country, state or island, may and shall be exported to the place, from whence he or she came, or was brought; and the charges attending the same shall be paid by the importer; to be recovered by motion in the name of the Commonwealth, upon ten days previous notice thereof, in any court of record; (b) 'and every free negro or mulatto so removed or exported, and thereafter returning to this Commonwealth, (unless it be in consequence of shipwreck or some other unavoidable necessity,) upon proof thereof made before any magistrate of this Commonwealth, shall receive, by order of such magistrate, thirty-nine lashes on his or her bare back well laid on; which punishment may, at the discretion of any magistrate, be repeated once in every week, so long as such free negro or mulatto shall remain within the Commonwealth.'

65. EVERY master of a vessel, or other person, who shall bring into this Commonwealth, by water or by land, in any vessel, boat, land carriage, or otherwise, any free negro or mulatto, shall forfeit and pay for every such person so brought, the penalty of three hundred and thirty-three dollars, thirty-three cents, lawful money; one half to the Commonwealth, 'for the use of the literary fund,' and the other half to the person who shall inform thereof; to be recovered, by action of debt or information, in any court of record; and the defendant in every such case shall be ruled to give special bail. (c)

66. THIS act shall not extend to masters of vessels, bringing into this State, any free negro or mulatto employed on board and belonging to such vessel, and who shall therewith depart; nor to any person travelling into this State, having any free negro or mulatto as a servant. (d)

67. EVERY free negro or mulatto, who resides in any county in this Commonwealth, shall be registered and numbered in a book, to be kept for that purpose, by the clerk of the court of the said county, which register shall specify the age, name, colour and stature of such free negro or mulatto, together with any apparent mark or scar, on his or her face, head or hands, and in what court he or she was emancipated; or that such free negro or mulatto was born free. A copy of the said register signed by the clerk, 'with the county seal annexed,' and attested by one justice of the peace of the county, wherein such register shall be made, shall be delivered to the said negro or mulatto, on application, for which copy the clerk may demand and receive twenty-five cents, to be paid by the person receiving

(b) 1793, c. 23, § 1; ed. 1794, 1803, and '14, c. 164, § 1.

(c) 1793, c. 23, § 2; ed. 1794, 1803, and 1814, c. 164, § 2.

(d) *Ibid.* § 3.

ing the same; 'but no tax for annexing the county seal shall be demanded,' *Provided, always*, That the clerk shall, in no case, grant a copy of such register, until the court of the county, in which such free negro or mulatto resides, shall have certified that such register has been truly made.(e)

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Proviso: before copy granted, court to certify register truly made.

68. AND whereas divers free negroes and mulattoes, who have been registered and numbered agreeably to the act of Assembly in that case made and provided, and who have obtained copies of the said registers as by the said act is required, have granted their said copies to runaway slaves, who by virtue thereof have passed for free men, and have, under sanction thereof, prevailed on masters of vessels to transport them out of this Commonwealth; for remedy whereof, *Be it enacted*, That any free negro or mulatto, who shall deliver to any slave the copy of the register of his or her freedom, signed by the clerk of the court with whom the said register was made, on any pretext whatsoever, shall, on conviction thereof, be adjudged a felon, 'and be punished by confinement in the public jail and penitentiary house, for not less than one, nor more than ten years.'

Felony for free negro &c. to deliver such copy of register to a slave. How punishable.

69. ANY free person, who shall be convicted of secretly harbouring or entertaining a slave or slaves, without the consent of his or her master, mistress or overseer, shall be guilty of a misdemeanor, and be punished as in other cases of misdemeanor, and moreover be liable to the party injured for damages. And any slave, who shall, before a justice of the peace, be convicted of the like offence, shall receive such corporal chastisement, not exceeding thirty-nine lashes, as the said justice, in his discretion, may direct.*

Punishment of free person harbouring slave, &c.

Action by party injured.

Punishment of slave for like offence.

70. IN all cases, where any slave or slaves hath been or shall be allotted to any widow for her dower, or hath been or shall be devised to her for life in lieu thereof, or hath been or shall be held by any person for his or her life only, or the life of any other person or persons, every such person entitled to such life estate, or his or her guardian, if he or she be an infant, shall, within sixty days after coming to the possession of such slave or slaves, cause to be lodged with the clerk of the court of that county or corporation, wherein he or she resides, a list containing the names of all such slaves, describing their ages and sexes, under the penalty of fifty dollars for each slave. Such clerk shall record the said list, in a well bound-book to be kept for that purpose; for which he shall receive from the person furnishing any such list, a fee of one dollar. The increase of all such slaves shall, within the like time from their births, in like manner, be registered with the said clerk, under the like penalty, and for a further fee in each case of twenty-five cents. In case of the intermarriage of any such widow, her husband shall from that time perform all the duties required by this section, under the like penalties. And all the penalties hereby incurred, shall go and accrue to any party aggrieved.

Tenants in dower, or for any other life estate, or guardians of infants, to deliver lists of slaves to clerk; and when.

What to be expressed therein.

Penalty for neglect.

Clerk to record such lists.

His fee.

Increase of slaves to be registered in like manner.

Duty of husband marrying tenant in dower.

Penalties how appropriated and recoverable.

(e) 1802, c. 21, § 1, 2; edi. 1808, c. 14, § 1, 2

(f) 1797, c. 4, § 5; edi. 1803, and '14, c. 223, § 5.

* Substituted at the late Revisal for § 2, of the act of 1797, c. 4, which imposed a pecuniary penalty, and, in case of free negroes and mulattoes, corporal punishment if the penalty was not paid.

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Free negroes &c.
residing in corpo-
rate towns how to
be registered.

What to be speci-
fied in such regis-
ter.

Clerk of corpora-
tion court to fur-
nish copy with
county seal an-
nexed.
His fee.

No tax for annex-
ing seal.
Copy when re-
newable.

Penalty for har-
boring or employ-
ing any negro, &c.
not having such
copy.

How appropriated
and recoverable.
Action by party in-
jured.

Negro, &c. in a
town, neglecting
to procure such
certificate, may be
committed to jail
by any alderman,
&c.

How long to be
confined.

Court may order
him to be hired
out to pay jailor's
fees.

Free negroes, &c.
to have certificates
registered in coun-
ties to which they
remove, and ob-
tain certified copy.

ed, to be recovered with costs by action of debt, bill, plaint, or otherwise, in any court of record.(h)

71. EVERY free negro or mulatto, who resides in, or is employed to labor within the limits of any city, borough, or 'corporate,' town, shall be registered and numbered in a book to be kept for that purpose, by the clerk of the said city, borough or town, which register shall specify his or her age, name, colour and stature; by whom, and in what court, the said negro or mulatto was emancipated; or that such negro or mulatto was born free. A copy of the said register, signed by the clerk with the county* seal annexed,' and attested by one alderman or town magistrate, shall be annually delivered to the said negro or mulatto, for which copy the clerk shall receive twenty-five cents, to be paid by the person receiving the same, (i) but no fee for annexing the seal shall be demanded. No clerk shall renew a copy of the said register, until the former one shall have been delivered up and destroyed, or until he shall be directed to do so, by the court of such city, borough, or corporate town, the said court having been satisfied that such former copy has been accidentally lost or destroyed, or that such free negro or mulatto is otherwise entitled to have it renewed.'

72. ANY person harboring or employing any negro or mulatto, who has not a certified copy of the said register, shall forfeit and pay, for each offence, five dollars to the owner of such negro or mulatto, and, if there be no owner, to the informer, to be recovered by warrant before any alderman or magistrate, and shall be moreover liable to an action for damages, at the suit of the party aggrieved.(k)

73. IN case any negro or mulatto, who resides in, or is employed to labor, in any city, borough or town, shall neglect to procure such certificate, it shall be lawful for any alderman or magistrate to commit to jail such negro or mulatto, there to remain till such copy is produced, and the jailor's fees paid,(l) or until the court of such city, borough or corporate town shall be satisfied, that such certificate has been accidentally lost or destroyed, or that such free negro or mulatto is otherwise entitled to be discharged; and, in case of inability or failure to do so, the said court may order such free negro or mulatto to be hired out, for so long a time as shall be necessary to pay the jailor's fees.'

74. AND, for the prevention of free negroes and mulattoes going at large in the several counties of this Commonwealth; *Be it further enacted*, That no free negro or mulatto shall be allowed to go at large or hire himself or herself to labor in any county, without having his or her certificate registered in the clerk's office of the county wherein he or she resides, and having a certified copy of the said certificate: For registering

(A) Compiled of 1803, c. 89; and 1804, c. 16; edi. 1808, c. 33, and 51.

(i) 1793, c. 22, § 2; edi. 1794, 1803, and '14, c. 163, § 2

(k) *Ibid*, § 3.

(l) *Ibid*, § 4.

* So in the roll; instead of *seal of the corporation*.

and granting such certificate, the clerk shall be allowed twenty-five cents.(m)

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75. ANY person employing or harboring any such negro or mulatto, coming within the purview hereof, shall forfeit and pay, for each offence, five dollars, to the use of the informer, to be recovered by a warrant before a justice of the peace, and shall be moreover liable to an action for damages, at the suit of the party aggrieved.(n)

Clerk's fee.
Penalty for employing or harboring free negro, &c. coming within this regulation.

76. EVERY such free negro or mulatto shall, once in every three years, obtain a new certificate, under the same rules and regulations, as are prescribed for obtaining the first (o); 'but 'no clerk shall renew such certificate, until the former one 'shall have been delivered up and destroyed, or until he shall 'be directed to do so by the court of the county within which 'such free negro or mulatto is registered, the said court having 'been satisfied that such former certificate has been accidentally lost or destroyed, or that such free negro or mulatto is 'otherwise entitled to have it renewed.'

Certificate to be renewed once in every three years. Proviso.

77. AND, in case any negro or mulatto, who resides in, or is employed to labor, in any county, shall neglect to procure such certificate, it shall be lawful for any magistrate in the said county, to commit to jail such negro or mulatto, there to remain till such certificate is produced and the jailor's fees paid (p); 'or until the court of such county shall be satisfied that such 'certificate has been accidentally lost or destroyed, or that 'such free negro or mulatto is otherwise entitled to be discharged; and, in case of inability or failure to do so, the said 'court may order such free negro or mulatto to be hired out, 'for so long a time as shall be necessary to pay the jailor's fees.'

Negro, &c. residing in any county, neglecting to procure such certificate, may be committed to jail. How long to be confined.

78. IT shall be the duty of every commissioner of the revenue, annually, to return to the court of his county or corporation, at the time he returns a list of taxable property, a complete list of all free negroes or mulattoes within his district, together with their names, sexes, places of abode, and particular trades, occupations or callings; a copy of which list shall be fixed by the clerk of the said county or corporation at the court-house door, and the original be deposited, for safe-keeping, in his office: every commissioner of the revenue, or clerk of a court failing in said duty, shall forfeit and pay the sum of twenty dollars, to be recovered by motion or information, one-half to the use of the county or corporation, and the residue to any person who shall sue for the same.(q)

Court may order him to be hired out to pay jailor's fees.

Commissioners of revenue to return lists of free negroes and mulattoes.

What to be specified therein.

Copy to be set up by clerk at court-house door.

Penalty on commissioner or clerk for neglect.

How recoverable and appropriated.

79. IF any negro or mulatto, so registered, shall remove into another county, it shall and may be lawful for any magistrate of the county or corporation, in which he or she may intrude, to issue a warrant to apprehend said free negro or mulatto; and if, upon examination, it be found, that he or she has no honest employment by which to maintain him or herself, such free negro or mulatto shall be deemed and treated as a vagrant.(r)

Negro, &c. registered, removing into another county, may be apprehended and treated as a vagrant.

(m) 1793, c. 22, § 2; edi. 1794, 1803 and '14, c. 163, § 5.

(n) *Ibid.*, § 6.

(o) *Ibid.*, § 7.

(p) *Ibid.*, § 8.

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(q) 1800, c. 70, § 5; edi. 1803 and '14, c. 283, § 5.

(r) *Ibid.*, § 6.

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Penalty on owner
licensing slave to
go at large, and
trade as a free-
man.

Slave going at
large, or hiring
self out, may be
apprehended and
carried before a
magistrate,

Who may fine the
owner, &c.,

(Amount of fine.)

Or commit the
slave to jail.

Court may impose
a fine ;

to what amount ;
or order slave to
be sold ; when and
how.

Proceeds of sale,
how applicable.

Where fine impos-
ed, slave to be held
in custody, and lia-
ble therefor.

When to be sold,
unless fine be paid.
Such fines, how
appropriated.
Proviso : what in-
terest in slave to
pass by sale.

80. If any master or owner of a slave shall license such slave to go at large, and trade as a freeman, the master or owner shall forfeit and pay the sum of thirty dollars to the Commonwealth, for the use of the literary fund ; and if, after conviction, such slave shall be found so going at large and trading, the master or owner shall again be liable to the like penalty ; and so, as often after conviction, as such slave shall be found so going at large and trading.(s)

81. If any person shall permit his or her slave, or any slave hired by him or her, to go at large, or hire himself or herself out, it shall be lawful for any person, and it shall moreover be the duty of every sheriff, deputy sheriff, coroner and constable of a county, and serjeant, coroner and constable of a corporation, to apprehend and carry such slave before a magistrate of the county or corporation where apprehended ; and, if it shall appear to the magistrate, that such slave hath been permitted to go at large, or hire himself or herself out, he shall forthwith impose on the owner of such slave, or the person permitting him or her to go at large, or hire himself or herself out, a fine not less than ten dollars, nor more than twenty dollars ; or may, in his discretion, order the slave to the jail of the county or corporation, there to be safely kept until the next court ; when, if it shall appear to the court, that such slave hath been permitted to go at large, or hire himself or herself out, contrary to law, it shall be lawful for the said court, in their discretion, and they are hereby required, either to impose on the owner of such slave, or the person permitting him or her to go at large, or hire himself or herself out, as aforesaid, a fine not less than twenty dollars, nor more than fifty dollars, or order the sheriff or other officer of their county or corporation, to sell every such slave for ready money, at the next court held for the said county or corporation, notice being given at the court-house door, at least twenty days before such sale : one-third of the amount of such sale shall go to the Commonwealth for the use of the literary fund, and the residue shall be paid by the sheriff or other officer, after deducting six *per centum* on the whole amount for his trouble, and the jailor's fees, to the person who shall inform thereof, and cause the fact to be established ; and when there shall be no informer, the same shall go to the Commonwealth for the use of the literary fund. And, in every case of a fine, imposed under this section, the slave shall be held in custody, and liable therefor, and may be sold by order of the magistrate or court imposing the same, and in satisfaction thereof, and all incidental charges, unless the same be paid within ten days after such fine is imposed ; upon payment whereof, the said slave shall be discharged. All such fines shall go to the Commonwealth for the use of the literary fund : *Provided*, That no sale of a slave under this section, shall convey a greater interest in such slave, than is held by the person committing a breach hereof, unless it shall

(s) From 1769, c. 19, § 8 ; Chan. Rev. p. 9 ; 1792, *edi.* 1794, 1803 and 74, c. 103, § 25 ; altered, at the late revision, by striking out so much of the former laws as related to the mode of recovery.

appear, that the owner of such slave was privy to, or connived at such breach.(t)

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82. ANY person who shall suffer a slave, held by him or her, as trustee, guardian, executor or executrix, administrator or administratrix, to hire himself or herself out, contrary to the meaning of this act, shall forfeit and pay forty dollars, for each and every such offence, to be recovered by any person who will sue for the same, by action of debt or information in any court of record within this Commonwealth.(v)

Penalty on trustee, guardian, executor, &c., suffering slave to hire self out.
How recoverable and appropriated.

83. ANY master or skipper of a vessel, who shall permit any slave to come on board any vessel, without the leave or consent of the master or overseer, given in writing, or shall buy, sell, or receive of, to, or from a slave, any commodity whatsoever, without the leave or consent of the master or overseer, given in writing as aforesaid, shall forfeit and pay for every such offence, in addition to the penalties imposed by this act, the sum of twenty dollars, to be recovered by warrant from any magistrate of the county or corporation, by any person who will prosecute for the same; upon service of which warrant, the offender shall be taken and remain in custody until judgment; and, in case of conviction, shall be by such magistrate committed to the jail of his county or corporation, there to remain until payment of the penalty aforesaid: *Provided, always,* That, in case the skipper of any vessel be a slave, he shall receive for every such offence, thirty-nine lashes on his bare back, to be inflicted by order of any magistrate of a county or corporation.(w)

Penalty on master or skipper of vessel permitting slave to come on board, or trading with slave, without written consent of owner or overseer.
How recoverable and appropriated.

Punishment of skipper of vessel, being a slave.

84. AND moreover, any master or skipper of a vessel who shall permit any slave to come on board his vessel, without leave or consent of his master, overseer, or owner, or shall buy, receive of, or from a slave, any commodity whatsoever, without the leave or consent of the master, owner, or overseer, as aforesaid, shall forfeit and pay for every such offence, in addition to the other penalties hereby imposed, the sum of two hundred dollars; one-third thereof, shall go to the master or owner of such slave; one-third to the informer; and one-third to the Commonwealth, to the use of the literary fund.(x)

Farther penalty for same offence.

How appropriated.

85. IN all actions, which shall be brought against any master or skipper of any ship or vessel, in pursuance of this act, such master or skipper shall be required to give appearance bail: *Provided,* the plaintiff shall make *affidavit* before a magistrate, of the cause of such action, to be transmitted to the clerk of the court, wherein the suit shall be prosecuted.(y)

Bail required in actions against masters or skippers of vessels, under this act.

86. *BE it enacted,* That, if any master or skipper of any vessel, shall hereafter incur any of the fines, penalties and forfeitures imposed by the *twenty-eighth,* twenty-ninth,**

Remedy by attachment against the vessel, &c.

(t) Compiled, and altered from 1800, c. 70, § 1, 3; editions 1803, and 1814, c. 283, § 1, 3; and 1807, c. 13; edi. 1808, c. 119.

(w) 1801, c. 21, § 1; edi. 1803, and 1814, c. 305, § 1.

(x) 1804, c. 11, § 3; edition 1808, c. 60, § 3.

(y) Compiled of 1801, c. 21, § 2; edi. 1803, and 1814, c. 305, § 2; and 1804, c. 11, § 4; edi. 1808, c. 60, § 4.

* So in the roll. The sections here referred to, are § 30, 31, 52, and 84 of this act. The sections were numbered as here referred to, in the engrossed bill, as it passed the House of Delegates; but the amendments introduced in the Senate rendered a new arrangement of the sections necessary; which was not adverted to.

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Bond with security
required of plain-
tiff.

Proceedings on
such attachments.

Courts to give this
act in charge to
grand juries.

All courts of law
to have cognizance
of offences against
it.

Fines, &c. assess-
ed on present-
ments by grand ju-
ries, how appro-
priated.

Repealing clause.

Proviso.

Exception.

Commencement.

'fiftieth,* and one hundred and second* sections of this act, the said fines, penalties and forfeitures may be recovered either in the modes herein-before pointed out, or by attachment against the vessel, or other property in which such master or skipper may have an interest; and it shall be the duty of any justice of the peace, to whom application is made for such attachment, to grant the same upon the plaintiff's entering into bond with security in double the amount to be attached for, payable to the defendant, conditioned for satisfying and paying all costs which shall be awarded to such defendant in case the plaintiff be cast in his suit, and also all damages which shall be recovered against the said plaintiff for issuing and suing out such attachment; which bond shall be by the same justice returned to the court to which the attachment is returnable; and the party entitled to such costs or damages, may thereupon bring suit and recover: and every attachment issued without such bond taken, or where no bond shall be returned, is hereby declared illegal and void, and shall be dismissed. All attachments which may issue by virtue of this section, shall be served, returned and prosecuted, as attachments issued against the estate of absconding debtors are served returned and prosecuted.'

87. ALL the courts of law within this Commonwealth shall constantly give this act in charge to their grand juries, at the times when such grand juries shall be sworn; and the said courts are hereby declared to have cognizance of all offences against the provisions of this act, whether the same be triable before a single magistrate, or otherwise; and, on all convictions in pursuance of any presentment by a grand jury, the fines, forfeitures and penalties, which otherwise would have gone to an informer, shall accrue to the Commonwealth, for the use of the literary fund. (z)

88. ALL and every act and acts, clauses and parts of acts, within the purview of this act, shall be, and are hereby repealed: *Provided, nevertheless,* That all rights, remedies, fines, penalties and forfeitures, incurred or accrued under any former act, shall remain in the same condition, as if this act had not been made; except such penalties and forfeitures as are herein expressly remitted.

89. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty; except so much thereof as relates to the bringing into this Commonwealth and holding therein any slave or slaves, and to the remission of penalties and forfeitures incurred thereby; and so much of this act as relates to the matters aforesaid, shall commence and be in force from and after the passing thereof.

(z) Altered from 1800, c. 70, § 7; edi. 1803, and '14, c. 283, § 7; 1805, c. 63, § 15; edi. 1808, c. 69, § 15.

* See note (*) on the preceding page.

C. 112.

*An act to reduce into one, the several acts concerning estrays.**

A. D. 1819.
A. R. C. 43.

[Passed February 7, 1819.]

1. *BE it enacted by the General Assembly,* That it shall be lawful for any person, by himself or his agent, to take up any estray on his own land; and, having taken it, he, or his agent, shall forthwith give information thereof, to some justice of the peace for the said county, who shall thereupon issue his warrant to three disinterested freeholders of the neighbourhood, commanding them, having been first duly sworn, to view and appraise such estray, and certify the valuation under their hands, together with a particular description of the kind, marks, brand, stature, colour and age; which certificate shall, by the justice, be transmitted to the clerk of the county court, within twenty days, and by such clerk entered in a book to be kept for that purpose, for which he may demand and take twenty cents, to be paid down by the taker-up.^(a)

Who may take up an estray.
His duty thereupon.
Warrant to appraisers.
Their duty,
Justice to transmit certificate to clerk of court; and when.
Clerk's duty.

2. THE clerk shall, moreover, cause a copy of every such certificate, to be publicly affixed at the door of his court-house, on two several court days, next after he shall receive the same; for which, and a certificate thereof, he shall receive the like fee as for entering the same in the book.^(b)

His fee; and by whom to be paid.
Clerk to have copy set up at court-house door, on two court days.

3. If the valuation shall be under three dollars thirty-three cents, and no owner shall appear until notice shall have been twice published, as aforesaid, the property shall then be vested in the owner of the land, on which such estray was taken; and if the valuation shall exceed that sum, such owner shall, within three months after the appraisement, cause such certificate to be published three times in any newspaper that may be printed nearest to the place where such estray may have been taken up; and if no owner appears to claim such estray, within a year and a day after the publication, the property shall from thenceforth be vested in the owner of the lands whereon it was taken. But the former owner, in either case, may, at any time afterwards, upon proving his property, demand and recover the valuation money, deducting therefrom the clerk's and printer's fees, and such compensation for keeping and supporting such estray, as shall be adjudged reasonable by two freeholders, to be sworn by a justice of the peace in the county where such estray may have been taken up.^(c)

His fee.
Property, if under \$3. 33 in value, vested in owner of land.
If valuation exceed that sum, further publication required.
Property vested in owner of land, when.

4. If any person shall take up a boat or other vessel adrift, he shall, in like manner, make application to a justice of one of the adjacent counties, for his warrant, to have the same

But former owner may recover valuation money, fees and charges deducted.

Boats or other vessels adrift, to be appraised and advertised as estrays.

^(a) 1785, c. 70, § 1; 1792, *edi.* 1794, 1803, and '14, c. 16, § 1.

^(b) *Ibid.* § 2.

^(c) Compiled of 1785, c. 70, § 3; 1792, *edi.* 1794, 1803, and '14, c. 16, § 3; 1803, c. 66, § 1; *edi.* 1808, c. 27, § 1, and amended at the late Revision, by striking out as much as prescribed the amount of the printer's fee, and limited the period within which the owner might recover the valuation money.

* Former general laws relating to estrays; 1748, *edi.* 1752, c. 44; and *edi.* 1769, c. 36; 1769, c. 18; *Chan. Rev.* p. 8; 1785, c. 69; 1792, *edi.* 1794, 1803, and '14, c. 16.

A. D. 1819.
A. R. C. 43.

Proviso, in case of
death or loss of
estray, or of boat
&c.

valued and described, by her kind, burthen and build, and shall proceed in all other respects, and have the same benefit, as before directed in the case of estrays.(d)

5. *PROVIDED, always*, That if, after notice published as aforesaid, any estray shall happen to die, or by any casualty get out of the possession of the person who took the same up, without his or her default, such taker-up shall not be answerable for the same, or for the valuation thereof; nor shall any taker-up be answerable for any boat or other vessel lost as aforesaid.(d)

Repealing clause.

6. ALL and every act and acts, part and parts of acts, coming within the purview of this act, shall be and the same are hereby repealed: *Provided*, That nothing herein contained, shall be construed to extend to, or abridge any right, which has or may have accrued before the commencement of this act.

Proviso.

Commencement.

7. THIS act shall commence and be in force from and after the first day of January, eighteen hundred and twenty.

C. 118.

A. D. 1818.
A. R. C. 42.

*An act to reduce into one the several acts for the better securing the payment of rents, and preventing the fraudulent practices of tenants, and to regulate the practice of suing out and prosecuting writs of replevin.**

[Passed January 12, 1818.†]

Method of proceeding in distresses for rent.

1. *BE it enacted by the General Assembly*, That, where any goods and chattels shall be distrained for any rent, reserved and due upon any demise, lease or contract whatsoever, and the tenant or owner of the goods so distrained shall not, within ten days after such distress taken, and notice thereof, and the cause of such taking, left at the chief mansion house, or other most notorious place on the premises charged with the rent distrained for, replevy the same, by sufficient security given to the sheriff or officer serving such distress, to pay the money or tobacco, and all costs, with lawful interest for the same, at the end of three months; in such case, such sheriff or officer shall and may sell the goods and chattels so distrained for, by public auction, to the highest bidder, either for money or tobacco, according as the rent reserved shall be due and payable, to be paid at the end of three months; and shall take bond of the buyer or buyers, with one or more sufficient securities, to pay the same accordingly, with interest, to the landlord for whom the distress was made.(a)

Replevin bond may be given, payable in 3 months;

Or property sold, on 3 months' credit.
2 Will. and Mar. st. 1, c. 5, § 2.

(d) 1785, c. 70, § 4; 1792, edi. 1794, 1803, and '14, c. 16, § 4.

(a) 1748, edi. 1752, c. 15, § 1; and edi. 1769, c. 10, § 1; 1792, edi. 1794, 1803 and '14, c. 89, § 1.

* Former general laws touching these subjects, 1730, edi. 1733, c. 9; and 4 Hen. st. at lar. p. 288; 1748, edi. 1752, c. 15, and edi. 1769, c. 10; 1769, c. 2; Chan. Rev. p. 6; 1792, edi. 1794, 1803 and '14, c. 89.

† Suspended till January 1, 1820, *vid. ante*. c. 45.

2. ALL and every bond and bonds, so taken in pursuance of this act, shall mention that the same was or were entered into, for goods or other estate distrained for rent, and restored to the debtor, or sold to the obligor, (as the case shall be,) and, before the expiration of the said three months, shall be delivered to the landlord for whom distress was made. And if the money or tobacco shall not be paid, according to the condition of such bond, it shall be lawful, and full power and authority is hereby given to the justices of the court where such bond shall be lodged, upon motion of the party to whom the same is payable, to award execution thereupon, with costs: *Provided*, the obligors have ten days' notice of such motion; and, upon such execution, the sheriff or officer shall not take any sureties for payment of the money or tobacco at a further day, but shall levy the same immediately. And, for the better direction of such sheriff or officer, the clerk shall endorse upon the back of every such execution, that "no security is to be taken."^(b)

A. D. 1818.

A. R. C. 42.

Tenor of bonds taken in pursuance of this act.

Mode of recovering money due thereon.

3. *PROVIDED, always*, That, when distress shall be made for tobacco, between the last day of September and the last day of December, in any year, and the goods distrained shall not be replevied as aforesaid, such goods shall be sold and security taken for paying the tobacco by the first day of January then next ensuing; and the bonds, taken for the same and costs of seizure and sale, shall be by the officer delivered to the landlord for whom distress was made; which last mentioned bonds shall have the like force, and may be proceeded upon in the same manner as any other bond, directed to be taken by this act.^(c)

Where distress is for tobacco between 30th September and 31st December, goods to be sold on credit to 1st January ensuing.

4. ANY officer who shall levy distress for rent, shall be entitled, in case the property be replevied, to the same commission as in the case of a forthcoming bond, taken under any writ of execution for the like sum, and may include such commission in every bond taken under such distress.^(d)

Officer's commission for levying distress, when property is replevied.

5. IN case any distress and sale shall be made, under color of this act, for rent pretended to be in arrear or due, where in truth no rent is in arrear or due, to the person or persons distraining, or to him, her or them, in whose name or names, or right, such distress shall be taken as aforesaid, then the owner of the goods and chattels so distrained and sold, his executors or administrators shall have remedy, by action of trespass, or upon the case, against the person or persons so wrongfully distraining, or either of them, his, her or their executors and administrators, and shall recover double the value of the goods and chattels so distrained and sold, together with full costs of suit.^(e)

Remedy in case of wrongful distress. St. Marlbr. 52 Hen. 3, c. 3. 2 Will. and Mar. st. 1, c. 5, § 5.

6. UPON any pound breach, or rescous, of goods or chattels, distrained for rent, the person or persons grieved thereby shall, in a special action upon the case, for the wrong thereby sustained, recover treble damages, with costs of suit, against the

Treble damages upon pound breach or rescous. 2 Will. and Mar. st. 1, c. 5, § 4.

(b) 1748, *edi.* 1752, c. 12, § 14; and *edi.* 1769, c. 8, § 14; 1792, *edi.* 1794, 1803 and '14, c. 89, § 2.

(c) 1748, *edi.* 1752, c. 15, § 2; and *edi.* 1769, c. 10, § 2; 1792, *edi.* 1794, 1803 and '14, c. 89, § 3.

(d) 1800, c. 12; *edi.* 1803 and '14, c. 270.

(e) 1748, *edi.* 1752, c. 15, § 3; and *edi.* 1769, c. 10, § 3; 1792, *edi.* 1794: 1803 and '14, c. 89, § 4.

A. D. 1818.

A. R. C. 42.

offender or offenders, in any such rescous or pound breach, or either of them, or against the owner of the goods distrained, in case the same be afterwards found to have come to his or her use or possession.(f)

Goods upon lease-
hold lands not to
be taken in exe-
cution until rent in
arrear be paid.

8 Ann. c. 14, § 1.

7. No goods or chattels whatsoever, lying or being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years, at will or otherwise, shall, at any time hereafter be liable to be taken by virtue of any writ of execution, or on any pretence whatsoever, unless the party, so taking the same, shall, before removal of the goods from off such premises, pay or tender to the landlord or lessor thereof, or his agent, all the money or tobacco due, for the rent of the said premises, at the time of taking such goods or chattels in execution.(g)

Proviso.

8 Ann. c. 14, § 1.

8. *PROVIDED, nevertheless,* That such rent arrear do not amount to more than one year's rent; and, if more be due, then the party suing out such execution, paying or tendering to such landlord, or his agent, one year's rent, may proceed to execute his judgment; and the sheriff or officer serving the same, is hereby empowered and required to levy and pay to the plaintiff, as well the money or tobacco so paid for rent, as the execution money.(h)

Where landlord
suspects tenant
will remove his
effects, he may
have an attach-
ment.

9. WHERE any landlord or lessor shall have sufficient grounds to suspect, that his tenant will remove his effects from the leased tenement, to any other place, whether within or without the county or corporation, before the expiration of his term, so as no distress for the said rent can be made, it shall be lawful for such landlord to go before any justice of the peace of the county or corporation, where the lands leased do lie, and make oath what rent the tenant is to pay, and at what time the same will be due, and that he has just cause to suspect, and verily believes such tenant will remove his or her effects out of the county or corporation before the time of payment; and thereupon such justice may, and he is hereby empowered and required, to issue an attachment against the goods and chattels of such tenant, returnable to his next county or corporation court; and if such tenant shall not, at the time of serving such attachment, or before, or at such next court, enter into recognizance, with one or more sufficient securities, for the payment of the said rent at the time it shall become due, it shall be lawful for such court, and they are hereby required, to order the goods attached to be sold by the sheriff or serjeant at public auction, for money or tobacco, according to the reservation of the rent, to be paid at the time the rent shall become due, the purchasers giving good security for such payment, and to assign the bonds, taken for the same and the costs, to such landlord or lessor; and the overplus of such sale, if any besides the charges of attachment and sale, to return to the owner.(i)

Proceedings there-
upon.

(f) 1748, edi. 1752, c. 15, § 3, and
edi. 1769, c. 10, § 3; 1792, edi. 1794,
1803 and '14, c. 89, § 4, 5.

(g) *Ibid*, § 5, 6.

(h) *Ibid*, § 6, 7.

(i) Compiled of 1748, edi. 1752, c.
15, § 7: edi. 1769, c. 10, § 7; 1792,
edi. 1794, 1803, and '14, c. 89, § 8; and
1815, c. 15, § 1.

10. WHEN any tenant shall have actually removed his effects from the leased tenement, before the rent reserved thereon hath become due, so that there be not left on such tenement property liable to distress, sufficient to secure the payment of the rent so reserved, it shall be lawful for the landlord or lessor, in like manner, to obtain an attachment, at any time within ten days after such removal, and to levy the same on the effects of the tenant, wherever they may be found; and in other respects to proceed therein, in the manner, and under the regulations herein-before prescribed.^(k)

A. D. 1818.
A. R. C. 42.

Attachment where tenant has actually removed his effects before rent due.

11. THE agent or attorney in fact of any landlord or lessor shall have the same right to obtain and prosecute, in the name of such landlord or lessor, any attachment, upon taking the oath prescribed by law, which the landlord or lessor would himself have under like circumstances.^(l)

Agent of landlord may obtain and prosecute attachment for rent.

12. WHENEVER any distress shall be made for rent reserved in wheat, corn, or any thing other than money, it shall be lawful for the landlord or lessor to apply to the court of the county or corporation, or to the superior court of law for the county in which the leased tenement may lie, to ascertain the value in money of the rent in arrear so reserved, and to order the property so distrained, or so much thereof as may be necessary, to be sold for the satisfaction of such rent. And the court, to which such application shall be made, ten days previous notice thereof having been given to the tenant, or, in case of his absence from the county, being set up at some conspicuous place on the tenement, shall proceed to ascertain the value in money of the rent in arrear so reserved, either by their own judgment, or, if required by either party, by the verdict of a jury, summoned and impannelled at their bar for that purpose, without the formality of pleading; and, having so ascertained the value, shall order a sale of the property so distrained, and award costs to the landlord or lessor. In pursuance of such order, the sheriff or serjeant of the court, or the officer having distrained the property, shall proceed to advertise and sell, under the rules and regulations prescribed for the sale of property taken under execution, the property distrained as aforesaid, or so much thereof as shall be necessary to raise the amount of money and costs aforesaid; and shall return the residue thereof to the owner. The sheriff or other officer receiving the money and costs aforesaid, or any part thereof, under such order of court, shall pay over the same to the landlord or lessor, and, on failure, may be proceeded against for its recovery, and subjected to costs and damages, in the same manner and to the extent provided in the case of a sheriff failing to pay money received by him on an execution returned satisfied. It shall be lawful, however, for any such tenant, at any time after the value of the rent shall be ascertained as aforesaid, and before the sale shall have been made, to execute a replevy bond, with sufficient security, for the amount of the rent so ascertained and costs, payable with interest at the end of three months from the date thereof. Such

When distress shall be made for rent reserved in wheat, corn, &c. and how value thereof in money shall be ascertained.

Property distrained, to be sold for the money so ascertained, with costs.

Remedy against sheriff for not paying the money and costs to landlord.

Tenant may execute a replevy bond.

(k) 1815, c. 15, § 2

(l) 1815, c. 15, § 3

A. D. 1878.

A. R. C. 42.

Similar proceedings on attachments to secure payment of rent reserved in any other thing than money, and not due.

Actions of debt for rent, case for use and occupation, trespass quare clausum fregit, & waste, may be prosecuted as transitory actions.

Goods or chattels on demised premises, not belonging to tenant, or to some person bound for the rent or some part thereof, not distrainable.

Owner of such property not to avail himself of his right, but by replevin.

Attachments for rent may be executed by constables.

Goods carried off demised premises may be seized within ten days thereafter.

8 Ann. c. 14, § 2.
11 Geo. 2, c. 19, § 1.

bond shall be taken in other respects in the same manner, shall have the same force and effect, and shall be in the same manner recoverable, as other replevy bonds hereby authorised in cases of distress for rent.(m)

13. WHENEVER an attachment to secure the payment of rent reserved in any other thing than money, and not due, shall be issued against any tenant about to remove, or having removed, his effects from the rented tenement, and such tenant shall fail to give security for the payment of the rent, so reserved, when it shall become due, it shall be lawful for the landlord or lessor, in like manner, to have the value in money of the rent so reserved ascertained by the court, before which the attachment shall be returned; and thereupon, to have such proceedings for the recovery thereof, as would have been proper if the amount so ascertained had been reserved in money.(n)

14. ALL actions of debt for rent in arrear, all actions on the case for the use and occupation of lands and tenements, all actions of *trespass quare clausum fregit*, and all actions of waste, may hereafter be sued and prosecuted in the court of the county or corporation, or the superior court of the county, in which the defendant may reside or be found, in like manner as transitory actions may now be sued and prosecuted therein.(o)

15. No goods or chattels found or being in or upon any demised premises, such goods and chattels *bona fide* belonging to any person other than the tenant of such premises, or some other person or persons bound or liable for the payment of the arrears of rent, or of some portion thereof, due on such demised premises, shall be liable to be distrained for the payment of such arrears of rent: *Provided, however*, That if such tenant or other person, bound or liable for the payment of such arrears of rent, or of any portion thereof, shall have any limited property or interest in such goods and chattels, the same may be distrained and sold for such interest as such tenant, or other person or persons bound or liable for the payment of such arrears of rent, or of any portion thereof, may have therein: *Provided also*, That no person, claiming title to such property distrained for rent, shall, in any manner, avail himself of the provisions of this section, unless by a writ of replevin sued out and levied before the sale of such property under the distress.(p)

16. ANY process of attachment against a tenant or tenants for rent, under any lease or other contract, may hereafter be executed and returned by a constable, in the same manner as by law sheriffs are directed to execute and return the same.(q)

17. IN case any lessee for life or lives, term of years, at will, or otherwise, of messuages, lands or tenements, upon the demise whereof any rents are or shall be reserved, or made payable, shall, at any time, fraudulently or clandestinely, convey or carry off or from such demised premises, his goods or chattels, with intent to prevent the landlord or lessor from distraining

(m) 1815, c. 15, § 4.

(n) *Ibid.*, § 5.

(o) *Ibid.*, § 6.

(p) 1815, c. 15, § 7.

(q) 1802, c. 3, § 2; edition 1808, c. 8, § 2.

the same for arrears of rent so reserved, it shall be lawful for such lessor or landlord, or any person or persons by him for that purpose lawfully empowered, within ten days next after such conveying away or carrying off such goods and chattels, to take and seize the same wherever they shall be found, as a distress for the arrears of such rent, and the same to sell, in the like manner as if they actually had been distrained by such lessor or landlord in and upon the demised premises.(r)

A. D. 1818.
A. R. C. 42.

18. *PROVIDED, always*, That no goods or chattels so carried off, and *bona fide* sold for valuable consideration, before such seizure made, shall be afterwards liable to be so taken or seized for any arrears of rent.(s)

But not if *bona fide* sold before seizure.

8 Ann. c. 14, § 3.
11 Geo. 2, c. 19, § 2.

19. Any person or persons having rent in arrear, or due upon any lease or demise for life or lives, may bring an action or actions of debt for such arrears of rent, in the same manner as if such rent was due and reserved upon a lease for years.(t)

Rent in arrear upon lease for life may be recovered by action of debt.

8 Ann. c. 14, § 4.
How rent may be distrained for, after lease is ended or determined.
8 Ann. c. 14, § 6.

20. It shall be lawful for any person or persons having rent in arrear, or due upon any lease for life or lives, or for years, or at will, ended or determined, to distrain for such arrears after the determination of the respective leases, in the same manner, as if such lease or leases had not been determined.(v)

Limitation of such distresses.
8 Ann. c. 14, § 7.

21. *PROVIDED*, That such distress be made within six months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due. And no distress for rent shall be made in any case whatsoever, but within five years after such rent shall become due and in arrear.(w)

Limitation of all distresses, five years.

22. *PROVIDED, also*, That nothing in this act contained shall extend or be construed to let, hinder or prejudice the Commonwealth, in the levying, recovering or seizing any debts, fines, penalties or forfeitures due, payable or answerable to the Commonwealth; but that the same may be levied, recovered and seized in the same manner as if this act had never been made.(x)

These limitations not to affect the Commonwealth.
8 Ann. c. 14, § 8.

23. AND, whereas very great and unjust delays have arisen from the suing out writs of replevin in cases of goods distrained for rent; for remedy whereof,

BE it enacted, That, before any writ of replevin shall be granted in case of goods and chattels distrained for rent, the person or persons praying such writ, shall enter into bond, with one or more sufficient securities, in the clerk's office, in the penalty of at least double the value of the rent distrained for, and costs of suit, to perform and satisfy the judgment of the court in such suit, in case he, she or they shall be cast therein; and if, upon the trial of such suit, it shall be found that the rent distrained for was justly due, the party injured or delayed by suing forth the said writ shall recover, against the party suing forth and prosecuting the same, double the value of the rent in arrear and distrained for, with full costs of the suit.

No writ of replevin to be issued until bond and security be given.
11 Geo. c. 19, § 23.

If, on such writ, rent be found due, the party delayed to recover double the value.

(r) 1748, ed. 1752, c. 15, § 8; ed. 1769, c. 10, § 8; 1792, ed. 1794, 1803, and '14, c. 89, § 9.

(s) *Ibid.*, § 9, 10.

(t) *Ibid.*, § 10, 11.

(v) 1748, ed. 1752, c. 15, § 8; ed. 1769, c. 10, § 8; 1792, ed. 1794, 1803, and '14, c. 89, § 11, 12.

(w) *Ibid.*, § 12, 13.

(x) *Ibid.*, § 13, 14.

A. D. 1818.

A. R. C. 42.

No security to be taken on executions issued upon such judgments. Person other than the tenant may sue out writ of replevin, and, if cast, shall pay double costs.

Suits of replevin shall be speedily tried.

And, upon any execution issued upon such judgment, the clerk shall, in like manner, endorse that *no security is to be taken.*(y)

24. WHERE any person shall suggest, that the goods distrained are his or her property, and not the property of the tenant, nor held in trust for the use of the tenant in any manner whatsoever, and that the same, in his or her opinion, are not liable to such distress, he or she, giving bond and security in manner herein-before directed, may sue out a writ of replevin for such goods, but not otherwise; and, in case the person or persons suing out the said writ shall be cast in such suit, judgment shall be given against him for double the value of the rent in arrear and distrained for, with full costs as aforesaid.(y)

25. AND, for the more speedy determination of such writs of replevin; *Be it further enacted*, That every such writ issuing from the clerk's office of any county or corporation court shall be returnable to the next court after the same shall be issued; and such court shall, at their next sitting after the return, cause an issue to be made up therein; and every issue made up on such writ of replevin, whether in a superior or inferior court, shall be tried at the following term, without waiting for its turn in the order of priority in regard to other suits.(y)

Grantees of lands, or of reversions, to have same right of entry, for non-payment of rent, &c. as original lessors. 32 Hen. 8, c. 34, § 1.

26. ALL persons, being grantees or assignees of any lands, tenements or hereditaments let to lease, or of the reversions thereof, from any person or persons, and the heirs, executors and administrators and assigns of such grantees or assignees, shall and may have and enjoy the like advantages against the lessees, their executors, administrators and assigns, by entry for non-payment of the rent, or for doing of waste, or other forfeitures, and also shall and may have and enjoy all and every such like covenants and agreements, contained and expressed in the indentures of their said leases, demises or grants, against all the said lessees, their executors, administrators and assigns, as the said lessors themselves, or their heirs ought, should or might have had, or enjoy at any time or times.(z)

Lessees of lands to have same actions and advantages of covenants, &c. against grantees of reversions, as against original lessors. 32 Hen. 8, c. 34, § 1.

27. ALL lessees of any lands, tenements or hereditaments, for a term of years, life or lives, their executors, administrators or assigns, shall and may have like action and advantage against all and every person or persons, their heirs and assigns, which have, or shall have any gift or grant of the reversion of the said lands, tenements or hereditaments, so letten, or any parcel thereof, for any condition, covenant or agreement contained or expressed in the indentures of their lease and leases, as the same lessees, or any of them, might and should have had against the said lessors and their heirs; all benefit and advantage of recoveries in value, by reason of any warranty in deed or law, only excepted.(a)

(y) 1769, c. 4, § 1, 2, 3; Chan. Rev. p. 6; 1792, edi. 1794, 1803, and '14, c. 89, § 15, 16, 17, 18; the 25th section of this act amended at the late re-

visal, by adapting its provisions both to the superior and inferior courts.

(z) 1792, edi. 1794, 1803, and '14, c. 89, § 19.

(a) *Ibid*, § 20.

28. THE executors and administrators of any person unto whom any rent is or shall be due, and not paid at the time of his death, shall and may have an action of debt for all such arrearages against the tenant or tenants, that ought to have paid the said rent, so being behind in the life of their testator, or against the executors or administrators of such tenants; and also, furthermore, it shall and may be lawful, for every such executor and administrator of any such person, to whom such rent is or shall be due and not paid at the time of his death, to distrain for the arrearages of all such rents on the lands, tenements and other hereditaments which were charged with the payment of such rents and chargeable to the distress of the said testator, or intestate, so long as the same continue, remain and be in the seisin or possession of the said tenant in demesne, who ought immediately to have paid the said rent, so being behind, to the said testator or intestate in his life time, or in the seisin or possession of any person or persons claiming the said lands, tenements and hereditaments only by and from the said tenant by purchase, gift or descent, in like manner and form as their said testator might or ought to have done in his life time; and the said executors and administrators for the same distress lawfully may make avowry upon the matter aforesaid.(b)

A. D. 1818.

A. R. C. 42.

Executors &c. may have debt or distress against tenant, his executors &c.
32 Hen. 8, c. 37, § 1.

29. IF any man which now hath or hereafter shall have in the right of his wife any estate in fee simple, or for term of life, of, or in any rents, or fee-farms, and the same rents, or fee-farms now be, or hereafter shall be due, behind and unpaid in the said wife's life, then the said husband, after the death of his said wife, his executors and administrators, shall have an action of debt for the said arrearages against the tenant of the demesne that ought to have paid the same, his executors or administrators; and also the said husband, after the death of his said wife, may distrain for the said arrearages in like manner and form, as he might have done if his said wife had been then living, and make avowry upon his matter as is aforesaid.(c)

Husband, having fee simple, or life estate, in right of wife, may after her death maintain debt, or distrain for rent accruing during her life.
32 Hen. 8. c. 37, § 1.

30. THE executors and administrators of any person or persons having rent in arrear or due upon any demise or lease, for life or lives, or for years, or at will, although the same be determined, shall and may have the like remedy by action of debt, or by distress, against the person who ought to have paid the same, his or her executors or administrators, as the testator if living might or could have had.(d)

Executors &c. may maintain debt, or distrain, for rent due to their testators, &c. although the tenants' estate be determined.

31. IT shall not be lawful for any person taking any distress to drive or remove the same out of the county where such distress was taken; and whosoever doth so shall be amerced at the discretion of the jury: moreover, distresses shall be reasonable and not too great, and he that taketh great and unreasonable distresses shall be amerced for the excess of such distresses.(e)

Goods distrained not to be removed out of county.

Distresses to be reasonable, and not too great.
St. Mar. 52. Hen. 3, c. 4.

32. ALL and every act and acts, clauses and parts of acts, coming in the purview of this act, shall be and the same are hereby repealed: *Provided*, That all rights and remedies,

Repealing clause.

(b) 1792, edi. 1794, 1803, and '14, c. 89, § 21.

(c) *Ibid*, § 22.

(d) 1792, edi. 1794, 1803, and '14, c. 89, § 23.

(e) *Ibid*, § 24.

A. D. 1818.

A. R. C. 42.

Commencement.

given by every such act or acts, and all such parts of acts, shall be and remain as if this act had not been made.

33. THIS act shall commence and be in force, from and after the first day of January next.

C. 114.

*An act concerning Awards.**

[Passed December 17, 1789.]

A. D. 1789.

A. R. C. 14.

Submission to arbitration may be made rule of court.
9 and 10 Will. 3, c. 15.

1. *BE it enacted by the General Assembly*, That it shall and may be lawful for all merchants, and traders, and others desiring to end any controversy, suit or quarrel, for which there is no other remedy but by personal action or suit in equity, by arbitration, to agree, that their submission of the suit to the award or umpirage of any person or persons should be made a rule of any court of record which the parties shall choose, and to insert such their agreement in their submission or the condition of the bond or promise, whereby they oblige themselves, respectively, to submit to the award or umpirage of any person or persons; which agreement being so made and inserted in their submission or promise, or condition of their respective bonds, shall or may, upon producing an affidavit thereof made by the witnesses thereunto, or any one of them, in the court of which the same is agreed to be made a rule, and reading and filing the said affidavit in court, be entered in the proceedings of such court; and a rule shall be made thereupon by the said court, that the parties shall submit to and finally be concluded by the arbitration or umpirage, which shall be made concerning them by the arbitrators or umpire pursuant to such submission.

Awards to be entered as judgment of such court, and execution issued thereon.

2. *AND* the award made in pursuance of such submission may be entered up as the judgment or decree of the court, and the same execution or process may issue thereupon as on other judgments or decrees; and the court shall not invalidate such award, arbitrament, or umpirage, unless it be made appear to such court, that such award, arbitrament, or umpirage was procured by corruption or other undue means, or that there was evident partiality or misbehaviour in the arbitrators or umpires, or any of them. And any award, arbitrament, or umpirage procured by corruption or other undue means, or where there shall have been such evident partiality or misbehaviour as aforesaid, shall be deemed and judged void and of none effect, and accordingly set aside by the court in which the submission shall be made, so as complaint of such corruption or undue means, or evident partiality or misbehaviour as aforesaid, be made before the end of the second court of quarter sessions in the case of a county court, or at the end of the second term of any other court next after such award, arbitrament, or umpirage be made and returned to such court.

For what conduct of arbitrators or umpire, such award may be set aside.

When complaint must be made thereof.

* 1789, c. 46; 1792, ed. 1794, 1803, and '14, c. 52.

3. *PROVIDED*, nevertheless, That nothing herein contained, shall be construed to take away from courts of equity their power over awards, arbitraments, or umpirages.

A. D. 1789.
A. R. C. 14.

Not to affect power of courts of equity over awards

C. 115.

*An act to explain and amend an act, "reducing into one the several acts concerning Forcible Entries and Detainers."**

A. D. 1814.
A. R. C. 38.

[Passed February 12, 1814.]

1. *BE it enacted by the General Assembly*, That none shall enter into any lands or tenements, but in case where entry is given by law; and, in such case, not with strong hand, nor with multitude of people, but only in a peaceable and easy manner; and that none, who shall have entered in a peaceable manner, shall hold the same afterwards, against the consent of the party entitled to the possession thereof.

Prohibition of unlawful or forcible entries and unlawful detainers.

2. If any shall enter, or shall have entered, into any lands or tenements, in case where entry is not given by law; or if any shall enter, or shall have entered, into any lands or tenements, with strong hand or with multitude of people, even in case where entry is given by law; the party turned out of possession by such unlawful, or by such forcible entry, by whatever right or title he held such possession, or whatever estate he held or claimed, in the lands or tenements, of which he was so dispossessed, shall, at any time within three years thereafter, be entitled to the summary remedy herein provided.

Remedy for person dispossessed by unlawful or forcible entry.

3. *AND*, if any shall enter, or shall have entered, in a peaceable manner, into any lands or tenements, in case where such entry is lawful; and, after the expiration of his right, shall continue to hold the same, against the consent of the party entitled to the possession; the party so entitled, whether as tenant of the freehold, tenant for years, or otherwise, shall be entitled to the like summary remedy, at any time within three years after the possession shall so have been withheld from him against his consent.

Limitation.

Remedy to party injured by unlawful detainer.

4. The party so turned out of possession, or so held out of possession, may exhibit his complaint before any justice of the peace for the county or corporation within which such lands or tenements may lie, in the following form, or to the following effect, that is to say:

Limitation.

Complaint may be made to justice of peace.

County (or corporation of) to wit:

Form of complaint.

A. B. of the said county (or corporation) complains, that C. D. hath unlawfully (or forcibly) turned him out of possession, (or unlawfully, and against his consent, withholds from him the possession,) of a certain tenement, containing by esti-

* 1813, c. 22; altered from 1788, c. 45; 1789, c. 7; 1792, cdi. 1794, 1803 and '14, c. 87. The act of 1792 was a copy of the provisions of the English statutes, 5 Ric. 2, c. 8; 15 Ric. 2, c. 2; 8 Hen. 6, c. 9; 31 Eliz. c. 11; 21 Jac. 1, c. 15. The provisions of the act of 1813, c. 22, so far as respects the remedy, are entirely new.

A. D. 1814.
A. R. C. 38.

nation, of land, with the appurtenances, lying and being in the county (or corporation) aforesaid—Whereof he prays restitution of the possession.

A. B., Plaintiff.

To be verified by oath or affirmation.

5. SUCH complaint shall be verified by the oath or affirmation of the plaintiff, certified at the foot thereof, after the following manner :

In what form.

County (or corporation of) to wit :
This day, the above named A. B. made oath (or affirmed,) before me, a justice of the peace for said county, (or corporation,) that he verily believes the allegations of the above complaint to be correct and true.

Given under my hand this day of

E. F.

Warrant to be issued by justice.

6. THE justice before whom such complaint shall be made, shall thereupon issue his warrant, to the following effect :

County (or corporation of) to wit :
Whereas A. B. hath made complaint on oath (or affirmation,) before me, a justice of the peace for said county (or corporation,) that C. D. hath unlawfully (or forcibly) turned him out of possession, (or unlawfully, and against his consent, holds him out of possession) of a certain tenement, containing by estimation of land, with its appurtenances, lying and being in the said county, (or corporation,) and hath prayed restitution of the possession thereof ; These are, therefore, in the name of the Commonwealth, to require you to summon the said C. D. to appear at the court-house of your county (or corporation,) on the day of , before the justices of the county (or corporation) aforesaid, to answer the complaint aforesaid ; and also to require you to summon at least eighteen good and lawful men, being freeholders of your bailiwick, and not of kin to either party, then and there to be attendant upon the said justices, as jurors, to try the complaint aforesaid. You are furthermore required to give notice of this warrant to at least two other justices of the peace for the said county (or corporation) and to request their attendance at the time and place aforesaid ; and have then there this warrant.

Witness my hand and seal this day of

E. F., [Seal.]

How directed and returnable.

7. THE warrant aforesaid shall be directed to the sheriff, serjeant or coroner, as the case may require ; shall be made returnable on a day certain, not less than ten, nor more than twenty days, after its date ; and shall be forthwith executed by the proper officer, who shall make due return to the justices, at the time and place therein mentioned, of the manner in which he shall have executed the same.

Time and manner of service.

8. THE said warrant shall be served on the defendant at least eight days before the return day, either by delivering to him a copy thereof, or, if he cannot be found, by delivering a copy to any white person of his family, above the age of sixteen years, at his usual place of residence ; or, if no such person be found, then by setting up a copy on some conspicuous place on the tenement in the warrant mentioned.

pena for witnesses, by whom issued ;

9. At any time after such warrant shall have been issued, it shall be lawful for the justice issuing the same, or any ju-

tice of the peace for the county or corporation, or for the clerk of the county or corporation court, as the case may be, upon the application of either party, to issue subpoenas for witnesses, requiring them to attend at the court-house, before the justices, at the time appointed as aforesaid, to give evidence on the trial. Any subpoena, so issued, shall be executed in the same manner, and, to all intents and purposes, shall have the same force and effect, as a subpoena issued according to law, in a cause depending in a county court.

A. D. 1814.
A. R. C. 33.

And how executed.

10. It shall be the duty of the justices notified as aforesaid, and of the justice who shall have issued the warrant, to attend at the court-house on the day therein specified, for the purpose of holding a court for the trial of the complaint aforesaid; for which purpose, such justices, or any two of them, or any two or more justices of the county or corporation, as the case may be, shall constitute a court. Such court shall be considered a court of record; they shall have power to issue all proper process to bring before them witnesses, or other persons, whose attendance may be lawfully required by them; and they may adjourn from day to day, and from time to time, until the trial shall be ended: the sheriff, serjeant or coroner, as the case may require, shall be attendant upon them, and execute their orders: And the clerk of the county or corporation court, as the case may be, shall attend them, and shall record their proceedings in the proper books of his office, and file away and preserve the complaint and warrant aforesaid, with all other papers exhibited on the trial.

Court for trial of complaint, how constituted.

To be a court of record.
Its powers.

Its officers.

Account of its proceedings.

11. WHEN the justices shall have so met, and formed a court, on the day and at the place aforesaid, if it shall appear to them that the defendant has been duly served with the warrant, agreeably to the requisitions of this act, they shall proceed, without further pleadings in writing, to empanel a jury for the trial of the complaint aforesaid. The jury shall be composed of any twelve of the freeholders, summoned as aforesaid, to be selected by lot, to whom neither party hath any legal exception; or, if a sufficient number of such freeholders, to whom neither party hath any legal exception, be not attending, the deficiency shall be made up of by-standers, being freeholders of the county or corporation.

Proceeding in court.

Jury how empanelled.

12. WHEN the jury shall have been so empanelled, they shall be charged on oath, in the following manner; that is to say,

How charged in case of forcible or unlawful entry;

If the complaint be of a forcible entry, or of an unlawful entry, they shall be charged thus:

You shall well and truly try, whether the defendant C. D., at any time within three years next before the exhibition of the complaint filed by the plaintiff in this cause, did forcibly (or unlawfully) enter upon the tenement in the said complaint mentioned, and turn the said plaintiff out of the possession thereof; and whether the said defendant continued to hold the possession thereof at the time of the exhibition of said complaint. And you shall find a true verdict thereupon according to the evidence. So help you God.

A. D. 1814.
A. R. C. 38.

Of unlawful de-
tainer.

OR, if the complaint be of an unlawful detainer against the consent of the plaintiff, they shall be charged thus :

You shall well and truly try, whether the defendant C. D. against the consent of the plaintiff, holds possession of the tenement mentioned in the complaint filed in this cause ; whether the said defendant hath so held possession thereof, against the consent of the plaintiff, for three years next before the exhibition of the said complaint ; and whether the plaintiff hath the right of possession in the tenement aforesaid : and you shall find a true verdict thereupon according to the evidence. So help you God.

Proceeding at tri-
al.

13. THE jury being so empannelled and charged, the justices shall then admit before them all legal evidence which shall be offered, as well on the part of the defendant as on the part of the plaintiff ; shall suffer each party to be heard by counsel ; shall decide all questions of law which shall be properly submitted to them, in the course of the trial ; shall admit bills of exception to their opinions ; and shall, in all respects, conduct the trial according to the usages of courts of law in this Commonwealth.

14. WHEN the jury shall have unanimously agreed upon their verdict, they shall find the same in the following form, or to the following effect ; that is to say,

Form of verdict in
case of forcible or
unlawful entry.

IN cases of forcible entry, or unlawful entry, thus :

WE, the jury, find that the defendant did, (or did not,) within three years next before the exhibition of the complaint filed by the plaintiff in this cause, forcibly (or unlawfully) enter upon the tenement, in the said complaint mentioned, and turn the plaintiff out of possession thereof ; and that the said defendant did (or did not) continue to hold the possession thereof, at the date of the said complaint.

Of unlawful de-
tainer.

OR, in case of unlawful detainer against the plaintiff's consent, thus :

WE, the jury, find that the defendant did, (or did not,) at the time of the exhibition of the complaint filed in this cause, hold possession of the tenement therein mentioned, against the consent of the plaintiff ; that the said defendant hath (or hath not) so held possession thereof against the consent of the plaintiff, for three years next before the exhibition of said complaint ; and that the plaintiff hath (or hath not) the right of possession in the tenement aforesaid.

Judgment for
plaintiff.

15. IF the verdict so found, on a complaint of a forcible entry or of an unlawful entry, shall ascertain that such forcible entry, or unlawful entry, as the case may be, whereby the plaintiff was turned out of possession, was made by the defendant within three years before the exhibition of the complaint, and that the defendant's possession continued at the time of exhibiting the complaint ; or if the verdict found as aforesaid, upon a complaint of unlawful detainer against the consent of the plaintiff, shall ascertain that the defendant, at the time of the exhibition of said complaint, held the possession of the tenement therein mentioned against the consent of the plaintiff ; that the said defendant had not so held, against the consent of the plaintiff, for three years next before the exhibition of said complaint ; and that the plaintiff hath the right of pos-

session, in the tenement aforesaid; then, in either of these cases, the justices shall render judgment in favor of the plaintiff, that he recover possession of the tenement aforesaid, with full costs, and shall award a writ of *habere facias possessionem*.

A. D. 1814.
A. R. C. 38.

And habere facias possessionem.
Judgment for defendant.

16. If the verdict found as aforesaid, in either of the said cases, shall be in favor of the defendant, the justices shall render judgment against the plaintiff, that his complaint be dismissed, and that the defendant recover of him full costs.

17. THE judgment of the justices rendered as aforesaid, either in favor of the plaintiff, or in favor of the defendant, shall, in all respects, be executed, in the same manner, as if it had been the judgment of the court of the county or corporation, at an ordinary term thereof. And either party thinking himself aggrieved thereby shall have the same remedy to correct any error therein, either by writ of error, or *supersedeas*, as if it had been the judgment of such county or corporation court.

Judgment for plaintiff or defendant how executed.

Party aggrieved may have writ of error or supersedeas.

18. No judgment rendered as aforesaid, either for the plaintiff or defendant, shall bar any action of trespass, or any writ of ejectment or writ of right, between the same parties, respecting the same tenement, nor shall any verdict found as aforesaid be held conclusive of the facts therein found, in any such action of trespass, ejectment or writ of right.

Such judgment to be no bar to trespass, ejectment or writ of right.

19. EVERY juror summoned to attend the justices aforesaid, and failing to attend without sufficient cause therefor, shall be liable to a fine of sixteen dollars, to the use of the Commonwealth, which may be imposed by the justices aforesaid, or by the court of the county or corporation, at their ordinary terms.

Penalty on jurors failing to attend.

20. THE sheriff, or other proper officer, shall be allowed, for his services in executing and returning the warrant aforesaid, the sum of four dollars, and for attending the justices during the trial, the sum of one dollar and five cents for each day: All other fees of officers for services rendered, in relation to the proceedings and trial aforesaid, shall be the same as the fees for similar services, rendered in a suit at law, respecting the title of land, depending in a county or corporation court.

Fees to sheriff and other officers.

21. ALL and every act, clause and clauses of acts coming within the purview of this act, shall be and the same are hereby repealed.

Repealing clause.

22. THIS act shall commence and be in force from and after the passing thereof.

Commencement.

C. 116.

A. D. 1818.
A. R. C. 42.

*An act to empower Securities to recover damages in a summary way, and for other purposes.**

[Passed January 13, 1818.†]

Summary remedy
for sureties, in
notes or obliga-
tions, against their
principals.

1. *Be it enacted, That, in all cases where judgment hath been, or shall hereafter be, entered up in any of the courts of record within this Commonwealth, against any person or persons, as security or securities, their heirs, executors or administrators, upon any note, bill, bond or obligation, and in all cases where execution hath been, or shall hereafter be, awarded by or issued from any of the courts of record within this Commonwealth, against any person or persons, as security or securities, his, her or their heirs, executors or administrators, upon any bond, obligation or recognizance, upon which, by the laws of this Commonwealth, execution can be so awarded or issued without judgment, and the amount of such judgment or execution, or any part thereof, hath been paid or discharged by such security or securities, his, her or their heirs, executors or administrators, it shall and may be lawful for such security or securities, his, her or their heirs, executors or administrators, to obtain judgment by motion against such principal obligor or obligors, recognizor or recognizers, his, her or their heirs, executors or administrators, in any court, where such judgment may have been entered up, or from which such execution may have issued, against such security or securities, his, her or their heirs, executors or administrators, for the full amount which shall have been paid, with interest thereon, from the time the same shall have been paid and satisfied, until such judgment shall be discharged.*(a)

For one surety a
gainst another.

2. *WHERE the principal obligor or obligors, recognizor or recognizers, have, or hereafter shall become insolvent, and there have been, or shall be, two or more securities, jointly bound with the said principal obligor or obligors, recognizor or recognizers, in any bond, bill, note, recognizance or other obligation, for the payment of money or other thing, and judgment hath been, or hereafter shall be obtained, or execution awarded or issued against one or more of such securities, or his or their legal representatives, it shall and may be lawful for the court before whom such judgment was or shall be obtained, or from which such execution was issued, upon motion of the party or parties, his or their legal representatives, against whom judgment hath been entered up, or execution issued, as securities aforesaid, to grant judgment, and award execution against all and every of the obligors and recognizers, and their legal repre-*

(a) Compiled of 1786, c. 15; 1792, 1814, c. 175, § 1; 1806, c. 6; edition
edi. 1794, 1803, and '14, c. 145, § 1; 1808, c. 87.
1794, c. 9, § 1; edi. 1794, 1803, and

* Former general laws, relating to this subject; 1786, c. 15; 1792, edi. 1794, 1803, and '14, c. 145, 174, 175; 1806, c. 6; edi. 1808, c. 87.

† Suspended till January 1st, 1820, *vid. ante*. c. 45.

sentatives, for their and each of their respective shares and proportions of the said debt or damages.(b)

A. D. 1818.

A. R. C. 42.

3. No security or securities, his, her or their executors or administrators, shall be suffered to confess judgment, or suffer judgment to go by default, so as to distress his, her or their principal or principals, if such principal or principals will enter him, her or themselves a defendant or defendants to the suit, and tender to the said security or securities, his, her or their executors or administrators, other good and sufficient collateral security, to be approved of by the court before whom the suit shall be depending.(c)

Sureties not to suffer judgments to go against them by confession or default, to the injury of principals.

4. In all cases where judgment hath been, or shall hereafter be entered up, in any of the courts of record in this Commonwealth, against any person as common bail for the appearance of another to defend any suit depending in such court, and the amount of such judgment, or any part thereof, hath been paid or discharged by such common bail, his, her or their heirs, executors or administrators, it shall and may be lawful for such common bail, his, her or their heirs, executors or administrators, to obtain judgment by motion against the person or persons for whose appearance they were bound, his, her or their heirs, executors or administrators, for the full amount of what shall have been paid by the said common bail, his or her heirs, executors or administrators, in any court where judgment may have been entered up against such common bail.(d)

Summary remedy of common bail against defendant.

5. *PROVIDED, always,* That no judgment shall be obtained by motion, as aforesaid, unless the party or parties, against whom the same is prayed, shall have ten days previous notice thereof.(e)

Notice required in all such cases.

6. WHEN any person or persons shall hereafter become bound as security or securities by bond, bill or note, for the payment of money or tobacco, and shall apprehend, that his or their principal or principals is, or are likely to become insolvent, or to migrate from this Commonwealth, without previously discharging any such bond, bill or note, so that it will be impossible or extremely difficult for such security or securities, after being compelled to pay the amount of the tobacco or money which may be due by such bond, bill or note, to recover the same back from such principal or principals, it shall and may be lawful for such security or securities, in every such case, provided an action shall have accrued on such bond, bill or note, to require, by notice in writing, of his or their creditor or creditors forthwith to put the bond, bill or note, by which he or they may be bound as security or securities as aforesaid, in suit. And, unless the creditor or creditors so required to put such bond, bill or note in suit, shall in a reasonable time commence an action on such bond, bill or note, and proceed with due diligence in the ordinary course of law to recover a judgment for, and by execution to make the amount of tobacco or money due by such bond, bill or note, the creditor or credi-

When sureties in bonds may require creditors to commence suits thereon.

Creditors failing to do so, to lose their remedy against the securities.

(b) From 1786, c. 15; 1792, edition 1794, 1803, and '14, c. 145, § 2; 1794, c. 9, § 2; edi. 1794, 1803, and 1814, c. 175, § 2.

(c) 1786, c. 15; 1792, edition 1794, 1803, and '14, c. 145, § 3.

(d) 1792, edi. 1794, 1803, and '14, c. 145, § 4.

(e) *Ibid.*, § 5.

A. D. 1818.

A. R. C. 42.

tors, so failing to comply with the requisition of such security or securities, shall thereby forfeit the right which he or they would otherwise have to demand and receive of such security or securities, the amount of the money or tobacco which may be due by such bond, bill or note.(f)

Sureties, their executors, &c. may make same requisition of creditors, their executors, &c.

7. ANY security or securities, or, in case of his or their death, then his or their executors or administrators, may in like manner, and for the same cause, make such requisition of the executors or administrators of the creditor or creditors of such security or securities, as it is herein-before enacted may be made by a security or securities of his or their creditor or creditors; and, in case of failure of the executors or administrators so to proceed, such requisitions as aforesaid being duly made, the security or securities, his, her or their executors or administrators making the same shall have the same relief that is herein-before provided, for a security or securities, when his or their creditor or creditors shall be guilty of a similar failure.(g)

Bonds with collateral conditions, and those given by guardians, executors, and public officers, excepted. Creditor's remedy against his principal debtor, not to be affected.

8. *PROVIDED, always*, That nothing in the two last preceding sections contained shall be so construed as to affect bonds with collateral conditions, or the bonds that may be entered into by guardians, executors, administrators or public officers: *And provided also*, That the rights and remedies of any creditor or creditors, against any principal debtor or debtors, shall be in no wise affected thereby; any thing to the contrary, or seeming to the contrary, notwithstanding.(h)

Repealing clause.

9. ALL acts and parts of acts coming within the purview of this act, shall be, and are hereby repealed: *Provided, however*, That all rights and remedies accrued, and proceedings instituted, before the commencement of this act, shall be, and remain as if this act had never been passed.

Commencement.

10. THIS act shall commence and be in force from and after the first day of January eighteen hundred and nineteen.

C. 117.

A. D. 1792.

A. R. C. 17.

*An act concerning Waste.**

[Passed December 26, 1792.]

Forfeitures by tenant for life or years, for waste.

1. *BE it enacted by the General Assembly*, That if any tenant by the curtesy, tenant in dower, or otherwise for term of life or years, shall commit waste during their several estates or terms, of the houses, woods, or any other thing belonging to the tenants,† so held without special license in writing so to do, they shall be subject respectively to an action of waste,

(f) 1794, c. 8, § 2; edi. 1794, 1803, and '14, c. 174, § 2.

(g) 1794, c. 8, § 3; edi. 1794, 1803, and '14, c. 174, § 3.

(h) *Ibid*, § 4, 5.

* 1792, edi. 1794, 1803, and 1814, c. 139.

† So in Revised Bill, of 1792, and in the law; but it should be *tenements*, as in Stat. 52 Hen. 3, c. 24, from which this section was taken.

and shall moreover lose the thing wasted, and recompense the party injured in three times the amount at which the waste shall be assessed.

A. D. 1792.

A. R. C. 17.

2. IN case any of the said tenants shall aliene their estate, and notwithstanding retain possession of the same and commit waste, he in the reversion shall be entitled to his action of waste, and likewise recover against them the place wasted, and treble damages.

St. Marib. 52

Hen. 3, c. 24.

St. Glou. 6 Edw.

1, c. 5.

6 Hen. 6, c. 5.

3. IF one tenant in common shall commit waste of the estate held in common, he shall be subject to an action of waste at the suit of the other tenant or tenants in common.

Action of waste
by tenant in com-
mon.

West. 2, 15 Edw.

1, c. 22.

By heirs.

St. of Waste, 20

Edw. 1, St. 2.

4. AN action of waste shall be maintainable by the heir, whether within or of full age, for waste done in the time of his ancestor, as well as in his own time.

5. IF tenant for life commit waste, and he in the reversion brings his action of waste and dieth before judgment, his heir may bring an action of waste for the same.

6. IF a guardian shall commit waste of the estate of his ward, such ward when he attains his full age shall have his action to recompense him for the injury.

By wards against
guardians.

7. THE process in an action of waste, shall be summons, attachment, and distress, and if the defendant appear not upon the distress, the waste shall nevertheless be enquired of by a verdict of a jury, and the court proceed to judgment according to the directions of this act.

Process in actions
of waste.

West. 2, 13 Edw.

1, c. 14.

8. AFTER the commencement of any suit in any court of this Commonwealth, the tenant shall have no power to commit waste or estrepement of the land in demand, whilst such suit is depending; and if he do, the sheriff shall be commanded to keep the same at the suit of the plaintiff.

Tenant not to
commit waste
pending action.

9. THIS act shall commence and be in force, from and after the passing thereof.

Commencement.

C. 418.

*An act for reforming the method of proceeding in Writs of Right.**

A. D. 1818.

A. R. C. 42.

[Passed January 10, 1818.]

1. BE it enacted by the General Assembly, That, for the trial of disputed titles to lands in a more simple mode than that which hath most commonly been used of late, the claimant or demandant of an estate in fee simple may sue forth, against the possessor or tenant, a writ of *præcipe quod reddat*, which, issuing from any court having jurisdiction thereof, shall be in this form or to this effect:

THE Commonwealth of Virginia, to the sheriff of E. greet-Form of writ of
ing: Command C. D., that he, justly and without delay, ren-right

* From 1786, c. 59; 1792, ed. 1794, 1803, and 1814, c. 27; with such alterations at the late Revisal, as the present organization of our courts rendered necessary.—This act was suspended till Jan. 1st. 1820. *vid. ante*, c. 45.

A. D. 1818.
A. R. C. 42.

der unto *A. B.*, tenement containing of land, with the appurtenances, in the county of *E.*, which he claimeth to be his right, and whereof he complaineth that the aforesaid *C. D.* doth withhold the possession. And, unless he shall do so, then summon the said *C. D.*, that he appear before the justices of our court, at on the day of next court, to shew wherefore he hath not done it. And have you then there this writ. Witness clerk of our said court, at , the day of , in the year

Of count there-
upon.

UPON which writ the count shall be in this form, or to this effect:

E. to wit: A. B. by F. G., his attorney demands against C. D., tenement, containing of land, with the appurtenances, in the county of E., and bounded by And whereupon the said A. B., saith that he hath right to have the tenement aforesaid, with the appurtenances, and offereth proof that such is his right.

Of plea thereto.

If several tenements be demanded in the same count, the contents, situations and boundaries of each shall be inserted therein. To which count the tenant may plead in this form, or to this effect:

*AND the aforesaid, C. D., by H. I., his attorney, cometh and defendeth the right of the said A. B., when and where it be-
hoveth him, and all that concerneth it, and whatsoever he ought to defend, and chiefly the tenement aforesaid with the appurtenances as of right, namely tenement, containing of land in the county of E., and bounded by and putteth himself upon the assize, and prayeth recognition to be made, whether he hath greater right to hold the tenement aforesaid with the appurtenances, as he now holdeth it (or them,) or the said A. B., to have it as he now demandeth it (or them.)*

Of replication.

AND to such plea the replication shall be in this form, or to this effect:

AND the aforesaid A. B., in like manner, putteth himself upon the assize, and prayeth recognition to be made whether he hath greater right to hold the tenement aforesaid, as he demandeth, or the said C. D., as he holdeth it (or them.)

WHEREUPON, twelve good and lawful men, qualified as jurors are required to be, shall be elected, tried and charged as the manner is, to make recognition of the assize; which charge shall be in this form, or to this effect:

Charge to jury.

You shall say the truth, whether C. D. hath more right to hold the tenement which A. B. demandeth against him by his writ of right, or A. B. to have it (or them) as he demandeth.

What may be
given in evidence
at trial.

AND at the trial any matter may be given in evidence, which might have been specially pleaded. And upon the verdict, or in case of a demurrer, the like judgment shall be given, and upon such judgment the like execution awarded, as in case of a writ of right; and the party for whom judgment shall be given shall recover his costs of suit; and the demandant, if he recover his seisin, may also recover damages, to be assessed by the recognitors of assize, for the tenant's withholding possession of the tenement demanded.

Party prevailing
to recover costs.
demandant re-
cover damages to
be assessed in his

2. WHERE the *præcipe quod reddat* shall issue from the general court, or a superior court of law, if return thereof be made that the tenant is not found in the bailiwick of the officer to whom it was directed, the demandant may sue forth a writ of *exigi facias*, in this form, or to this effect;

A. D. 1818.
A. R. C. 42.

Where *non est inventus* is returned on a

THE Commonwealth of Virginia to the sheriff of E. greet- ing: We command you, that you cause C. D., to be required from county court to county court, until five courts be passed, if he doth not appear; and if he doth appear, then summon him that he be before the justices of our

præcipe from the general court or a superior court of law, writ of *exigi facias* to issue.

court at , on the day of the next court, to shew wherefore he hath not rendered unto A. B. tenement, containing of land, with the appurtenances in the county of E. And have you then there this writ. Witness clerk of our said court, at the day of in the year

AND when the residence or last place of abode of the tenant shall be out of the county in which the land demanded lieth, a like writ of *exigi facias* shall also be directed to the sheriff of the latter county; and in either case a copy of such writ shall, within four weeks after the teste thereof, be printed in such public newspaper as the court wherein the suit is brought shall direct; and the said writ or writs of *exigi facias* being returned in due form, and being printed as aforesaid, if the tenant shall not appear at the court to which the same is or are returnable, judgment shall be entered, that the demandant recover his seisin against the tenant.

A like writ to be sent to the sheriff of county where tenant resides. A copy to be printed in such newspaper as court shall direct. Judgment when tenant shall not appear.

3. WHERE the *præcipe quod reddat* shall issue from the court of a county, city or borough, if return thereof be made, that the tenant is not found in the bailiwick of the officer to whom it was directed, the demandant may sue forth a new *præcipe* every court for five courts following, successively, the tenant be not by one or other of them before summoned; and when the residence or last place of abode of the tenant shall be out of the county, city or borough, in which the land demanded lieth, a *testatum præcipe* shall also be directed to the sheriff or proper officer of the latter county, city or borough; and, in either case, a copy of the first of the said five *præcipes* shall, within four weeks after the teste thereof, be printed in such public newspaper as the court wherein the suit is brought shall direct; and a copy of that and every other of them shall, within fourteen days after the teste of each, be set up at the door of his court-house, by the officer to whom it shall be directed, and who, by an endorsement on such writ, shall be required by the clerk to do so; and return of the said five writs being made, that the tenant is not found in the bailiwick or bailiwicks of the officer or officers, to whom they were directed, and that they had been set up as is before directed, and the first of them being printed as aforesaid, if the tenant shall not appear at the court, to which some one of the said writs was returnable, judgment shall be entered, that the demandant recover his seisin against the tenant; but if the tenant against whom, without having appeared, or without having been summoned, any such judgment shall be rendered, shall be out of Virginia at the time of the suit brought, the judgment

Course where return of *non est inventus* is on a *præcipe*, issued from a county or corporation court. New *præcipe* to issue every court, for five courts successively.

Testatum præcipe to issue to the sheriff or proper officer of county or corporation where tenant resides. Copy of the first of the five *præcipes* to be printed in such newspaper as the court shall direct.

Copies to be set up at court-house door.

Judgment when tenant shall not appear.

A. D. 1818.

A. R. C. 42.

Such judgment, if tenant was out of state when suit was brought, no bar to his action within a limited time.

Judgment on default after appearance.

Conditional order if the tenant do not appear, after being summoned. Judgment thereupon.

Provision in favor of infants, femes covert and persons of unsound mind.

shall be no bar to an action commenced by him, or any claiming under him, to be restored to the land recovered, within a year and a day after he or they shall come into the country, or, remaining out of it, within seven years after the judgment; in which action, or in a separate one, damages may also be recovered.

4. If the tenant, whether summoned or not, shall appear and afterwards make default, judgment shall be entered against him; and if, having been summoned, he shall not appear, the court shall make an order that, unless he appear at the then next court, judgment shall be entered against him, which shall be entered accordingly, if, a copy of that order being delivered to him, or left at the place of his usual abode, fifteen days or more before such next court, and *affidavit* thereof being made, he shall not then appear.

5. If the demandant or tenant, against whom any such judgment shall be rendered, at the time of the suit brought shall be an infant, a married woman, or a person of unsound mind, the judgment shall be no bar to another action, commenced within five years after attainment of full age, discovery, or recovery of understanding, or within the same time after the death of such privileged person.

Repealing clause.

6. ALL acts and parts of acts coming within the purview of this shall be and are hereby repealed: *Provided, however*, that all rights accrued and proceedings instituted before the commencement of this act shall be and remain in the same condition as if the same had never been passed.

Commencement.

7. THIS act shall commence and be in force, from and after the first day of January, one thousand eight hundred and nineteen.

C. 119.

A. D. 1819.

A. R. C. 43.

*An act to reduce into one the several acts declaring and regulating the practice of suing out, and prosecuting writs of scire facias, to repeal letters patent.**

[Passed March 8, 1819.]

Writs of *scire facias*, to repeal letters patent, to be prosecuted in superior courts of chancery.

1. *BE it enacted and declared by the General Assembly*, That whensoever any person shall desire to prosecute a writ of *scire facias*, to repeal any letter patent, or grant of this Commonwealth, for lands, tenements, or other hereditaments, either because the same letter patent or grant was obtained from the Commonwealth by false suggestion, or issued contrary to law, or to the prejudice of his or her private right, such person shall have liberty to prosecute such writ of *scire facias*, in any superior court of chancery for the district in which the lands, tenements, or hereditaments, granted by such letter patent, grant or any part thereof, may be situated: *Provided, however*, That,

Patent, or grant not to be repealed, less petitioner

* Compiled of 1814, c. 23; and 1817, c. 29, with some amendment at the late revision, but not material.

when any such writ of *scire facias* shall be prosecuted upon the petition of any person or persons, body politic or corporate, other than the Commonwealth, no such letter patent or grant shall be repealed, either in the whole or in part, unless such petitioner hath a good equitable right to such lands, tenements, or hereditaments, or to some part thereof, commencing prior to the date of such letter patent, or grant; nor shall such letter patent or grant in such case be repealed further than such equitable right may extend: *Provided, also*, That no such letter patent, or grant, issued before the twenty-sixth day of February in the year eighteen hundred and eighteen, shall be repealed upon any *scire facias* sued out more than ten years after the said date; and that no such letter patent, or grant, issued upon or after the said twenty-sixth day of February, shall be repealed, upon any *scire facias* sued out more than ten years after the date of such letter patent or grant, saving to all persons, *non compos mentis*, infants, *femes covert*, persons imprisoned, or out of this Commonwealth, in the service thereof, or of the United States, the said term of ten years, after their several disabilities removed.

A. D. 1819.
A. R. C. 43.

for its repeal, have good equitable right commencing prior to its date; nor farther than such right may extend.

Limitation of time for suing out the *scire facias*.

Saving as to persons under legal disabilities.

2. THE person desirous to prosecute such *scire facias* shall exhibit a petition to the said superior court of chancery, or to the judge thereof in vacation, briefly stating the causes, for which, in his or her opinion, the letter patent, or grant, sought to be repealed, ought not to have issued. The said court or judge shall thereupon order the clerk of such court to issue to the register of the land-office a writ of *certiorari*, commanding him to certify to the court aforesaid, on or before the first day of its next term, whether such letter patent, or grant, had ever issued; and, if it had, to certify a true copy thereof; and it shall be the duty of the register to conform to the directions of the said writ.

Mode of proceeding to obtain writ.

Certiorari to be issued to register of land office.

3. UPON the return of such writ, if the register shall certify a copy of such letter patent, or grant, the same shall be filed in such court, as an exhibit in the cause; and the petitioner may thereupon exhibit his bill in equity, setting forth the cause of his complaint, making all persons claiming title under such letter patent, or grant, parties defendants thereto, and praying a repeal of such letter patent, or grant.

Bill to be filed on return thereof.

Who shall be parties to suit.

4. WHEN such bill shall be filed, a *scire facias* shall be issued by the clerk against the defendants in the said bill, returnable as other process of the court, requiring such defendants to appear and answer the said bill, and to shew cause, if any they can, why the said letter patent or grant should not be repealed.

Scire facias thereupon.

5. AFTER the return of such *scire facias*, the proceedings in the cause aforesaid shall be in all respects similar to the proceedings on other bills in equity; the defendant may in like manner shew cause, against the relief sought, by answer, plea or demurrer; the plaintiff may in like manner set the cause for hearing, except or reply, and have commissions awarded for taking depositions; and, if the defendant fail to appear, have the bill taken for confessed, or have an order of publication against any absent defendant or defendants.

Proceedings to be similar to proceedings on other bills in equity.

A. D. 1819.

A. R. C. 43.

What decree may be pronounced. Such decree to be certified to register, and noted in margin of the record of the patent or grant.

6. UPON the final hearing of the cause, the court shall decree such letter patent or grant to be repealed, in the whole or in part, or dismiss the plaintiff's bill, as law and equity may require.

7. ANY such final decree repealing such letter patent or grant, either wholly or in part, shall be certified to the register of the land office, and the substance thereof shall be thereupon entered in the margin of the original record of such letter patent or grant; and thereupon such letter patent or grant, for so much thereof as shall have been so repealed, shall be utterly null and void.

Register's fees for services rendered under this act.

8. THE register for the services hereby required of him, shall receive the following fees, viz.: for making a return to the certiorari, the same fee as for a copy of the patent; and for entering the substance of the decree in the margin of the record, twenty-five cents.

Repealing clause. Proviso.

9. ALL acts and parts of acts, coming within the purview of this act, shall be and the same are hereby repealed: *Provided however*, That any proceedings instituted before the commencement of this act may be prosecuted in the same manner as if this act had never passed.

Commencement.

10. THIS act shall commence and be in force from and after the passing thereof.

C. 120.

A. D. 1818.

A. R. C. 42.

*An act to reduce into one act the acts now in force, directing the mode of suing out and prosecuting writs of Habeas Corpus, and to annul the remedy by writ de homine replegiando.**

[Passed January 17, 1818.†]

How writ of habeas corpus ad subjiciendum, may be obtained. 31 Car. 2, c. 2, § 3, 10.

1. *Be it enacted by the General Assembly*, That whenever any person detained in custody, whether charged with a criminal offence or not,‡ shall, by himself, or by some other person in his behalf, apply to the general court, or any superior court of law, or superior court of chancery in this Commonwealth, or to any judge thereof, in vacation, for a writ of *habeas corpus ad subjiciendum*, and shall shew, by affidavit or other evidence, probable cause to believe that he is detained in custody without lawful authority, it shall be the duty of the court or judge to whom such application shall be made, forthwith to grant the writ, signed by himself, directed to the person

* Former general laws touching this subject; May, 1784, c. 35; 1792, edition 1794, 1803 and '14, c. 118; 1814, c. 26.

† Suspended till January 1st, 1820; *vid. ante* c. 45.

‡ Materially altered by the act of 1814, c. 6, both from the English statute and our own act of 1792, which gave the writ, *unless the commitment were for treason or felony, plainly expressed in the warrant of commitment*, to all prisoners *not being convicted, or in execution by legal process*; and the other provisions of the act of 1814, from which this act is chiefly taken, are far more favorable to the prisoner than the former statutes; and many of them are entirely new.

in whose custody the applicant is detained, and returnable, immediately, before such court or judge, or any of the said courts or judges: *Provided*, That in all cases where it shall appear necessary, the court or judge granting the writ, shall previously require bond, with sufficient security, executed in such manner, and in such reasonable penalty, as such court or judge shall prescribe, conditioned for the payment of such charges as may be awarded against the prisoner, and that he will not escape by the way. Every bond, so executed, shall be recorded with the other proceedings, as herein-after provided for; and may be sued on, in the name of the person to whom it is made payable, for the benefit of any person really interested therein.^(a)

A. D. 1818.
A. R. C. 42.

Bond and security may be required of prisoner.

Such bond to be recorded.

How it may be put in suit.

2. WHENEVER any such writ shall be served on the officer or other person to whom it is directed, or, in his absence, from the place where the prisoner is confined, on the person having the immediate custody of the prisoner, it shall be the duty of him on whom the writ shall be so executed, without delay, to bring the body of the prisoner, or cause it to be brought before the court or judge before whom the writ is made returnable, or, in case of the absence of such court or judge, before any of them; and, at the same time, to certify the cause of the detainer of such prisoner.^(b)

Duty of person in whose custody prisoner is, when such writ shall be served on him.

31 Car. 2, c. 2, § 2.

3. ANY person failing to return the writ so served upon him, with the cause of the prisoner's detainer, or to bring the body of the prisoner before the court or judge, according to the command of the writ, for three days after such service, or, when the prisoner is to be brought more than twenty miles, for so many days more as will be equal to one day for every twenty miles of such further distance, shall forfeit and pay to the prisoner the sum of three hundred dollars; the right to recover which shall not cease by the death of either or both of the parties.^(c)

Penalty for disobedience.

31 Car. 2, c. 2, § 5.

4. IT shall be lawful for a judge, in vacation, to take the same steps to enforce obedience to any writ of *habeas corpus ad subjiciendum*, as may be taken in term-time by any court having jurisdiction over such writs.^(d)

Power of judge in vacation to enforce obedience.

5. THE court or judge before whom the prisoner shall be brought, shall, without delay, proceed to enquire into the cause of his imprisonment, and shall either discharge him, admit him to bail, or remand him into custody, as the law and the evidence shall require; and shall, moreover, either award against the prisoner the charges of his transportation, not exceeding seventeen cents per mile, and the costs of the proceedings, or shall award costs in his favor, or shall award no costs or charges against either party, as shall seem right. The clerk of the court, in the office of which the proceedings shall be recorded, may issue execution for the costs and charges, so awarded by a judgment rendered in vacation, in the same manner as if the judgment had been rendered in term time.^(e)

Duty of court or judge before whom prisoner is brought.

31 Car. 2, c. 2, § 3.

Discretionary power as to costs and charges.

Execution for costs, &c., awarded by judge in vacation, may be issued by clerk of the court.

6. THE return made to such writ shall not hereafter be taken to be conclusive as to the facts stated therein; but it shall be

Return made to such writ not to be conclusive; but

(a) 1814, c. 26, § 1.

(b) *Ibid*, § 2.

(c) *Ibid*, § 3.

(d) 1814, c. 26, § 4.

(e) *Ibid*, § 5.

A. D. 1818.
A. R. C. 42

evidence to contradict it admissible.

Power of judge in vacation to compel attendance of witnesses.

When affidavits may be taken instead of personal attendance.

Proceedings to be entered of record. For that purpose to be signed and certified by judge in vacation.

When required, all material facts proved to be made a part of record. Fee to clerk.

Such fee to be charged to prisoner, and taxed in bill of costs.

Judgment to be conclusive, until reversed.

Second *habeas corpus* for the same cause not to be allowed.

But writ of error, or action for false imprisonment, may lie.

Prisoner, if discharged, not to be afterwards confined for same cause, unless by order of court.

31 Car. 2, c. 2, § 6. Court of appeals may grant writ of error to any party aggrieved by such judgment.

Costs to be awarded at discretion.

Provision in case any person, held in service of this State, or of the U. States, shall be discharged.

competent for the judge or court, before whom such return is made, to receive evidence in contradiction thereof, and to determine the same, as the very truth of the case shall require. (f)

7. In vacation, a judge shall have the same power to compel the attendance of a witness, to give evidence upon the trial, as a court would have in term-time; and whenever, either in term-time or in vacation, it shall be inconvenient to procure the personal attendance of a witness, his affidavit, taken upon reasonable notice to the adverse party, may be received in evidence. (g)

8. THE proceedings and judgment shall, in all cases, be entered of record. If they be had in vacation, before a judge in chancery, they shall be signed by the judge, certified to the clerk, and by him entered among the records of the chancery court, within the jurisdiction of which the judgment shall be rendered: if before a judge of the general court in vacation, they shall be in like manner signed, certified and entered among the records of the superior court of law for the county in which the judgment shall be rendered. Whenever either party shall require it, upon the trial, the court or judge shall cause to be made a part of the record all the material facts proved. The clerk shall be allowed the same fee for entering the record, as is allowed by law for copying a record, of the same number of words; which fee shall be charged to the prisoner, and taxed in the bill of costs, when costs are recovered by him. (h)

9. THE judgment so entered of record shall be conclusive, until reversed in the manner herein provided for; and no person remanded by such judgment, whilst the same continue in force, shall be at liberty to obtain another *habeas corpus*, for the same cause, or, by any other proceeding, to bring the same matter again in question, except by writ of error or by action of false imprisonment; nor shall any person, who shall hereafter be discharged from confinement by such judgment, be afterwards imprisoned or confined for the same cause, unless by the order or judgment of a court of competent jurisdiction. (i)

10. If any party to such judgment shall feel himself aggrieved thereby, it shall be lawful for the court of appeals, on his motion, to grant a writ of error; and, upon the trial, to reverse or affirm the judgment, wholly or in part; and to cause such other judgment to be entered, and such other proceedings to be had, as the law and the right of the case may require; either awarding costs or not, at their discretion. (k)

11. If, by any judgment entered as aforesaid, any person held in service of this State, or of the United States, shall be discharged, it shall be lawful for the attorney-general, on behalf of the Commonwealth, or for any attorney, duly authorised, on behalf of the United States, to obtain from the court of appeals a writ of error to such judgment, and to cause the same to be reversed and otherwise proceeded on, in the same

(f) 1814, c. 26, § 6.

(g) *Ibid*, § 7.

(h) *Ibid*, § 8.

(i) 1814, c. 26, § 9.

(k) *Ibid*, § 10.

manner as is allowed to the parties thereto. And, if, at any time during the recess of the court of appeals, the Executive of this Commonwealth should think that the public interest requires the immediate revision of such judgment, it shall be lawful for them to convene the said court, on any day which to them shall seem proper.^(l)

12. THE trial of all writs of error to judgments in case of *habeas corpus*, shall have preference, in the court of appeals, to all other trials.^(m)

13. THE remedy by writ *de homine replegiando*, shall be, and the same is hereby annulled.⁽ⁿ⁾

14. A CITIZEN of this Commonwealth, committed to prison in custody of any officer, for any criminal matter, shall not be removed from thence, into the custody of another officer, unless it be by *habeas corpus*, or some other legal writ, or where the prisoner shall be delivered to the constable, or other inferior officer, to be carried to some common jail, or shall be sent, by warrant of an overseer of the poor, to some common work-house, or shall be removed from one place to another within the same county, in order to his discharge or trial in due course of law, or in case of sudden fire or infection, or other necessity; or where the prisoner shall be charged, by affidavit, with treason, felony or other crime, alleged to be done in any other of the United States of America; in which last case, he shall, on demand of the Executive authority of the State from which he fled, be sent thither in custody, by order of the general court, or by warrant of any two judges thereof in vacation time, or may be bound by recognizance with sureties, before them, to appear there, whichever shall seem most proper, if the said court or judges, upon consideration of the matter, shall think he ought to be put upon his trial.^(o)

15. ALL and every act and acts, clause and clauses of acts, coming within the purview of this act, shall be and the same are hereby repealed; saving to all persons all rights and remedies which may have accrued under them.

16. THIS act shall commence and be in force from and after the first day of January, eighteen hundred and nineteen.

A. D. 1818.
A. R. C. 42.

Executive may convene court of appeals, for purpose of revising such judgments.

Writs of error to judgments in cases of *habeas corpus*, to be tried out of turn.

Writ *de homine replegiando* annulled.

Citizen imprisoned for any criminal matter not to be removed into custody of another officer, but by *habeas corpus*, or some other legal writ;

Except in certain specified cases, 32 Car. 2, c. 2, § 9. How prisoner charged with felony, alleged to have been committed in another State, may be sent thither for trial.

C. 121.

*An act authorising certain proceedings on the Writ of Mandamus.**

A. D. 1799.
A. R. C. 23.

[Passed January 22, 1799.]

WHEREAS great difficulty and delay attends the present method of proceeding on writs of mandamus, and it is proper that

(l) 1814, c. 26, § 11.

(m) *Ibid.*, § 12.

(n) *Ibid.*, § 13.

(o) 1792, edition 1794, 1803 and '14, c. 118, § 7.

* 1798, c. 23; edi. 1803, and '14, c. 253.

A. D. 1799.
A. R. C. 23.

Proceedings and
judgment on *mandamus*.

the same should be amended by authorising certain other proceedings thereupon :

BE it enacted by the General Assembly of Virginia, That, as often as a writ of mandamus shall issue out of a court having competent jurisdiction within this Commonwealth, and a return shall be made thereunto, it shall and may be lawful to, and for the person or persons, suing or prosecuting such writ of mandamus, to plead to, or traverse all or any of the material facts contained within the said return, to which the person or persons making such return shall reply, take issue, or demur ; and such further proceedings, and in such manner, shall be had therein for the determination thereof, as might have been had, if the person or persons suing such writ, had brought his or their action on the case for a false return, and if any issue shall be joined on such proceedings, the person or persons suing such writ shall and may try the same in such place as an issue joined in such action on the case should or might have been tried : and, in case a verdict shall be found for the person or persons suing such writ, or judgment given for him or them on demurrer, or by nil dicit, or for want of a replication or other pleading, he or they shall recover his or their damages and costs in such manner as he or they might have done in such action on the case as aforesaid ; such costs and damages to be levied by *capias ad satisfaciendum, fieri facias, or elegit*, and a peremptory writ of mandamus shall be granted without delay, for him or them for whom such judgment shall be given, as might have been if such return had been adjudged insufficient ; and in case judgment shall be given for the person or persons making such return to such writ, he or they shall recover his or their costs of suit, to be levied in manner aforesaid.

The damages awarded, how levied.

C. 122.

A. D. 1816.
A. R. C. 40.

*An act to regulate the proceedings in suits against corporations.**

[Passed February 19, 1816.]

Suits against corporations to be commenced by summons.

1. *BE it enacted by the General Assembly, That,* in all actions or suits which may be instituted against any corporation, instead of the process heretofore used to compel the appearance of such corporation, it shall be sufficient to issue a summons to the sheriff or other proper officer, reciting the cause of action, and summoning the said corporation to appear and answer the same on the proper return day ; which summons shall be returnable in like manner, and subject to the same rules and regulations, as other original process.

Order of serving
summons against
any incorporated
company ;

2. *AND be it further enacted, That,* if a summons be issued as aforesaid, against any banking, turnpike, insurance, or other

* 1815, c. 21.

incorporated company, service on the president or other head, or, in his absence, on the cashier, or treasurer, or, in the absence of both the president or chief officer, and the cashier or treasurer, then on any director of such company; such president, or other officer, being, at the time of service, within the county in which he usually resides; shall be deemed sufficient service of the said summons. And, if the summons be issued against the corporation of any city, borough or town, service on the mayor or chief magistrate, or, in his absence, on the recorder, or, in the absence of the mayor or chief magistrate, and recorder, then on any alderman of the corporation, such mayor or other officer being at the time of service within the limits of such corporation, shall also be deemed sufficient. And, in like manner, the service of such summons on the president, or, in his absence, on any visitor or trustee of any incorporated college or academy, or on the chief officer of any other corporation whatever, or, for want of such chief officer, on any member of such corporation, such president, visitor, trustee, chief officer or other member, being, at the time of service, within the county in which he usually resides, shall be deemed sufficient service of such summons; and, on the return of such summons in any of the said cases, the same proceedings to a final judgment shall be had against such corporation as are had in other suits at law after the return of a *capias ad respondendum* executed. On every summons served as aforesaid, the sheriff or other proper officer shall make return distinctly on whom the same hath been executed: otherwise, such service shall not be deemed valid.

A. D. 1816.
A. R. C. 40.

Against the corporation of city, borough or town.

Against any incorporated college or academy; or other corporation.

Proceedings.

Return.

3. *AND be it further enacted*, That suits in chancery against corporations shall hereafter commence by *subpœna*; and the service of such *subpœna*, and of all interlocutory orders and decrees, against such corporations, shall be made in the same manner, and under the same restriction, as is herein-before provided for the service of a summons in a suit at law. And the same proceedings to a final decree shall be had against such corporations, as are had in other suits in chancery.

Mode of proceeding in chancery against corporations.

4. *AND be it further enacted*, That, if any judgment at law, or decree in chancery, shall be rendered against any corporation, it shall be lawful for the plaintiff in the suit, to sue out either a *distringas*, *feri facias*, *levari facias*, or *elegit*, as he may think proper; and that the said writs of *feri facias* and *elegit* may be levied as well on the current money as on the goods and chattels of said corporation.

Executions on judgments; and how to be levied.

5. ALL acts and parts of acts within the purview of this act, are hereby repealed. *Repealing clause.*

6. This act shall be in force from the time of passing thereof. *Commencement.*

C. 123.

A. D. 1819.
A. R. C. 43.

*An act, reducing into one, the several acts, directing the method of proceeding in courts of equity against absent debtors and other absent defendants, and for settling the proceedings on attachments against absconding debtors.**

[Passed February 11, 1819.]

Preamble.

WHEREAS creditors have experienced great difficulties in the recovery of debts due from persons residing without the jurisdiction of this Commonwealth, but who have effects here sufficient to satisfy and pay such debts : for remedy whereof,

When and how
courts of equity
may stop effects of
absent defendants.

1. *BE it enacted by the General Assembly,* That if, in any suit which hath been or hereafter shall be commenced, for relief in equity, in any superior court of chancery, or in any other court, against any defendant or defendants, who are out of this country, and others, within the same, having in their hands effects of, or otherwise indebted to, such absent defendant or defendants, 'or against any such absent defendant or defendants having lands or tenements within the Commonwealth,' and the appearance of such absentees be not entered, and security given to the satisfaction of the court, for performing the decrees ; upon affidavit, that such defendant or defendants are out of the country, or that, upon enquiry at his, her, or their usual place of abode, he, she, or they could not be found, so as to be served with process ; in all such cases, such court may make any order, and require surety if it shall appear necessary, to restrain the defendants in this country from paying, conveying away, or secreting the debts by them owing to, or the effects in their hands of, such absent defendant or defendants, and for that purpose may order such debts to be paid, and effects to be delivered, to the said plaintiff or plaintiffs, upon their giving sufficient security for the return thereof to such persons, and in such manner as the court shall direct.(a)

Affidavit requisite.

Surety may be re-
quired of garni-
shees.

Order for pay-
ment of money, or
delivery of effects,
to plaintiff, on his
giving security.

Day of appearance
in succeeding
term.

Order of publica-
tion ;

May be entered at
rules.

2. THE court shall also appoint some day in the succeeding term, for the absent defendant or defendants, to enter his or their appearance to the suit, and give security for performing the decree ; a copy of which order shall, by direction of the court, be forthwith published in any newspaper within this Commonwealth, the circulation of which shall, in the opinion thereof, be best calculated to apprise the absent defendant or defendants, of the pendency of such suit, and continued for two months successively ; and another copy thereof shall be posted at the front door of such court ; or, such order of publication may be entered at rules held in the clerk's office of any superior court of chancery, subject to the control of the

(a) 1744, edi. 1752, and 1769, c. 1 ;
5 *Hen. st. at lar.* p. 220 ; Oct. 1777,
c. 15, § 36, Chan. Rev. p. 69 ; 1792,
edi. 1794, 1803, and '14, c. 78, § 1, 2 ;

amended at late revival, by giving ju-
risdiction to the court, where the ab-
sent defendant has *lands or tenements*
within the Commonwealth.

* Former general laws on these subjects ; 1744, edi. 1752, and 1769, c. 1 ;
5 *Hen. st. at lar.* p. 220 ; October, 1777, c. 15, § 36, 37, 39, Chan. Rev. p. 69 ;
1787, c. 9, § 3 ; 1748, edi. 1752, c. 7, § 6 ; and edi. 1769, c. 4, § 6 ; 1772, c. 6,
§ 2, Chan. Rev. p. 22 ; 1792, edi. 1794, 1803, and '14, c. 78.

court, in the same manner, that other proceedings at the rules are subject to such control. If such absent defendants shall not appear and give such security, within the time limited, or such further time as the court may allow for good cause shewn, the court may proceed to take such proof as the complainant shall offer; and, if they shall, thereupon, be satisfied of the justice of the demand, they may order the bill to be taken as confessed, and make such order and decree therein, as shall appear just, and may enforce due performance and execution thereof, by such ways and means, as have heretofore been used for enforcing other decrees, requiring the plaintiff or plaintiffs to give security, as the court shall approve, for abiding such future order as may be made, for restoring the estate or effects to the absent defendant or defendants, upon his or their appearance and answering the bill: and, if the plaintiff or plaintiffs shall refuse to give, or not be able to procure such security, the effects shall remain under the direction of the court, in the hands of a receiver, or otherwise, for so long a time, and shall then be finally disposed of in such manner, as to the court shall seem just. (b)

A. D. 1819.
A. R. C. 43.

Proceedings if absent defendant do not appear.

Proof of claim.

Taking bill as confessed.

Decree and execution.

Requiring security of plaintiff.

Effect of his failing to give it.

3. ' No sale, however, of any lands or tenements belonging to such absent defendant shall be decreed, for the satisfaction of any debt appearing to be due from him, unless the personal fund in the power of the court shall be insufficient for that purpose; nor shall any such sale be decreed, until such lands or tenements shall have been fairly valued by discreet commissioners, for that purpose appointed by the court, and acting upon oath, and the valuation so made shall have been returned into court; nor shall such sale be decreed, until the plaintiff, or some one for him, shall have filed in court, or in the clerk's office, bond with good security, in double the value of such lands or tenements, for performing the future orders and decrees of the court in that behalf.'

Sale of lands, not to be decreed, if personalty sufficient;

Nor until valuation by commissioners;

Nor without bond, &c. of plaintiff.

4. If any person or persons, who shall be out of the Commonwealth at the time any decree is pronounced as aforesaid, shall, within seven years from the passing such decree, return and appear openly; or, in case of his or her death, if his or her heir, executor or administrator, shall, within the said seven years, be and appear openly within this Commonwealth, the plaintiff or plaintiffs, their executors or administrators, shall serve such person or persons, so returning or appearing, with a copy of the decree, within a reasonable time after such return or appearance shall be known to the plaintiff or plaintiffs; and, thereupon, such defendant or defendants, or their representatives, may, within twelve months after such service, or those defendants not served with a copy, or their representatives, may, within seven years after the decree pronounced, appear in court, and petition to have the cause re-heard; and, upon their paying down, or giving security for payment of such costs, as the court shall think reasonable, they shall be admitted to answer the bill, and issue may be joined, and witnesses on both sides examined, and such other proceedings, decree

Copy to be served, on defendant's return to state and appearing openly, within seven years; Or on his heir, executor, &c.

Time allowed to petition for rehearing.

Security for costs.

Admitting answer &c.

(b) Oct. 1777, c. 15, § 37, Chan. Rev. p. 69; 1792, edi. 1794, 1803, and '14, c. 78, § 3; 1806, c. 23, § 4; 1811, c. 16, § 4

A. D. 1819.
A. R. C. 43.

Final decree
where no petition
for re-hearing.

Order for quieting
possession or title.

Proceedings
against other ab-
sent defendants,
similar to those a-
gainst absent debt-
ors.

Attachments a-
gainst absconding
debtors, how ob-
tainable and re-
turnable, for claims
exceeding ten dol-
lars, or four hun-
dred pounds of to-
bacco.

By whom, and
how to be execu-
ted.

Garnishees to be
summoned.

and execution had, as may be just and right in the cause: but, if the several defendants or their representatives, upon whom the decree shall be so served, shall not, within twelve months after such service, and the other defendants or their representatives, upon whom no such service is made, shall not within seven years from the time of the decree pronounced, appear and petition to have the cause re-heard as aforesaid, and pay, or secure to be paid, such costs as the court shall think reasonable, all and every decree, to be made in pursuance of this act, against any defendant or defendants so failing, shall stand absolutely confirmed against him, her or them; and, at the end of such term, the court may make such further order for quieting the plaintiff or plaintiffs, in any such suits, in their possession and title to the estate and effects so sequestered or made liable, as to them shall seem reasonable.(c)

5. IN all cases whatever, where a suit is or shall be depending in a superior court of chancery, or other court of equity, concerning any matter or thing whatever, against any absent defendant or defendants, the court may, on satisfactory proof to them made, that such defendant or defendants is or are out of this Commonwealth, or that, upon enquiry at his, her, or their usual place of abode, he, she or they could not be found, make any order similar to that which is directed to be made in case of absent debtors, adapting the same to the nature of the case; a copy of which order shall be published in like manner as is directed in case of absent debtors; and thereupon the proceedings in relation to such absent defendant shall be, in all respects, the same, both before and after the decree, as are above prescribed in relation to absent debtors, so far as such proceedings against absent debtors shall be applicable to other absent defendants.(d)

6. If any person shall make complaint to any justice of the peace, that his debtor is removing out of the county or corporation privately, or absconds or conceals himself, so that the ordinary process of law cannot be served on him, such justice shall grant an attachment against the estate of such debtor, or so much thereof as shall be sufficient to satisfy the debt and costs of such complainant; which attachment, where the debt or demand shall exceed ten dollars, or four hundred pounds of tobacco, shall be returnable to the next county or corporation court, and directed to, and served by, the sheriff or his undersheriff, unless in case where the sheriff is a party interested, and then the same shall be directed to, and served by, a coroner or serjeant; and it shall be lawful for such sheriff or officer, to serve and levy the same, upon the slaves, goods and chattels of the party absconding, wherever the same shall be found, or in the hands of any person indebted to, or having any effects of, the party absconding, and to summon such garnishee or garnishees, to appear at the next court to be held for the said county or corporation, there to answer upon oath, what he or she is indebted to such party, and what effects of such party

(c) Oct. 1777, c. 15, § 39; Chan. Rev. p. 69; 1792, ed. 1794, 1803, and '14, c. 78, § 4.

(d) Altered at the late revision, from 1787, c. 9, § 3; 1792, ed. 1794, 1803, and '14, c. 78, § 5.

he or she hath in his or her hands, or had at the time of serving such attachment; which, being returned *executed*, the court may thereupon compel such garnishee to appear and answer as aforesaid.(e)

A. D. 1819.
A. R. C. 48.

7. *PROVIDED, always*, That every justice of the peace, before granting such attachment, shall take bond and security of the party for whom the same shall be issued, in double the sum to be attached, payable to the defendant, for satisfying and paying all costs, which shall be awarded to the said defendant, in case the plaintiff, suing out the attachment therein mentioned, shall be cast in his suit, and also all damages which shall be recovered against the said plaintiff for his suing out such attachment; which bond shall be, by the said justice, returned to the court, to which the attachment is returnable; and the party entitled to such costs or damages, may thereupon bring suit, and recover; and every attachment, issued without such bond taken, or where no bond shall be returned, is hereby declared illegal and void, and shall be dismissed.(f)

Plaintiff to give bond and security.

Bond to be returned to court, by justice granting attachment. If no bond returned, attachment illegal and void.

8. *PROVIDED also*, That all attachments shall be repleviable by appearance and putting in good bail, if by the court ruled so to do, or by giving bond with good security to the sheriff or other officer serving the same; which bond, the sheriff or other officer is hereby empowered and required to take, to appear at the court to which such attachment shall be returnable, and to abide by and perform the order and judgment of such court.(g)

Attachments how repleviable.

9. Upon the defendant or defendants replevying any attached effects, by giving bond and security to the sheriff or other officer as aforesaid, the sheriff shall return the name of the security by him so taken; and if such security shall be adjudged insufficient by the court, and if the defendant shall fail to appear and give special bail, if thereunto ruled by the court, such sheriff and security shall be subject to the same judgment and recovery, and have the same liberty of defence and relief, as if such security had been taken upon the execution of mesne process.(h)

Sheriff's duty on taking bond and security for replevying attached effects. His liability, if such security be adjudged insufficient, &c. Proceedings in such case.

10. It shall be lawful for any creditor, where his debt doth not exceed twenty dollars, or one thousand pounds of tobacco, to go before any justice of the peace of the county or corporation where his debtor resides, and make oath how much is justly due to him, and that he hath grounds to suspect, and verily believes, that such debtor intends to remove his effects; and, thereupon, such justice shall issue an attachment against the estate of such debtor, returnable to his next county or corporation court, directed to all sheriffs, serjeants and constables within the Commonwealth; and, by virtue thereof, it shall be lawful, as well for the sheriff, serjeant, or any constable of the county or corporation, where such attachment shall be obtained, as for the sheriff, serjeant or any constable of other counties or corporations, to pursue and seize such effects, and to make

Attachments how obtainable, for debts not exceeding twenty dollars, or one thousand pounds of tobacco.

By whom, and where to be executed.

(e) 1748, edi. 1752, c. 7, § 6; and edi. 1769, c. 4, § 6; 1792, edi. 1794, 1803, and '14, c. 78, § 6.

(f) *Ibid*, § 7.

(g) 1748, edi. 1752, c. 7, § 8; and edi. 1769, c. 4, § 8; 1792, edi. 1794, 1803, and '14, c. 78, § 8.

(h) *Ibid*, § 9.

A. D. 1819.
A. R. C. 43.

return of such attachment, to the court where the same shall be returnable; and, thereupon, such proceedings shall be had, as in other cases of attachments.(i)

How obtainable and returnable, for debts less than ten dollars, or four hundred pounds of tobacco.

11. AND, upon complaint made to a justice of the peace, that any person indebted to the complainant, in any less sum than ten dollars, or four hundred pounds of tobacco, is removing out of the county or corporation privately, or so absconds or conceals himself, that a warrant cannot be served upon him, such justice shall, taking bond and security, as in this act is before directed, grant an attachment against the estate of such debtor, or so much thereof, as shall be of value sufficient to satisfy the debt and costs of the party praying such attachment, directed to the sheriff, or any constable of his county, or serjeant, or any constable of his corporation, and returnable before himself, or any other justice thereof, who shall and may proceed thereupon, as upon an attachment returnable to the county or corporation court.(k)

Bond and security required.

Defence, or interpleader, to attachments, admissible without bail; but effects not replevied.

12. IN all cases of attachments, the defendant shall be admitted to make defence, and any other person claiming the property attached, may interplead, without giving bail: *Provided*, That the property attached shall not thereby be replevied.(l)

Judgment, where no repley or defence.

13. IF any such attachment as aforesaid, returnable to the county or corporation court, or before a justice of the peace, shall be returned *executed*, and the goods or effects attached shall not be replevied, or defence shall not be made without bail as this act directs, the plaintiff shall be entitled to a judgment for his whole debt, and may take execution thereupon; and all goods and effects attached and not replevied as aforesaid, shall be sold and disposed of, for and towards satisfaction of the plaintiff's judgment, in the same manner as goods taken in execution upon a writ of *fiery facias*. And, where any attachment shall be returned served in the hands of any garnishee, it shall be lawful, upon his or her appearance and examination, in the manner by this act before directed, to enter up judgment, and award execution, against every such garnishee and garnishees, for all sums of money due from him, her or them, to the person absconding, or in his, her or their custody or possession, for the use of such person, or so much thereof as shall be of the value sufficient to satisfy the debt and costs of the complainant; and all goods and effects whatsoever, in the hands of any garnishee or garnishees, belonging to such absconding person, shall be liable to satisfy such judgment.(m)

Sale of attached effects.

Judgment & execution against garnishee.

Effects of absconding person in garnishee's hands, liable to satisfy such judgment.

Attachment, when and how to be obtained, before debt is payable.

14. WHENEVER any creditor, whose claim amounts to ten dollars or four hundred pounds of tobacco, shall have sufficient grounds to suspect that his debtor will remove with his effects out of this Commonwealth, before his debt will be payable, or whenever such debtor shall have so removed, leaving effects, it shall be lawful for such creditor, to go before any magistrate of the county or corporation where his debtor resides, or, in

By whom granted.

(i) 1792, edi. 1794, 1803, and '14, c. 78, § 10.
(k) *Ibid*, § 11; and 1806, c. 7, § 1; edi. 1808, c. 88, § 1.

(l) 1805, c. 64, § 4; edition 1808, c. 70, § 4.
(m) 1748, edi. 1752, c. 7, § 12; and edi. 1769, c. 13, § 12; 1792, edi. 1794, 1803, and '44, c. 78, § 12.

case such debtor has removed, where he last resided, or where his effects may be found, and make oath to the true amount of his debt, and the time when it will be payable, and that he hath just cause to suspect, and verily believes, that such debtor will remove himself, with his effects, out of the Commonwealth, before the said debt will become payable, or hath actually so removed; and also, that he had no knowledge, when the said debt was contracted, of the intention of such debtor so to remove; and, thereupon such magistrate, taking bond and security from such creditor, as in other cases of attachments, shall issue an attachment against the goods and chattels of the debtor, returnable to the next court to be holden for such county or corporation, which attachment may be served on any goods and chattels of such debtor, or any garnishee or garnishees. If such debtor shall not, on or before the return of such attachment, enter into bond, with sufficient security, for the payment of the said debt, when it shall become due, the court, on due proof of the justice thereof, and of the intention of the debtor to remove, or of his having actually removed out of this Commonwealth, shall grant judgment, as in other cases of attachments: But execution shall be staid against any garnishee, who shall state, that he is indebted, or will at a future day be indebted to the defendant, until the claim of the plaintiff, or such garnishee's debt to the defendant shall become due; and the goods condemned shall be sold upon a credit, until the time the plaintiff's claim shall be payable. The sheriff, or other officer selling such goods, shall take a bond or bonds with good security from the purchaser or purchasers, and assign the same to the plaintiff, to the amount of his debt, interest and costs; and, where the property sold shall amount to more than the debt, interest and costs, shall take a bond, with good security, for the surplus, and assign the same to the defendant: *Provided, always*, That not more of the goods attached shall be sold, than shall be necessary to satisfy the debt, interest and costs, except in cases where the property sold cannot be divided; and, in such cases, the sheriff or other officer shall be entitled to commissions only on the amount of the plaintiff's demand; which commissions shall be included in the bond or bonds assigned to such plaintiff, who shall be liable therefor, as for commissions included in a forthcoming bond taken by virtue of an execution: *Provided, also*, That all such attachments shall be repleviable in the same manner as other attachments are by law repleviable. Where any such debt shall be less than ten dollars, or four hundred pounds of tobacco, an attachment may be attained as aforesaid, returnable before any magistrate of the county or corporation, who shall and may grant judgment thereon, and direct the goods condemned by him to be sold in manner aforesaid, or execution to be staid as aforesaid, against any garnishee or garnishees.(n)

A. D. 1819.

A. R. C. 43.

Oath by creditor.

Bond and security.
How returnable.

How executed.
Proof required.

Judgment.

Stay of execution
against garnishee.

Goods condemned
to be sold on credit,
till time of
payment of plaintiff's
claim; purchaser giving
bond and security.

Bond &c. for surplus,
to be assigned to defendant.
Proviso.

Rule as to sheriff's
commissions.

Such attachments
repleviable.

How returnable
&c., where debt
is less than ten
dollars or four
hundred pounds
of tobacco.

Where plaintiff
alleges garnishee
has not made true
discovery, jury to
try the fact.

15. *AND be it further enacted*, That, whenever the plaintiff in any attachment shall alledge, that any garnishee summoned in such attachment hath not discovered the true amount of

(n) 1805, c. 64, § 1; edi. 1808, c. 70, § 1.

A. D. 1819.
A. R. C. 43.

Judgment on verdict.

Costs to garnishee, if it be in his favour.

Jury to try right of property, where goods attached are claimed by third person.

Costs, how awarded.

Constables may execute attachments against absconding debtors.

Slaves &c.-attached, to be supported by sheriff or other officer, until sold, &c.

Compensation how ascertained and regulated.

Attachments may be issued and served on Sundays.

Repealing clause.

Proviso.

Commencement.

debts due from him to the defendant, or what goods and chattels belonging to the defendant are in his possession, the court shall direct, without the formality of pleading, a jury to be impannelled immediately, (unless good cause be shewn by either party for a continuance,) to enquire, what is the true amount due from such garnishee to the defendant, and what goods and chattels are in his possession belonging to the defendant. If the finding of the jury shall be against such garnishee, the court shall grant judgment, in the same manner, as if the facts found by the jury, had been confessed by him on his examination; and, if the jury find in his favor, he shall recover his costs against the plaintiff.(o)

16. WHENEVER, the goods and chattels, taken by virtue of any attachment, shall be claimed by any person, other than such debtor, the court shall immediately, (unless good cause be shewn by either party for a continuance,) direct a jury to be impannelled to enquire into the right of property; and, in all cases, where the jury find for a claimant, such claimant shall be entitled to his costs; and where the jury find for the plaintiff in the attachment, such plaintiff shall recover his costs against such claimant.(p)

17. ANY process of attachment against absconding debtors, may hereafter be executed and returned by a constable, in the same manner, as, by law, sheriffs are directed to execute and return the same.(q)

18. WHEN any sheriff, or other officer, shall serve an attachment on slaves, horses, or other live stock, and the same shall not be immediately replevied or restored to the debtor, it shall and may be lawful for such officers, and they are hereby required, to provide sufficient sustenance for the support of such slaves, and live stock, until such slaves or stock shall be sold, or otherwise legally discharged from such attachment; and their compensation for the same shall be ascertained, regulated and paid in like manner, as in case of slaves and live stock taken in execution.(r)

19. AND, upon proof being made before a magistrate, that a debtor is actually moving or absconding, as aforesaid, on Sunday, it shall be lawful to issue and serve an attachment against such debtor, as is directed by this act on any other day.(s)

20. ALL and every act or acts, and parts of acts, within the purview of this act, shall be, and the same are hereby repealed: *Provided*, That all rights vested before the commencement of this act, shall be and remain as if this act had never passed.

21. THIS act shall commence, and be in force from and after the first day of January eighteen hundred and twenty.

(o) 1805, c. 64, § 2; edi. 1808, c. 70, § 2.

(p) 1805, c. 64, § 3. edi. 1808, c. 70, § 3.

(q) 1802, c. 3, § 2. edi. 1808, c. 8, § 2.

(r) 1772, c. 6, § 2; Chan. Rev. p. 22; 1792, edi. 1794, 1803, and 1814, c. 78, § 13; 1806, c. 27, § 1; edi. 1808, c. 107, § 1.

(s) 1792, edi. 1794, 1803, and 1814, c. 78, § 14.

C. 124.

An act reducing into one all acts and parts of acts, providing a method to help and speed poor persons in their suits.

A. D. 1818.
A. R. C. 42.

[Passed January 17, 1818.*]

1. *Be it enacted by the General Assembly, That every poor person, who shall have cause of action against any person within this Commonwealth, shall have, by the direction of the court before whom he would sue, writ or writs original, and writs of subpœna, according to the nature of his cause, nothing paying for the same.*(a)

Poor persons to be allowed original writs, &c. without paying.
11 Hen. 7, c. 12.

2. *THE said court shall direct their clerk to issue the necessary process, shall assign him counsel learned in the laws, and appoint all other officers requisite and necessary to be had for the speed of the said suit to be had and made, who shall do their duties without any reward for their counsels, help and business in the same.*(b)

Court to assign them counsel.
11 Hen. 7, c. 12.

3. *ALL and every such poor person or persons, being plaintiff or plaintiffs in any such action or suit, so admitted by the court, shall not be compelled to pay any costs.*(c)

Poor persons, admitted to sue as such, not to pay costs.

4. *WHEN any person shall conceive himself or herself illegally detained as a slave in the possession of another, it shall and may be lawful for such person to make complaint thereof, either to a magistrate out of court, or to the superior court of law for the county, or the court of the county or corporation where he or she shall reside, and not elsewhere. When the complaint shall be made to a magistrate of such illegal detention, it shall be the duty of the said magistrate, forthwith, to issue his warrant summoning the owner or possessor of such complainant, to appear before him or some other magistrate of the county, to answer the complaint so made, and, upon his appearance, shall compel him to give bond with security, equal at least to the full value of such complainant, conditioned that he shall suffer him or her to appear at the next superior court of law, or court of the county or corporation, wherein he or she resides, for the purpose of petitioning the said court to be allowed to sue therein in forma pauperis, for the recovery of his or her freedom; and, if such master or holder shall fail or deny to give security as aforesaid, such magistrate shall order the complainant into the custody of the officer serving the warrant, to be kept by him safely, at the expense of such master or holder, until the sitting of the first court that shall happen after such judgment by him given, and produce him or her before such court.*(d)

23 Hen. 8, c. 15, § 2.
Remedy given to persons conceiving themselves illegally detained in slavery.
What shall be done when the complaint is made to a magistrate.

5. *WHEN a petition shall be offered to any superior court of law, or to the court of any county or corporation, by any per-*

Mode of proceeding when the petition for freedom is presented to a court.

(a) 1786, c. 65; 1792, *edi.* 1794, 1803, and '14, c. 126, § 1.

(d) 1795, c. 11, § 1; *edi.* 1803, and 1814, c. 189, § 1.

(b) *Ibid.*, § 2.

(c) *Ibid.*, § 3.

* Suspended 'till Jan. 1st, 1820, *vid. ante.* c. 45.

A. D. 1818.

A. R. C. 42.

Counsel to be appointed, who shall report the case & his opinion, before process shall issue.

Bond and security to be given by the defendant.

Penalty on persons aiding in the prosecution of a suit for freedom, in case the plaintiff fails to establish his claim.

Members of emancipation societies, not permitted to be jurors in such suits.

Trial thereof, when to be had.

Commencement.

son or persons so complaining, it shall state the material facts of the case, which being proved by affidavit or otherwise, to the satisfaction of such court, the petitioner shall obtain counsel, to be assigned by the said court, who, without fee or reward, shall prosecute the suit of such complainant: but, before process shall issue upon the said petition, the counsel so appointed shall make an exact statement to the court of the circumstances of the case, with his opinion thereupon; and unless, from such circumstances and opinion, the court shall see manifest reason to deny their interference, they shall order their clerk to issue process against the owner to appear and answer the complaint, and, in the mean time, that such complainant shall be in custody of the sheriff, until the owner shall give bond with security, either in court, or with the clerk of the court, to have him or her forthcoming, to answer the judgment of the court; in which case, the complainant shall be returned into the possession of the owner.(e)

6. And, if any person or persons shall be found aiding, abetting or maintaining any person in the prosecution of a suit upon a petition as aforesaid, and such person or persons shall fail to establish his or their claim to freedom, every person so found aiding, abetting or maintaining, shall forfeit and pay to the owner of such slave, or to the person who shall prosecute for the same, the sum of one hundred dollars for every person so complaining; to be recovered by action of debt or information, in any court of record within this Commonwealth; and moreover be liable to an action on the case for damages arising therefrom to the party grieved thereby.(f)

7. In all cases wherein the property of a person, held as a slave, demanding freedom, shall come before a court for trial, no person who shall be proved to be a member of any society instituted for the purpose of emancipating negroes from the possession of their masters, shall be admitted to serve as a juror in the trial of the said cause.(g)

8. EVERY petition or suit instituted for the emancipation of a person held as a slave shall be tried at the next quarterly or superior court succeeding such petition or suit, without waiting its regular turn on the docket, unless good cause be shewn, by one of the parties, for a continuance thereof.(h)

9. THIS act shall commence and be in force from and after the first day of January, eighteen hundred and nineteen.

(e) 1795, c. 11, § 2; edi. 1803, and 1814, c. 189, § 2.

(f) *Ibid*, § 3.

(g) 1797, c. 4, § 3; edi. 1803, and 1814, c. 222, § 3.

(h) *Ibid*, amended at the late revision.

C. 125.

*An act to reduce into one the several acts and parts of acts, prescribing a method of protesting inland bills of exchange, and allowing assignees of obligations to bring actions thereupon, in their own names.**

A. D. 1818.
A. R. C. 42.

[Passed January 13, 1818.†]

1. *BE it enacted by the General Assembly, That all bills of exchange or drafts for money in the nature of bills of exchange, drawn by any person or persons residing in this State, on any person or persons in the United States, or in the territories thereof, or in the District of Columbia, shall be considered, in all cases whatsoever, as inland bills of exchange; and, if such bill of exchange or draft shall be protested for non-acceptance or non-payment, the drawer or endorser shall be subject to the payment of one per centum damages thereof; and the bill of exchange or draft shall carry an interest of six per centum per annum, from the date of the protest, until the money therein drawn for shall be fully satisfied and paid, any thing in any law to the contrary notwithstanding.*(a)

Drafts for money by a resident of this State, on any person in United States, &c. declared inland bills of exchange.

Damages and interest thereupon.

2. *If a bill of exchange, for the sum of sixteen dollars and sixty-seven cents, or upwards, dated at any place in Virginia, drawn upon a person at any other place therein, or in the United States, or in the territories thereof, or the District of Columbia, expressed to be for value received, and payable at a certain number of days, weeks or months after date, being presented to the person, upon whom it shall be drawn, shall not be accepted by subscribing his name, with his proper hand, to the acceptance, written at the foot, or on the back of the bill, or, being accepted in that manner, and not otherwise, shall not be paid before the expiration of three days after it shall become due, the person to whom it shall be payable, or his agent or assigns, may cause the bill to be protested by a notary public, or, if there be no such, by any other person, in presence of two or more credible witnesses, for non-acceptance, in the form or to the effect following, written under a fair copy of the bill:*

Mode of protesting inland bills of exchange for non-acceptance or non-payment.
9 and 10 Will. 3. c. 17, § 1, 2, 3.

Know all men, that I, _____, on the _____ day of _____, at the usual place of abode of the above named _____, presented to him the bill, of which the above is a copy, and which the said _____ did not accept, wherefore I, the said _____, do hereby protest the said bill. Dated at _____, this _____ day of _____.

Form of such protest for non-acceptance;

Or, for non-payment after acceptance, in the same form, or to the same effect, except that the words, presented to him the bill, of which the above is a copy, and which the said _____ did not accept, shall be left out, and instead of them the words, _____

Or for non-payment.

(a) 1793, c. 14, § 1; edi. 1803 and '14, c. 191, § 1; amended at late revisal, by increasing the interest on a protest.

* Former laws on this subject; 1705, 3 *Hen. et. al. lar.* p. 378; 1748, edition 1752, c. 33, § 5; edition 1769, c. 27, § 5; 1786, c. 68; 1792, edition 1794, 1803 and '14, c. 29.

† Suspended till January 1st, 1820; *vid. ante.* c. 45.

A. D. 1818.
A. R. C. 42.

Notice to be given
drawer.

Payee neglecting
to protest, or to
give notice, how
far liable.

New bills to be
given, if the first
be lost.

Action of debt
may be maintain-
ed on a note or
writing for money
or tobacco.

Assignments of
bonds, bills, &c.
valid, and assign-
ees may sue in
their own names,
allowing all just
discounts.

Assignees may
recover from any
previous assignor
or assignors.
When suit is
brought against
remote assignor,
what defence he
may make.

Joint action to be
brought only a-
gainst joint as-
signors.
Rights of endors-
ers or of assignees,
not to be abridged
or destroyed by
these regulations.

Repealing clause.

Commencement.

demanded payment of the bill, of which the above is a copy, and which the said *did not pay*, be inserted. And the drawer, such protest being sent to him, or notice thereof in writing being given to him, or left at the place of his usual abode, within a reasonable time thereafter, shall pay the money mentioned in the bill to the person entitled to it, with interest and damages as aforesaid; and he, to whom the bill shall be payable, neglecting to procure the protest to be made, or due notice thereof to be given, shall be liable for all costs and damages accruing thereby.(b)

3. If the bill shall be lost or shall miscarry, the drawer shall sign and deliver another of the same tenor, sufficient security being given to indemnify him against all persons who may claim under the former.(c)

4. An action of debt may be maintained upon a note or writing by which the person signing the same shall promise or oblige himself to pay a sum of money or quantity of tobacco to another.(d)

5. ASSIGNMENTS of all bonds, bills and promissory notes, and other writings obligatory, whatsoever, shall be valid; and an assignee of any such may thereupon maintain any action, in his own name, which the original obligee or payee might have brought, but shall allow all just discounts, not only against himself, but against the assignor, before notice of the assignment was given to the defendant.(e)

6. THE assignee or assignees, his, her, or their executors or administrators, of any bill, note or obligation, shall hereafter be entitled to recover from any previous assignor or assignors, his, her or their executors or administrators; *Provided*, That, in any suit brought against a remote assignor or assignors, his, her or their executors, or administrators, he, she or they shall be subject only to such recovery, and shall have the benefit of the same defence, as if the suit had been instituted by the immediate assignee or assignees: *And provided, also*, That no joint action shall be commenced or prosecuted against any two or more persons, unless when they shall be joint assignors. But nothing in this act contained shall be so construed, as in any manner to abridge or destroy any rights which endorsers of bills of exchange, or assignees of bonds, notes and obligations, now are entitled to by law, or to which they were entitled on the first day of April, in the year of our Lord one thousand eight hundred and seven.(f)

7. ALL and every act and acts, part and parts of acts, coming within the purview of this act, shall be and the same are hereby repealed: *Provided*, That nothing herein contained shall extend to rights which have, or may have accrued before the commencement of this act.

8. THIS act shall commence and be in force from and after the first day of January, eighteen hundred and nineteen.

(b) 1786, c. 68,; 1792, edi. 1794, 1803 and '14, c. 29, § 1.

(c) *Ibid.* § 2.

(d) *Ibid.* § 3; from 1748, edi. 1752, c. 33, § 5; and edi. 1769, c. 27, § 5.

(e) Compiled of 1786, c. 68; 1792, edi. 1794, 1803 and '14, c. 29, § 4; and 1795, c. 14, § 2; edi. 1803 and '14, c. 191, § 2.

(f) 1806. c. 28, § 3; edition 1806, a. 108, § 3.

C. 126.

*An act for reducing into one act, all acts and parts of acts, concerning suits brought for sterling money, and for ascertaining the rate of exchange, and damages upon protested foreign bills of exchange.**

A. D. 1819.
A. R. C. 43.

[Passed January 18, 1819.]

1. *BE it enacted by the General Assembly, That, where any* Damages and interest payable on protested foreign bills of exchange.
‘foreign’† bill of exchange is, or shall be drawn, for the payment of any sum of money, in which the value is or shall be expressed to be received, and such bill is or shall be protested for non-acceptance, or non-payment, the drawer or endorser shall be subject to the payment of fifteen *per centum* damages thereon, and the bill shall carry an interest of six *per centum per annum* from the date of the protest, until the money therein drawn for shall be fully satisfied and paid.(a)

2. *IT shall be lawful for any person or persons, having a* Such bills how suitable.
right to demand any sum of money upon ‘such’‡ protested bill of exchange, to commence and prosecute an action of debt, for principal, damages, interest and charges of protest, against the drawers and|| endorsers jointly, or against either of them separately; and judgment shall and may be given for such principal, damages and charges, and interest upon such principal, after the rate aforesaid, until such judgment shall be fully satisfied.(b)

3. *‘AND, whereas doubts have arisen, whether the fourth* Repeal of 4th section of act of 1748.
‘section of the act, entitled, *An act for ascertaining the damages upon protested bills of exchange, and for the better recovery of debts due on promissory notes, and for the assignment of bonds, obligations and notes, which passed in the year*
‘seventeen hundred and forty-eight, be, or be not yet in force;
‘*Be it enacted, That the same shall be, and is hereby repealed.*’¶

4. *IN all ‘foreign’§ bills of exchange, given for any debt due* Sum in current money, paid or allowed for any foreign bill of exchange, to be expressed therein. Effect of omission.
in current money of this Commonwealth, or for current money advanced and paid for such bills, the sum in current money that was paid, or allowed for the same, shall be mentioned and expressed in such bill; and in default thereof, in case such bill shall be protested, and a suit brought for the recovery of the

(a) From 1748, *edi.* 1752, c. 33, § 2; and *edi.* 1769, c. 27, § 2; amended at revision of 1792, *edi.* 1794, 1803, and ‘14, c. 77, § 2.

(b) *Ibid.*, § 3.

* Former general laws touching this subject; 1748, *edi.* 1752, c. 33; and *edi.* 1769, c. 27; 1755, *edi.* 1769, c. 2, § 4, 5; 1792, *edi.* 1794, 1803, and ‘14, c. 77; the preamble, which was in all the former laws, struck out at the late revision.

† Inserted at the late revision.

‡ “Such” instead of “a,” inserted at the late revision.

|| In the revision of 1792, the word “or” was inserted here, instead of “and;” the word “and” was restored by act of 1805, c. 68.

¶ This section was introduced at the late revision, by recommendation of the revisors. The section of the act of 1748, here repealed, was reported by the revisors of 1792, (see report of revised bills, part I. page 79,) and omitted by the Legislature out of the act then passed on the subject.

§ Inserted at the late revision.

A. D. 1819.
A. R. C. 43.

Penalty for inserting any other than the true sum.

How appropriated and recoverable.

Drawer may compel payee by bill in chancery, to discover true rate of exchange.

Decree, upon discovery, that a less rate was allowed than expressed.

Judgments for sterling debts to be discharged at such difference of exchange as court shall direct.

Plaintiff declaring for sterling money, where debt is not so payable, to be nonsuited. Judgments on bonds or notes payable in sterling for current money debts, at what rate to be discharged.

money due thereby, the sum of money expressed in such bill shall be held and taken as current money, and judgment shall be entered accordingly; and, if any person, so receiving or purchasing a bill of exchange, shall express, or cause to be expressed therein, any other than the true sum in current money allowed for the same, every such person so offending shall forfeit and pay to the person drawing such bill, the whole sum of money for which such bill shall be drawn, to be recovered, with costs, by action of debt in any court of record within this Commonwealth, wherein the same shall be cognizable.(c)

5. AND, that people may not be injured for want of due proof of the rate of exchange, so given or allowed for such bills, where the same is not truly expressed therein; (such bills being usually negotiated in secret, and with such caution, that it can seldom be detected in the ordinary course of evidence;) *Be it further enacted*, That it shall and may be lawful, for any drawer of such bill of exchange, to exhibit a bill in chancery, in any court of record in this Commonwealth, having chancery jurisdiction, against the person to whom such bill shall be payable, to compel him to discover, upon his corporal oath, the true difference of exchange given or allowed for such bill; and, in that case, if it shall appear, that a less rate of exchange was given or allowed than is expressed, the drawee of such bill shall be discharged from the penalty herein-before inflicted for the same, but shall be decreed to pay to the drawer, so much money as the rate of exchange allowed shall be less than the rate of exchange expressed, together with the damages of fifteen *per centum* thereon, and costs of suit to the time of such decree.(d)

6. In any action, which hath been, or shall be commenced, and is or shall be depending for the recovery of any sterling money in any court of record within this Commonwealth, wherein the plaintiff or plaintiffs shall recover, such court shall have power, and are hereby directed, by rule to be entered at the foot of their judgment in such action, to order such judgment to be discharged or levied in current money, at such a difference of exchange as they shall think just; any law, usage, or custom to the contrary in any wise notwithstanding.(e)

7. If any person shall, in any suit hereafter to be brought, declare for sterling money, except where the debt or duty is payable in sterling, the plaintiff in every such suit shall be nonsuited; and, if any person shall, after the passing of this act, take a bond, obligation or note, payable in sterling, for any current money debt, and shall bring suit thereon, the court before whom such suit shall be tried, upon proof being made thereof, shall order the judgment to be discharged, or levied in current money, at the rate of thirty-three and one-third *per centum*.(f) *

(c) 1755, edi. 1769, c. 2, § 4; 1792, edi. 1794, 1803, and '14, c. 77, § 4.

(d) 1755, edi. 1769, c. 2, § 5; 1792, edi. 1794, 1803, and '14, c. 77, § 5.

(e) 1755, edi. 1769, c. 2, § 2; 1792, edi. 1794, 1803, and '14, c. 77, § 6.

(f) 1755, edi. 1769, c. 2, § 3; 1792, edi. 1794, 1803, and '14, c. 77, § 7; rate of exchange, by the act of 1755, was 25 *per cent.*; by the act of 1792, it was declared to be 33 1-3 *per cent.*, as in this act.

* The rate of exchange by the act of 1755, was 25 *per cent.* By the act of 1792, it was made 33 1-3, as in this act.

8. ALL and every act or acts, within the purview of this act, shall be, and are hereby repealed: *Provided*, That nothing herein contained shall be construed to extend to any contract entered into, or right which has accrued, prior to the commencement of this act; but the same shall remain in the same condition, as if this act had never been made.

A. D. 1819,
A. R. C. 43.
Repealing clause.
Proviso.

9. THIS act shall commence in force from and after the first day of January next.

C. 127.

*An act declaring the Law in cases of Discounts and Offsets.**

A. D. 1806.
A. R. C. 31.

[Passed December 29, 1806.]

WHEREAS doubts have arisen whether there is any law now in force regulating discounts and offsets in the courts of common law within this Commonwealth; for removing whereof,

1. *BE it enacted by the General Assembly*, That, when any suit shall be commenced and prosecuted in a court within this Commonwealth, for any debt due by judgment, bond, bill, or otherwise, the defendant shall have liberty, upon trial thereof, to make all the discount he can against such debt; and, upon proof thereof, the same shall be allowed in court.

Defendant at liberty to prove all discounts.
2 Geo. 2, c. 22, § 13. 8 Geo. 2, c. 24, § 4, 5.

2. THIS act shall be in force from and after the first day of May next.

C. 128.

An act for limitation of actions; for preventing frivolous and vexatious suits: concerning Jeofails, and certain proceedings in civil cases.†

A. D. 1819.
A. R. C. 43.

[Passed February 25, 1819.]

I. Limitations of Actions.‡

1. *BE it enacted by the General Assembly*, That all writs of *formedon in descender remainder*, or *reverter*, of any lands,

Of formedon in descender &c.
21 Jac. 1, c. 16,

* 1806, c. 8; edi. 1808, c. 89.—Former laws, touching this subject, 1705 § 1. 8 Hen. St. at lar. p. 378; 1748, edi. 1752, c. 33, § 6; and edi. 1769, c. 27, § 6. This provision was not reported by the revisors of 1792, and consequently not re-enacted by the legislature at that revision; which omission was the occasion of passing this act. *Vind. post.* c. 128, § 87.

† It is deemed unnecessary to make references from the particular provisions of this act, to laws existing before the revival of 1792; a general reference to them will be given wherever one is thought likely to be useful.—From the Revival of 1705, to that of 1792, the limitation of real actions was always inserted in the acts for settling the titles and bounds of lands, &c. The act of limitation of personal actions and for preventing frivolous and vexatious suits, and that concerning Jeofails, were separate and distinct statutes. These laws were consolidated into one act, and amended, at the Revival of 1792, Edi. '94, '03, and 1814, c. 76. N. B. The amendments made at the late Revival are distinguished, as far as practicable, by being printed within single inverted commas.

‡ These words are not in the roll, therefore not a part of the act; they are, inserted to make the arrangement of the act more distinct.

A. D. 1819.
A. R. C. 43.

Of right of entry.

Saving, in favour
of infants, &c.
21 Jac. 1, c. 16,
§ 2.

Limitations of
writs of right, and
other actions pos-
sessory.
32 Hen. 8, c. 2,
§ 1, 2, 3.

Of trespass, de-
tinue, trover, re-
plevin, account,
case, debt, assault
and battery, &c.
21 Jac. 1, c. 16,
§ 3.

tenements or hereditaments whatsoever, hereafter to be brought upon any title or cause heretofore accrued, or which may hereafter fall or accrue, shall be sued out within twenty years next after such title or cause of action accrued, and not afterwards; and that no person or persons, who now hath or have, or hereafter may have, any right or title of entry, into any lands, tenements or hereditaments, shall make any entry but within twenty years next after such right or title accrued; and such person shall be barred from any entry afterwards.(a)

2. *PROVIDED, nevertheless*, That if any person or persons, entitled to such writ or writs, or to such right or title of entry as aforesaid, shall be, or were under the age of one and twenty years, *feme covert, non compos mentis*, imprisoned or not within this Commonwealth, at the time of such right or title accrued, or coming to them, every such person, and his or her heirs, shall and may, notwithstanding the said twenty years are, or shall be expired, bring and maintain his action, or make his entry, within ten years next after such disabilities removed, or the death of the person so disabled, and not afterwards.(b)

3. In all writs of right, and other actions possessory, any person may maintain a writ of right upon the possession or seisin of his ancestor or predecessor, within fifty years, or any other possessory action upon the possession or seisin of his or of her ancestor or predecessor, within forty years, next before the *teste* of the writ; but no person shall maintain a real action upon his own possession or seisin, but within thirty years next before the *teste* of the writ.(c)*

4. ALL actions of trespass, *quare clausum fregit*, all actions of trespass, detainue, actions *sur trover*, and replevin for taking away of goods and chattels; all actions of account, and upon the case, other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants; all actions of debt, grounded upon any lending or contract without specialty; all actions of debt for arrearages of rent; all actions of assault, menace, battery, wounding and imprisonment, or any of them, which shall be sued or brought; shall be commenced and sued within the time and limitation hereafter expressed, and not after; that is to say: The said actions upon the case, other than for slander, and the said actions for account, and the said actions for trespass, debt, detainue and replevin for goods and chattels, and the said

(a) 1792, edi. 1794, 1803, and 1814,
c. 76, § 1.

(c) 1792, edi. 1794, 1803, and 1814,
c. 76, § 3.

(b) *Ibid*, § 2.

* Former acts of limitation of real actions: act of 1646, c. 13, 1657, c. 39, 1761-2, c. 72. (1 *Hen. St. at lar. p.* 331, 451. 2 *Id.* p. 97,) by all which, the limitation of all actions for lands was five years only. The first contained a saving in favor of orphans; the second extended the saving to *femes covert*, and persons insane; and the last, to persons out of the country. By the acts of 1703, c. 21, and 1710, c. 13. (3 *Id.* p. 323, 520,) the limitation of *formedon in descender, remainder* and *reverter*, and rights of entry, was twenty years; and of writs of right, *assise of mort d'ancestor, coznage, ayle*, and writs of entry on the disseisin, or possessory action on the possession, of an ancestor, thirty years; saving to infants, *femes covert*, persons insane, imprisoned, or out of the colony, their several rights of action for ten years after their disabilities removed. By the act of 1748, (5 *Id.* p. 413; edi. 1752, and 1769, of acts of 1748, c. 1, § 30,) the limitation of real actions was made the same, as that enacted at the Revision of 1792, c. 76; and re-enacted by this act.

actions of trespass *quare clausum fregit*, within five years next after the cause of such action or suit, and not after; and the said actions of trespass, of assault, battery, wounding, imprisonment, or any of them, within three years next after the cause of such actions or suits, and not after; and the said action upon the case for words, within one year next after the words spoken, and not after. (d)

A. D. 1819.
A. R. C. 43.

Of actions of slander.

5. JUDGMENTS in any court of record within this Commonwealth, where execution hath not issued, may be revived by *scire facias*, or an action of debt brought thereon, within ten years next after the date of such judgment, and not after; or where execution hath issued, and no return is made thereon, the party in whose favor the same was issued, shall and may obtain other executions, or move against any sheriff or other officer, or his or their security or securities, for not returning the same, for the term of ten years from the date of such judgment, and not after. (e)

Limitation of *scire facias*, or debt, on judgment. Of right to sue out new execution, or move against sheriff, where execution issued, and no return.

6. PROVIDED, That, if any person or persons, entitled to such judgment, where execution hath not issued, or where execution hath issued, and no return made, (in either case,) shall be, or were under the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned or not within this Commonwealth, at the time of such judgment being awarded, whether execution hath issued thereon or not, every such person, his or her heirs, executors or administrators, shall and may, notwithstanding the said ten years are or shall be expired, have the benefit of said judgment, where no execution hath issued, by reviving the same by *scire facias*, or by action of debt; and where execution hath issued, and no return made, every such person or persons, his or her heirs, executors or administrators, may have the benefit of other executions, or may move against any sheriff or other officer, or his or their security or securities, for the same, within five years after such disabilities removed, and not after. (f) *

Saving in favor of infants, &c. entitled to such judgments or executions.

7. ALL actions or suits, founded upon any account for goods, wares or merchandize sold and delivered, or for any articles charged in any store account, shall be commenced and sued within one year next after the cause of such action or suit, or

Limitation of actions on store accounts.

(d) 1792, edi. 1794, 1803, and 1814, c. 76, § 4.

(e) *Ibid*, § 5.

* Former acts of limitation of personal actions: act of 1705, c. 35; 1748, c. 9; 3 *Hen. st. at lar.* p. 381; 5 *Id.* 513; edi. 1733, acts of 1705, c. 35; edi. 1752 and 1769, acts of 1705, c. 8; acts of 1748, c. 5. There are some curious provisions on this subject in our ancient laws. By act of 1654, actions on bills, bonds and other engagements, were limited to 3 years; by act of 1657-8, actions on bills, bonds, judgments and other engagements were limited to five years, unless the debtor departed the country, and then the limitation did not run during his absence: the acts of 1660-1 and 1661-2, provided the same limitation of actions on bills and bonds; and that judgments should be of no force after seven years from the rendition thereof: the act of 1672 provided, that notes should not be recoverable of decedent's estates, unless sued within twelve months after decedent's death, and three years after date: In 1696, these provisions were in substance re-enacted. *vid.* 1 *Hen. st. at lar.* p. 390, 483; 2 *Id.* p. 22, 104, 301; 3 *Id.* p. 145. None of these laws contains any saving in favor of creditors absent, infant, insane, imprisoned or covert. All circumstances considered, it is unaccountable, that the assent of the crown to them was obtained. See also limitations of recovery of officers' fees, &c. 1 *Id.* 484; 2 *Id.* 26, 143; 3 *Id.* 163.

(f) *Ibid*, § 6. Sections 5 and 6 were introduced at the revival of 1792.

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Further time, in case of death of creditor or debtor within the year.

Dates of items to be specified in merchants' accounts.

Penalty for post-dating.

How recoverable and appropriated.

Limitation on store accounts to be computed from date of each item.

Verdict or judgment to be given only for what was delivered within the year.

Within what time action may be re-commenced, where judgment is arrested or reversed.

21 Jac. 1, c. 16, § 4.

In computations of time limited, certain periods not to be counted.

the delivery of such goods, wares and merchandize, and not after; except, that, in the case of the death of the creditors or debtors, before the expiration of the said term of one year, the further time of one year, from the death of such creditor or debtor, shall be allowed for the commencement of any such action or suit. (g)

8. AND, to prevent imposition or deception herein, the respective time or date of the delivery of the several articles, charged in any such account, or any receipt taken for the delivery of them, shall be particularly specified. And if any merchant or trader shall wilfully post-date any article or articles in such account, or the receipt taken for the delivery of them, he shall forfeit and pay tenfold the amount of the article or articles, so post-dated, to be recovered, with costs, by warrant where the penalty does not exceed twenty dollars, and by action of debt or information in any court of record, where the penalty shall exceed that sum; to the informer, where the informer prosecutes, or to the Commonwealth, 'for the use of the literary fund,' where the prosecution shall be first instituted on the public behalf. (h)

9. AND, to prevent any doubt in the construction hereof, it is hereby declared, that the before-mentioned limitation of one year, shall take place and be computed from the respective dates or times of delivery of the several articles entered or charged in any such account; and that all such articles as shall have been of more than one year's standing, when the action or suit was commenced, shall be disallowed and rejected, and verdict shall be given or judgment rendered, for no more than the amount of such articles, as appear to have been actually charged or delivered within one year next before the commencement of the suit as aforesaid. (i)*

10. PROVIDED, nevertheless, That if, in any of the said actions or suits, judgment be given for the plaintiff, and the same be afterwards reversed by error, or a verdict pass for the plaintiff, and, upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill, in all such cases, the party plaintiff, his heirs, executors or administrators, (as the case shall require,) may commence a new action or suit, from time to time, within one year next after such judgment reversed, or such judgment given against the plaintiff, and not after. (k)

11. PROVIDED, always, That in all questions which may arise in any court of record, upon any act for limitation of actions, making entries into lands, or limitation of evidence, in the computation of time, the several periods between the twelfth day of April, one thousand seven hundred and seventy-

(g) 1792, edi. 1794, 1803 and '14, c. 76, § 7.

(h) *Ibid*, § 8.

(i) 1792, edi. 1794, 1803 and '14, c. 76, § 9.

(k) *Ibid*, § 10.

* The provisions on this subject are of very ancient origin; but they were formerly accompanied with provisions concerning the proof of book debts, very favorable to the creditor: *vid.* 1 *Hen. st. at lar.* p. 301, 312, 485; 2 *Id.* 111, 112, 296, 442; 4 *Id.* 327; edi. 1733, acts 1632, c. 8; edi. 1752, acts 1748, c. 25; edi. 1769, c. 19. The act of October, 1779, c. 3, (edi. 1785, p. 108,) repealed the act prescribing the method of proving book-debts, and re-enacted the limitation of actions on such claims.

four, and the twelfth day of April, one thousand seven hundred and seventy-eight, and between the first day of January, one thousand seven hundred and eighty-one, and the fifth day of January, one thousand seven hundred and eighty-two, and between the fifth day of May, one thousand seven hundred and eighty-three, and the twentieth day of October, in the same year, shall not be accounted any part thereof, so as to bar such action, entry or evidence.(l)

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12. *PROVIDED, also*, That if any person or persons, that is or shall be entitled to any such action of trespass, detinue, action *sur trover*, replevin, actions of account, actions of debt, actions of trespass for assault, menace, battery, wounding or imprisonment, be, or shall be, at the time of any such cause of action given or accrued, fallen or come, within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned, beyond the seas, or out of the country, that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are before limited, after their coming to, or being of full age, discover, of same memory, at large, and returned from beyond the seas, or from without this country, as by other persons having no such impediment should be done.(m)

Saving in favor of infants, &c. entitled to trespass, detinue, trover, replevin, account, debt, assault and battery, &c.
21 Jac. 1, c. 16, § 7.

13. *PROVIDED, always*, That all suits hereafter brought in the name or names of any person or persons, residing beyond the seas, or out of this country, for recovery of any debt due for goods actually sold and delivered here, by his or their factor or factors, shall be commenced and prosecuted within the time appointed and limited by this act, for bringing the like suits, and not after; notwithstanding the saving herein-before contained to persons beyond the seas at the time their causes of action accrued; *Provided, nevertheless*, That, if any factor shall happen to die before the expiration of the time in which suit should* have been brought, such principal shall be allowed two years from the death of such factor, to commence and prosecute his, her or their action for any debt due to him, her or them, on account of any contract or dealing with such factor.(n)

Exception as to non-residents bringing suits for goods sold by their factors.

14. *PROVIDED, also*, That, if any person or persons, defendant or defendants to any of the aforesaid actions, shall abscond or conceal themselves, or, by removal out of the country, or the county where he or they do or shall reside, when such cause of action accrued, or by any other indirect ways or means, defeat or obstruct any person or persons, who have title thereto, from bringing or maintaining all, or any of the aforesaid actions within the respective times limited by this act, that then and in such case, such defendant or defendants are not to be admitted to plead this act in bar to any of the aforesaid actions; any thing in this act in any wise to the contrary notwithstanding.(o)

Defendants absconding, &c. not to have benefit of this act.
4 Ann. c. 16, § 19.

15. *PROVIDED, also*, That this act shall not extend to any action which shall be commenced against any master or com-

Nor masters of vessels putting on shore sick or disabled sailors, &c.

(l) 1792, edi. 1794, 1803 and '14,
c. 76, § 11.

(n) 1792, edi. 1794, 1803 and '14,
c. 76, § 13.

(m) *Ibid*, § 12.

(o) *Ibid*, § 14.

* "Shall," in the roll.

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or carrying debt-
ors, slaves, &c. out
of the State.

In actions against
executors, &c. on
open accounts,
items to be ex-
punged by the
court.

Saving in favor
of infants, &c.

Penalty for post-
dating such ac-
counts. .

Limitation of debt,
or *scire facias*, a-
gainst executors,
&c. upon judg-
ments against tes-
tators, &c.

Saving, in favor
of infants, &c.

Limitation of bills
of review.

Saving, in favor
of infants, &c.

Limitation of writs
of error or *super-
sedas*.

mander of a ship or vessel, who shall discharge or cause to be put on shore, any sick or disabled sailor belonging to his ship or vessel, or any servant, without taking due care for their main-tenance and cure, or carrying any debtor, servant or slave out of this Commonwealth, contrary to law.(p)

16. If any suit be brought against any executor or adminis-
trator, 'or other person having charge of the estate of a testa-
tor or intestate,' for the recovery of a debt due upon an open
account, it shall be the duty of the court, before whom such
suit shall be brought, to cause to be expunged from such account
every item thereof, which shall appear to have been due five
years before the death of the testator or intestate: saving to
all persons *non compos mentis*, *femes covert*, infants, imprisoned,
or out of this Commonwealth, who may be plaintiff in such
suits, three years after their several disabilities 'shall be' re-
moved. And, if any person shall wilfully post-date any such
account, he shall forfeit and pay tenfold the amount of the
articles so post-dated, to be recovered in any court of record,
where the penalty incurred shall exceed twenty-dollars, and
by warrant, before a justice of the peace, where the penalty
incurred shall not exceed that sum.(q)

17. No action of debt shall be brought against any executor
or administrator, 'or other person having charge of the estate
'of a testator or intestate,' upon a judgment obtained against
his testator or intestate, nor shall any *scire facias* be issued
against any executor or administrator, 'or other person having
'charge of the estate as aforesaid,' to revive such judgment,
after the expiration of five years from the qualification of his
executor or administrator, 'or of such other person having
'charge of the estate;' and all such judgments, after the
expiration of five years, upon which no proceedings shall have
been had, shall be deemed to have been paid and discharged:
saving to all persons, *non compos mentis*, *femes covert*, infants,
imprisoned, or out of this Commonwealth, who may have been
entitled to the benefit of such judgment, three years after their
several disabilities removed.(r)

18. No bill of review* shall be granted by any corporation
or county court sitting in chancery, or by any superior court of
chancery, to any decree pronounced in a cause which shall be
finally decided, unless the same be applied for within three
years, next after such final decision: saving to infants, *femes
covert*, persons of insane mind, 'persons imprisoned,' and per-
sons out of the state, in the service of this State, or of the
United States, a right to obtain such bill of review, within
three years after their respective disabilities are removed.(s)

19. No writ of error or *supersedeas* shall be granted to any
judgment of a court of law, after the expiration of five years
from the time when such judgment shall have been made

(p) 1792, edi. 1794, 1803, and 1814,
c. 76, § 15.

(q) 1792, edi. 1794, 1803, and 1814,
c. 92, § 56.

(r) 1792, edi. 1794, 1803, and 1814,
c. 92, § 57; sections 16 and 17, were
introduced at the revival of 1792.

(s) 1813, c. 12, § 3.

* The limitation of bills of review in England is not fixed by statute, but by
analogy (in practice) to the limitation of writs of error and *supersedeas*, which
was twenty years.

final : saving to all persons, *non compos mentis*, infants, *femes covert*, persons imprisoned or out of the United States, in the service thereof, or of this State, three years after their several disabilities removed.(t)

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Saving, in favour of infants, &c.
10 Will. 3, c. 14, § 1, by which the limitation is twenty years.

II. And for the relief of the good people of this Commonwealth against causeless and vexatious suits, and for the better enabling them to recover their just rights ;

20. *Be it enacted*, That in all actions of assault and battery, and slander, commenced and prosecuted in any superior court of law, if the jury find under the sum of sixteen dollars and sixty-six cents, and in the like actions commenced and prosecuted in any county or corporation court, if the jury find under six dollars and sixty-six cents, the plaintiff, in either case, shall not recover any costs.(v)

Prevention of vexatious suits.

Costs, where not recoverable.

21. AND in all actions of trespass '*quare clausum fregit*,'(w) where the court, before whom the trial shall be, shall not be satisfied, and enter upon the record, that the freehold, title, or interest of the land mentioned in the plaintiff's declaration, was or might have been in question, or that the trespass was wilful or malicious ; and in all other actions of trespass, where the court before whom the trial shall be, shall not be satisfied, and enter upon the record, that the trespass was wilful or malicious ; 'and in all actions upon the case, actions of covenant, 'and actions of debt for a penalty intended to secure the 'performance of a covenant or condition, where the court 'before whom the trial shall be, shall not be satisfied, and enter 'upon the record, that the action was neither frivolous nor 'vexatious,' if the jury find under six dollars, and sixty-six cents, the plaintiff shall not recover more costs than the sum so found, and, if more costs are awarded, the judgment shall be void, and shall be amended upon a motion at any time, by the court who awarded the same ; and the party injured shall be redressed, as to such costs so wrongfully awarded, in case the same be levied upon him. And, where several persons shall be made defendants, in any action of trespass, assault, false imprisonment, or ejectment, and, upon the trial thereof, any one or more of them shall be acquitted by verdict ; every defendant so acquitted, shall have and recover his costs of suit, in like manner as if a verdict had been given against the plaintiff or plaintiffs, and acquitted all the defendants ; unless the court, before whom such cause shall be tried, shall be satisfied, that there was reasonable cause for making such person or persons defendant or defendants to such action, and shall order it otherwise.(x)

Where no more costs than damages.
21 Jac. 1, c. 16, § 6.

22 and 23 Car. 2, c. 9, § 136.
43 Eliz. c. 6, § 2, (continued indefinitely by 3 Car. 1, c. 4, and 16 Car. 1, c. 4.)
8 and 9 Will. 3, c. 11, § 1, 4.

Remedy, if more be awarded.

Of several defendants, if any one be acquitted, costs allowed him.

Exception.

22. IN all actions of trespass *quare clausum fregit*, wherein the defendant or defendants shall disclaim, in his or their plea, to make any title or claim to the land in which the trespass is

Defendant may plead disclaimer, &c. in trespass *quare clausum fregit*.

(t) 1792, *edi.* 1794, 1803, and 1814, c. 66, § 51, 52.

(v) *Ibid.* c. 76, § 16.

(w) The words "and all other personal actions," which followed the word "trespass," in the former law, stricken out, at the revival of 1818, and the words "*quare clausum fre-*

git," substituted: all other actions of trespass, and certain specified personal actions, provided for, in this section ; *vid.* 1792, *edi.* 1794, 1803, and 1814, c. 76, § 17.

(x) 1792, *edi.* 1794, 1803, and 1814, c. 76, § 17, as am. at revival of 1818.

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Plaintiff forced to
join issue.
Effect of verdict
for defendant, or
nonsuit of plaintiff.

by the declaration supposed to be done, and the trespass be by negligence or involuntary, the defendant or defendants shall be admitted to plead a disclaimer, and that the trespass was by negligence or involuntary, and a tender or offer of sufficient amends for such trespass before the action brought; whereupon, or upon some of them, the plaintiff or plaintiffs shall be enforced to join issue; and, if the said issue be found for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited, the plaintiff or plaintiffs shall be clearly barred from the said action or actions, and all other suits concerning the same.(xx) *

III. And for the further regulation of costs:

In all cases at law,
except motions,
the party having
judgment, to re-
cover costs.

St. Glouc. 6 Ed. 1.
Expos. St. Glouc.

3 Hen. 8, c. 10.

19 Hen. 7, c. 20.

23 Hen. 8, c. 15.

24 Hen. 8, c. 8.

4 Jac. 1, c. 3.

On motions, costs
discretionary.

Full costs, inclu-
ding attorney's
fee, to be taxed in
judgments against
executors, &c.

Judgments for
costs, how to be
levied against exe-
cutors, &c., *defen-*
dants;

and how, against
them, *plaintiffs*.

Power of court in
such cases.

Saving the discre-
tionary power of
courts of equity, as
to costs.

23. *Be it enacted*, That, in all cases at law, except motions, where judgment shall be given for the defendant or appellee, he shall recover his costs against the plaintiff or appellant, and, have execution for the same; and, in all such cases, where judgment shall be given for the plaintiff or appellant, if not otherwise provided by law, he shall recover his costs against the defendant or appellee, and have execution for the same.(y)

24. On all motions, the court may give or refuse costs, at their discretion, unless where it is otherwise provided by law.(y)

25. In any cause, whether at law or in equity, whether appellate or original, when the judgment or decree shall be rendered against an executor or administrator, or other person having charge of the estate of a testator or intestate, full costs shall be taxed against him, including an attorney's fee, in the same manner as costs are taxed against a person suing or sued, in his own right. If such executor, administrator or other person, be defendant, the judgment or decree for costs shall be levied of the goods and chattels of the testator or intestate, in his hands to be administered, if so much thereof be found, if not, then of his own proper goods and chattels. If such executor, administrator or other person be plaintiff, then the judgment or decree for costs shall be rendered, to be levied only of the goods and chattels of the testator or intestate, in his hands to be administered; unless the court shall be of opinion, that such executor, administrator or other person, in the prudent discharge of his official duty, ought not to have brought the action; and, if the court shall be of that opinion, then they shall render the judgment or decree for costs, to be levied of the goods and chattels of the testator or intestate, in the hands of such executor, administrator or other person to be administered, if so much thereof be found, if not, then of his own proper goods and chattels: *Provided*, That nothing herein contained shall be construed to take away or abridge the discretion of a court of equity over the subject of costs.(z)

(xx) Editions 1794, 1803, and 1814,
c. 76, § 19.

(y) 1792, edi. 1794, 1803, and 1814,
c. 76, § 17; and c. 66, § 44.

(z) 1813, c. 13, § 2.

* In the roll, this section stands as the 31st section; manifestly misplaced, since it clearly belongs to this head of provisions for prevention of vexatious suits. Liberty has been taken to transpose it, and insert it under this head.

26. WHEN any plea in abatement shall, upon argument in any court of law, be adjudged insufficient, the plaintiff shall recover full costs to the time of overruling the plea, a lawyer's fee only excepted; (a) 'and when, by an interlocutory judgment, any other part of the pleadings shall be adjudged insufficient, all costs occasioned by such insufficient pleading, shall be adjudged against him who committed the fault.'

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Rule as to costs on over-ruling pleas in abatement; or adjudging other pleadings insufficient.

27. 'EVERY new trial granted at law, shall be upon the condition of paying the costs of the former trial, unless such new trial be granted for the misconduct of the opposite party; and in such case, the person guilty of the misconduct, shall be adjudged to pay the costs of the former trial.'

New trials to be on condition of paying costs of former trial. Exception.

28. EVERY action at law, or suit in equity, commenced or prosecuted in the name of any person, not residing in Virginia, unless he be employed abroad, in the service of the Commonwealth, or of the United States of America, shall be dismissed, if security be not given with the clerk of the court, in which the suit shall be depending, within sixty days after notice shall, at any time during such non-residence, have been given to the demandant or plaintiff, or his attorney, by some person interested, that such security is required for payment of the costs and damages, which may be awarded to the tenant or defendant, and also for the fees which will become due to the officers of the court; (b) Such non-resident demandant or plaintiff, requiring services of the clerk of any court, shall secure the payment of the fees for such services, before the said clerk shall be obliged to perform them. (c) 'In all cases, where security for costs shall be required under the provisions of this section, and a question shall arise as to the residence of the plaintiff or demandant, the burthen of proving such residence shall be upon him.'

How security for costs may be required of non-resident plaintiffs.

Such plaintiffs to secure payment of clerk's fees.

Burthen of proof as to plaintiff's residence, to be upon him.

29. A FEE of fifty cents for each legal notice proved to have been delivered, in any cause, whether at law or in equity, shall be taxed in the bill of costs. (d)

Fees for notices, to be taxed in bill of costs.

30. ALL taxes imposed on law proceedings, shall be included in the bill of costs. (e) *

Also, taxes on law process.

31. THE laws of costs shall not be interpreted as penal laws. (f)

Laws of costs, how construed.

IV. For preventing delays :

32. *Be it enacted*, That the parol shall not demur, in any suit now depending, or hereafter to be brought, in any court of law or equity, by reason of the infancy of the plaintiffs or defendants, or of any or either of them, but the court may nevertheless proceed to judgment or final decree, in the same. (g)

Parol not to demur for infancy.

(a) 1792, edi. 1794, 1803, and 1814,

(e) Edi. 1803, and '14, c. 242, § 1.

c. 66, § 39; and c. 67, § 36.

(f) 1792, edi. 1794, 1803, and 1814,

(b) *Ibid.*, c. 76, § 23.

c. 76, § 44.

(c) *Ibid.*, c. 201, § 1.

(g) Edi. 1803, and '14, c. 240.

(d) Edi. 1803, and '14, c. 270; and edi. 1808, c. 57, § 3.

* Revenue law of 1808, c. 17, first imposed a tax on appeals from the superior courts of chancery to the court of appeals. Revenue law of 1812, c. 1, § 1, and subsequent revenue laws, directed taxes on law process to be taxed in the bill of costs.

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Pleas in abatement, and pleas of *non est factum*, to be on oath. Oath to be taken by defendant, not being himself obligor, covenantor or grantor.

Process and returns in real actions.

Essoins, views and vouchers abolished. Regulations for speeding such actions.

Joint tenancy may be pleaded in real or mixed actions. *Stat. de conjunctim seoffatis*, 34 Ed. 1, st. 1.

If verdict against such plea, judgment for plaintiff, and double damages; If not, writ to be abated.

Such plea to be on oath.

Effect of exception of non-tenure of parcel. 25 Ed. 3, st. 1, c. 16.

Where action, real or mixed, shall not abate by death of party.

33. No plea in abatement shall be admitted or received, unless the party offering the same shall prove the truth thereof, by oath or affirmation, as the case may require; and no plea of *non est factum*, offered by any person, charged as obligor, covenantor, or grantor of a deed, shall be admitted or received, unless the truth thereof shall in like manner be proved, by oath or affirmation; and where any person, other than the obligor, covenantor or grantor, shall be the defendant, such defendant shall prove, by oath or affirmation, that he or she verily believes that the deed, on which the action is founded, is not the deed of the person charged as obligor, covenantor or grantor.(i)

34. PROCESS in all real actions, other than writs of right, shall be according to the course of the common law, except that the returns shall be according to the laws of this Commonwealth; but all essoins, views and vouchers shall be and they are hereby taken away; and, after one imparlance, unless the tenant shall plead non-tenure, joint tenancy or several tenancy, in abatement, and then, after such plea shall be overruled, he shall put himself on the grand assize, and the mise shall be joined upon the mere right, 'or the general issue be 'joined, as the case may require,' and be tried at the next court, by twelve jurors, to be summoned, tried and sworn, as in all other actions: And, to remove all delays and groundless pretences, in saving the default of the tenant, no excuse shall be admitted but non-summons; and, such excuse being allowed, he may imparle, and, at the next court, shall either plead in abatement, or put himself upon the grand assize, or upon the country, as aforesaid.(k)

35. IN all actions, real or mixed, which shall hereafter be brought, for the recovery of any lands or tenements, within this Commonwealth, if the tenant shall plead, that he holdeth the tenements in demand, jointly with his wife, or any other person, not named in the writ, and shew forth a deed testifying the same, and demand judgment of the writ, and thereupon issue be joined, and it be found against the truth of the plea, by him in manner aforesaid pleaded, the plaintiff shall recover his seisin of the tenements in demand, and double damages, against the party by whom such plea shall have been pleaded; but, if it be found that the matter aforesaid was truly and lawfully alleged, by such defendant, in his plea, the writ shall be abated; *Provided, always*, That no such plea shall be admitted or received in any case, unless the party offering the same shall prove the truth thereof by oath or affirmation, as the case may require.(l)

36. By the exception of non-tenure of parcel of any lands or tenements, for which any action or suit shall be brought, the writ shall not be abated, but for the quantity of the non-tenure which shall be alleged.(m)

37. 'WHERE any action, real or mixed, is now or shall be depending, in any court of this Commonwealth, for the recovery

(i) 1792, edi. 1794, 1803, and 1814,

c. 66, § 38, 39.

(k) *Ibid*, c. 76, § 25.

(l) 1792, edi. 1794, 1803, and 1814,

c. 123, § 1, 2.

(m) *Ibid*, c. 125.

ry of any lands or tenements, and any party thereto shall die, before verdict rendered, such action shall not abate, if the same be maintainable by or against the heir or devisee of the deceased party. But the plaintiff, or, if he be dead, his heir or devisee, may have a *scire facias* against the defendant, or, if he be dead, against his heir or devisee, to shew cause generally why such action shall not be proceeded in to a final judgment. Upon the return of such *scire facias* executed, if no good cause be shewn to the contrary, such heir or devisee shall be made a party to the action, and the cause shall proceed in the same manner as if such heir or devisee had been originally a party thereto; *Provided*, That such heir or devisee shall have liberty to plead *de novo*, or to amend the pleadings in such manner as the nature of the case may require; and that he shall be entitled to a continuance of the cause, for one term after such *scire facias* returned executed.

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Scire facias in such case.

Proceeding thereupon.

Proviso as to plea de novo, or amendment of plea. Continuance.

38. WHERE any 'personal* action' or suit in equity, is now or shall be depending in any court of this Commonwealth, and either of the parties shall die, before 'verdict rendered† or final' decree be had, such action or suit shall not abate, if the same were originally maintainable by or against an executor or administrator, but the plaintiff, or, if he be dead, his executor or administrator, or the sheriff, serjeant, 'or other curator of the decedent's estate,' shall and may have a *scire facias* against the defendant, or, if he be dead, against his executor or administrator, or against the sheriff, serjeant, 'or other curator of his estate,' to shew cause generally why such action or suit shall not be proceeded in to a final judgment or decree. And if such executor, administrator, sheriff, serjeant 'or curator,' upon the return of a *scire facias* executed, shall neglect or refuse to enter his or her appearance to the suit, the court may proceed to final judgment or decree therein, in the same manner as if such executor, administrator, sheriff, serjeant 'or curator' had entered his or her appearance. And if such executor, administrator, sheriff, serjeant 'or curator' shall appear to the suit upon the return of such *scire facias* executed, or if, without a *scire facias*, he or she shall, voluntarily, enter himself or herself defendant to such suit, then, and in either case, such executor, administrator, sheriff, serjeant 'or curator' shall have liberty to plead *de novo* to the plaintiff's action, every such plea or pleas, as an executor or administrator may lawfully plead, or as the deceased party might or could have pleaded, if he or she had lived; and if such executor, administrator, sheriff, serjeant 'or curator' should not desire to plead *de novo*, or, if no issue shall have been joined or pleadings entered, before the death of his or her testator or intestate, or if any interlocutory judgment or decree shall have been entered in the life-time of the deceased party, and the executor, administrator, sheriff, serjeant 'or curator,' shall refuse to plead, or shall not desire to set aside

Where personal actions, or suits in equity, shall not abate by death of parties.

8 and 9 Will. 3, c. 11, § 6.

Scire facias.

Proceeding thereupon.

Plea de novo.

* The words "personal action," substituted at the revival of 1818, for "action at law," in the former act.

† The words "verdict rendered, or final," inserted at the revival of 1818, instead of "final judgment, or," in the former law.

A. D. 1819.
A. R. C. 43.

Cause to retain
its place on docket.
Continuance.

Where action
shall proceed for
or against surviv-
ing plaintiffs or
defendants.

Death of party
between verdict
and judgment not
pleadable in a
batement in any
action.

Discontinuance, if
scire facias be not
applied for, at or
before second
term.

the interlocutory judgment or decree, the court shall proceed to final judgment or decree, for or against the executor, administrator, sheriff, serjeant 'or curator,' in the same manner, as if the original writ had been issued against him or her, as executor, administrator, sheriff, serjeant 'or curator,' and the cause shall remain in its place on the issue or rule docket, as the case may be. But, the defendant being an executor, administrator, sheriff, serjeant 'or curator,' shall be entitled to a continuance until the next term after that to which a *scire facias* shall have been returned executed, or at which he or she shall have voluntarily entered himself or herself a defendant.(p) And, if there be two or more plaintiffs or defendants, and one or more of them should die, if the cause of action should survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall proceed at the suit of the surviving plaintiff or plaintiffs, against the surviving defendant or defendants. And in all actions, real, personal and mixed, if either party should die between verdict and judgment, such death shall not be pleaded in abatement, but judgment shall be entered as if both parties were living.(q) In any such action, real, personal or mixed, and in any such suit in equity, where the demandant or plaintiff shall die before verdict rendered, or final decree as aforesaid, if the heir or devisee, executor, administrator or other representative of the deceased party, shall not appear and pray for such *scire facias*, at or before the second term of the court, next after that at which the death of such party shall have been suggested on the record, such action or suit shall be discontinued, unless good cause be shewn to the contrary.'

V. For regulating certain proceedings in Civil cases;

Forms of writs.

39. *Be it enacted*, That, until an alteration be made, by the court of appeals, in the forms of writs, the same shall be, as nearly as may be, assimilated to those heretofore used, in the general court.(r)

How issuable, and
returnable.

40. ALL writs, summonses and other legal process, shall be issued by the clerk, and bear *teste* in his name; and shall be returnable as herein-after directed, except *subpœnas* for witnesses, which may be returnable, either to the next court, or immediately, or to any day of the term.(s)

Capias ad respondendum, where not issuable against non-resident till *non est inventus* returned in his own county, &c.

41. EXCEPT in cases where it shall be otherwise expressly provided by law, no writ of *capias ad respondendum*, from any superior or inferior court of law, shall be issued against any person, in any other county or corporation, than that in which he resides, until a *non est inventus* has been returned in his or her own county or corporation, upon a *capias* issued against such defendant, for the same cause of action; and every writ issued contrary hereto,* shall be void and dismissed, upon the first calling thereof: *Provided, nevertheless*, That, where two or more persons are or shall be, jointly, or jointly and severally, bound for the performance of any contract, or for the payment

(p) Compiled of: acts of 1806, c. 15, and c. 21; *vid.* edi. 1808, c. 94, 101.
(q) 1792, edi. 1794, 1803 and 1814, c. 76, § 20.

(r) 1792, edi. 1794, 1803, and 1814, c. 63, § 21, and c. 66, § 20.
(s) *Ibid.* c. 66, § 21.
* "thereto" in the roll.

of any money or tobacco, by bond, covenant, or otherwise, it shall be lawful to prosecute such persons jointly, in any county or corporation wherein either of them may reside, and process shall be issued accordingly from the court having jurisdiction over such county or corporation, and shall be served on the non-resident defendant, if he be found therein: *Provided, also,* That such writ may issue against any defendant or defendants, in any county or corporation, wherein the cause of action or any part thereof arose, although such defendant or defendants do not reside therein, and although no such previous writ shall have issued in his or her own county or corporation: *And provided, moreover,* That, where any person hath no fixed or known residence, in any county or corporation, within this Commonwealth, such writ may be issued and served upon him, in any county or corporation, in which he may be found.(t)

A. D. 1819.
A. R. C. 45.

Process how to be served.

Writ against non-resident may issue in county &c. where cause of action arose.

Writ how issuable against person having no fixed or known residence.

42. It shall not be lawful to demand bail, in any personal action, except as is herein-after particularly mentioned: And in all such actions wherein bail may not lawfully be demanded, the plaintiff, or his attorney, shall, on pain of having his suit dismissed with costs, endorse, on the original writ or subsequent process, the true species of action, and that bail is not required in order that the sheriff may be informed how to govern himself in the execution thereof; and, in the cases before mentioned, the sheriff may take the engagement of an attorney practising in the court, from which the process issued, endorsed on the writ, that he will appear for the defendant or defendants, and such appearance shall be entered with the clerk in the office on the return day of the writ. And although no such engagement of an attorney shall be offered to the sheriff, he shall nevertheless be restrained from committing the defendant to prison, or detaining him in his custody, for want of appearance bail, but the sheriff in such case shall return the writ executed; and if the defendant shall fail to appear thereto, there shall be the like proceeding against him only, as is herein-after directed, against defendants and their appearance bail, where such is taken.(v)

Endorsement to be made on the writ, where bail is not demandable.

Sheriff may take attorney's engagement to appear for defendant. Effect thereof. Writ to be returned without bail, though no such engagement be offered. 12 Geo. 1, c. 29, § 1. Proceeding thereon.

43. IN all actions of debt, founded upon any writing obligatory, bill or note in writing, for the payment of money or tobacco, all actions of covenant and detinue, and all actions upon statutes specially authorising bail to be taken, the plaintiff may of right demand bail; and if he shall endorse on the original writ or subsequent process, the true species of action, in such manner that his title to bail will appear thereby, and shall also endorse that bail is required, it shall then be the duty of the sheriff to take bail accordingly.(w)

In what actions bail is demandable. 12 Geo. 1, c. 29, § 2, revived and perpetuated, 21 Geo. 2, c. 27. Endorsement on writ.

44. IN all other personal actions, it shall be lawful for any judge of the general court, or any justice of the peace for any county or corporation, upon proper affidavit, verifying the justice of the plaintiff's action, and shewing probable cause to apprehend that the defendant will depart from the jurisdiction

How bail may be obtained, by affidavit, in other personal actions.

(t) From 1792, edi. 1794, 1803, and 1814, c. 66, § 24. *Ibid.* c. 67, § 23, 1808, c. 6, § 2, amended at Revision of 1818.

(v) Altered from 1792, edi. 1794, 1803, and 1814, c. 66, § 25, and c. 67, § 19.

(w) From 1792, edi. 1794, 1803, and 1814, c. 66, § 26, and c. 67, § 19.

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Duty of sheriff to return names of bail, and the bail bond, or a copy. Where suit may be defended by the appearance bail;

or by the sheriff.

Provision if the bail returned be adjudged insufficient. Judgment against sheriff and bail.

Objections to sufficiency of appearance bail, when to be taken. On whom is the burthen of proof.

How judgment may be, if sheriff or bail die before it be confirmed against him.

Sheriff's remedy against the bail's estate.

Attachment issuable, on motion of bail or sheriff &c., against estate of defendant.

Order of sale.

of the court so that process of execution cannot be served upon him, to direct bail to be taken, by endorsement on the original writ, or subsequent process, and the sheriff shall govern himself accordingly.(x)

45. In all cases, where bail shall so have been required, by the endorsement of the plaintiff or his attorney, or of a judge or justice, the sheriff shall return on the writ, the names of the bail by him taken, and shall return the bail bond or a copy thereof, to the clerk's office, on the day of appearance. And if the defendant shall fail to appear accordingly, and give special bail, the bail for appearance may defend the suit, and shall be subject to the same judgment and recovery, as the defendant might or would be subject to, if he had appeared and given special bail. If the sheriff shall not return bail and the bail bond, or a copy thereof, and the defendant shall fail to appear and give special bail, in such case the sheriff shall have like liberty of defence, and shall be subject to the same judgment and recovery, as is provided in the case of appearance bail. If the bail, returned by the sheriff, be objected to by the plaintiff, and be adjudged insufficient, by the court, and the defendant shall fail to give special bail, the sheriff shall thereupon be considered a party to the proceedings; and, without remanding the cause to the rules, he, together with the appearance bail, shall be subject to the same judgment and recovery, that the appearance bail alone would have been subject to, and shall be entitled to the same defence.(y)

46. OBJECTIONS to the sufficiency of the appearance bail shall be taken, either at the rules, or in court, at or before the first term after the return day of the writ, and not thereafter: They shall be decided by the court, without delay,(y) and the burthen of the proof shall be on the party affirming the sufficiency.

47. If the sheriff 'or appearance bail,' depart this life, before judgment be confirmed against him, in such case, the judgment may be confirmed against his executors or administrators; or, if there shall not be a certificate of probat or administration granted, then it may be confirmed against his estate; and a writ of execution may in either case be issued.(y)

48. 'In all cases wherein the bail being adjudged insufficient, judgment shall be rendered against the sheriff, his executors, administrators or estate, such sheriff and his representatives shall have the same remedy against the estate of the bail, as against the estate of the defendant.'

49. In every case, where judgment shall be confirmed against any defendant or defendants, and the appearance bail, or the sheriff, or the executors, administrators or estate of such appearance bail or sheriff, the court, on motion of such bail or sheriff, or executors or administrators, or other person on behalf of the estate of such sheriff or bail, may order an attachment against the estate of such defendant or defendants, returnable to the next succeeding court, and upon the execution

(x) From 1792, edi. 1794, 1803 and 1814, c. 66, § 25; c. 67, § 19; and 1809, c. 17, § 6.

(y) From 1792, edi. 1794, 1803 and 1814, c. 66, § 27; c. 67, § 21, and 1802, c. 30, § 3.

and return of such attachment, the court shall order the estate seized, or so much thereof as will be sufficient to satisfy the judgment and costs, and all costs accruing under the attachment, to be sold as goods taken in execution upon a *feri facias*; and, out of the money, such judgment and costs shall be satisfied, and the surplus, if any, restored, to the defendant or defendants, when required. (z)

A. D. 1819.

A. R. C. 43.

Proceeds how disposed of.

50. In any personal action, in which bail shall not have been required, the court may at any time before final judgment, for good cause shewn, rule the defendant to give special bail, and, on his failure to do so, may refuse him permission to plead, or may set aside any plea already pleaded by him, and award a writ of enquiry, or otherwise proceed to judgment according to law, or may cause him to be arrested and committed to prison. (a)

Court may require special bail in any personal action, for good cause shewn. Effect of failure to give it.

51. ANY judge of the general court, when not sitting in court, or any justice of the peace, or any mayor, recorder or alderman of a corporation, may take recognizance of special bail, in any action depending in any court of record within this Commonwealth, which shall be transmitted by the person taking the same, before the next succeeding court, to the clerk of the said court, to be filed with the papers in such action; the form of which recognizance shall be in substance as followeth, to wit:

Who may take recognizance of special bail.

Duty of person taking it.

Form thereof.

County (or corporation) to wit:

Memorandum, that, upon the day of in the year, E. F. of the county of personally appeared before me, one of the judges of the general court, (or a justice of the peace for the county or corporation, aforesaid,) and undertook for C. D. at the suit of A. B. in an action of now depending in the (here naming the court where the suit is depending) that, in case the said C. D. shall be cast in the said suit, he the said C. D. will pay and satisfy the condemnation of the court, or render his body to prison in execution for the same, or that he, the said E. F. will do it for him. Given under my hand this day of

G. H. (a)

52. THE person taking such bail as aforesaid, shall, if required, at the same time, deliver to the person or persons acknowledging the recognizance aforementioned, a bail piece, in substance as followeth, to wit:

Bail piece to be delivered to the bail.

County (or corporation) sc.

Form thereof.

C. D. of the parish of in the county (or corporation) aforesaid, is delivered to bail, on a *cepi corpus*, unto E. F. of the parish and county (or corporation) aforesaid, at the suit of A. B. Given under my hand, this day of

G. H. (b)

53. In actions of detainue, the recognizance of bail shall be so changed, as to subject the bail to the restitution of the thing, whether animate or inanimate, sued for, or the alternative

Recognizance of bail in detainue.

(z) 1792, edi. 1794, 1803, and 1814, c. 66, § 47.

(b) 1792, edi. 1794, 1803, and 1814, c. 66, § 30, and c. 76, § 40.

(a) Altered from 1792, edi. 1794, 1803, and 1814, c. 67, § 22.

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A. R. C. 43.

Notice of excep-
tion to special bail
taken out of court.
Effect of such
bail's being ad-
judged insufficient.

When special bail
may surrender
principal.
Proviso.

Where the bail
shall pay costs,
though surrender
good.
Effect of surren-
der.

How such surren-
der may be made
to sheriff, serjeant
or jailor.
His duty thereup-
on.

Receipt to be
transmitted by the
bail to clerk of
court.

Bail to give no-
tice to plaintiff or
attorney.
Upon surrender
after judgment,
defendant to re-
main in custody
twenty days.

If not charged in
execution, to be
then discharged.

But execution may
be sued out after-
wards, without
scire facias.

How bail may sur-
render, when
principal is in jail
by virtue of legal
process.

Copy of the re-
cognizance and a
certificate to be
obtained.

value, as the court may adjudge.(c) If the plaintiff, or his attorney, shall except to the sufficiency of any special bail so taken out of court, notice of such exception shall be given to the defendant or his attorney, a reasonable time before the same shall be tried. And if such bail shall be adjudged insufficient by the court, the recognizance thereof shall be discharged, and such proceedings shall be had, as if no such bail had been taken.(d)

54. EVERY special bail may surrender the principal, before the court where the suit hath been or shall be depending, at any time either before or after judgment shall be given: *Provided*, That such surrender be made before the appearance day of the first *scire facias* against the bail, returned executed, or of the second returned *nilil*: but, in either case, the special bail shall pay the costs of the *scire facias*, and judgment for the same shall be entered against him accordingly. Upon such surrender, the bail shall be discharged, and the defendant or defendants shall be committed to the custody of the sheriff or jailor attending such court, if the plaintiff or his attorney shall desire the same. Or such special bail may discharge himself or herself, by surrendering the principal or principals to the sheriff, serjeant or jailor of the county or corporation, where the original writ was served; and such sheriff, serjeant or jailor shall receive such defendant or defendants, and commit him, her or them, to the jail of his county or corporation, and shall give a receipt for the body or bodies of such defendant or defendants, which shall be by the bail transmitted to the clerk of the court where the suit is or was depending, to be preserved and filed by him amongst the papers of such suit. The bail shall forthwith give notice of such render, to the plaintiff, his agent or attorney at law, if to be found within the county or corporation. When such surrender after judgment, shall be to the sheriff, serjeant or jailor, he shall keep such defendant or defendants in his custody, in the same manner, and subject to the like rules, as are provided for debtors committed in execution, for twenty days, unless the creditor, his agent or attorney, shall sooner consent to his, her or their discharge; and, if, within the said twenty days, such creditor, his attorney or agent, shall not, in writing, charge the debtor or debtors in execution, he, she or they shall be forthwith discharged out of custody. But the plaintiff or plaintiffs may nevertheless afterwards sue out any legal execution, without suing out a *scire facias*.(e)

55. WHEN the principal debtor now is or hereafter may be imprisoned, in any jail in the Commonwealth, by virtue of process from any court, or any civil officer; and any person or persons, his special bail, shall desire to surrender such debtor, in discharge of the recognizance of bail; it shall be lawful for such bail to obtain a certified copy of such recognizance, either from the clerk where the same shall have been entered in court, or returned thereto, or from the judge or justice who shall have taken it, where such recognizance shall not have

(c) 1792, edi. 1794, 1803, and 1814,
c. 66, § 26.

(d) *Ibid*, c. 66, § 30.

(e) 1792, edi. 1794, 1803, and 1814,
c. 66, § 31.

been returned to court; (which copy it shall be the duty of the clerk, judge or justice to grant;) and to obtain, annexed to such copy of the recognizance, a certificate from the clerk of the court, stating the situation of the suit, in which such bail hath been entered, and specifying particularly whether final judgment hath been rendered therein, or the same be still pending: and it shall be lawful for the bail to deliver the said certified copy of the recognizance, and the said certificate of the clerk, to the sheriff, serjeant or jailor, in whose custody the debtor may be, and to demand a receipt therefor. Such sheriff, serjeant or jailor shall thereupon give to the bail, his agent or attorney, a receipt for the said copy of the recognizance and certificate of the clerk, in which shall moreover be expressed, that the special bail, in discharge of his recognizance aforesaid, had committed to the keeping of the said sheriff, serjeant or jailor, the body of the debtor, then in the custody of such sheriff, serjeant or jailor, under process from some court, or civil officer, of the Commonwealth, which process shall be plainly described on the face of such receipt. The debtor so committed shall be detained in custody by such sheriff, serjeant or jailor, in the same manner, as he ought by law to be detained when surrendered under the provisions of the preceding section; save only, that, where such commitment shall be after final judgment, and to the sheriff, serjeant or jailor in any county or corporation, other than that in which the suit was brought, such debtor, unless sooner discharged by the consent of the plaintiff, his agent or attorney, shall be detained in custody above twenty days, at the rate of one day for every twenty miles of the computed distance of the place of his confinement, from the jail of the court in which the suit was brought. The special bail shall immediately give notice of such commitment, to the creditor, his agent or attorney at law, if to be found in the county or corporation wherein the suit is or was depending, and shall file with the clerk of the court in which such suit is or was depending, the receipt of the sheriff, serjeant or jailor taken as aforesaid, and take his receipt therefor. (f)

A. D. 1819.
A. R. C. 43.

And delivered to sheriff, &c. who shall give a receipt. What shall be expressed in such receipt.

How long principal shall thereupon be detained in custody.

Bail to give notice to creditor or attorney, and file receipt with the clerk.

56. WHEN, pursuant to the provisions of this act, the special bail shall have surrendered his principal to the custody of the sheriff, serjeant or jailor, or shall have committed him to the keeping of the sheriff, serjeant or jailor, in whose custody such principal was before, and shall exhibit before the court, in which the suit is or was depending, satisfactory evidence, that, in due time thereafter, he gave to the creditor, his agent or attorney, such notice of the surrender or commitment, as is hereby required; or that such creditor, his agent or attorney was not to be found in the county or corporation aforesaid, and that in due time he filed with the clerk of the court the receipt of the sheriff, serjeant or jailor, taken as aforesaid; such bail shall thereupon be entitled to an *exonoretur*, to be entered in court, and shall be thereafter forever discharged from the said recognizance, in the same manner as if he had surrendered his principal in court: But no such *exonoretur* shall be

Evidence to be exhibited in such cases, to entitle the bail to an *exonoretur*.

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Notice to be given
of application
therefor.

Defendant surren-
dered, discharge-
able by giving
other bail.

Sufficiency of such
bail to be verified
on oath,
and recognizance
filed with the
clerk.

Provision for dis-
charging bail,
when principal is
sentenced to con-
finement in peni-
tentiary, or sent
out of state on
charge of a crime.

Proceedings
where defendant
is committed to
prison for want of
appearance bail.

How to be dis-
charged from cus-
tody.

Where suit shall
abate by return
that defendant is
no inhabitant.

Farther process,
on return of *non
est inventus*.

*Alias, pluries, or
testatum capias*.

Attachment to
force appearance.

entered, unless the creditor, his agent or attorney be present in court, or have reasonable notice of the application therefor. (f)

57. ANY defendant surrendered into custody, or committed by his bail, in manner herein provided, may, at any time before final judgment shall have been rendered in the action, discharge himself from such surrender or commitment, by giving other good special bail: *Provided*, That the sufficiency of such bail shall be verified on oath, to the satisfaction of the court, judge or justice, taking the same, and the recognizance thereof shall be duly filed with the clerk of the court where in the suit is depending, before such defendant shall be discharged. (f)

58. IF any defendant, having given special bail in any action, shall afterwards be convicted of any crime, and sentenced therefor to confinement in the penitentiary of this state, by a court of this Commonwealth, or of the United States, or shall be lawfully arrested, and delivered over to the executive authority of the United States, or of any state or territory thereof, upon a charge of any crime committed out of the jurisdiction of this state, and shall thereupon be carried beyond the limits of this Commonwealth, such special bail shall be discharged from his recognizance, in the same manner as if such defendant had died at the time of such sentence, or of such delivery.

59. WHEN the sheriff or other proper officer shall return upon any original or mesne process, that he hath taken the body of the defendant, and committed him to prison for want of appearance bail, the plaintiff may proceed, and the defendant make his defence, in like manner, as if his appearance bail had been entered and accepted. But the defendant shall not be discharged out of custody, until he shall put in good bail, or the plaintiff shall be ruled by the court to accept an appearance without bail. And, when any defendant, after appearance entered, shall be confined in prison, the plaintiff may proceed in the same manner as if he were not so confined. (g)

60. WHEN the sheriff or other proper officer, returning the truth of the case, upon any original or mesne process, to him directed, shall make return, that any defendant is not an inhabitant of his county or corporation, the suit shall abate and be dismissed as to such defendant, if the court, from which such process issued, have jurisdiction over such county or corporation only. (h)

61. WHEN the sheriff or other proper officer shall return on any writ of *capias*, to answer in any civil action, that the defendant is not found within his bailiwick, the plaintiff may either sue out an *alias* or a *pluries capias*, until the defendant shall be arrested, or a *testatum capias*, where the defendant shall have gone into another county or corporation; or may, at his election, sue out an attachment against the estate of the defendant, to force an appearance; and if the sheriff or other

(f) Altered from act of 1804, c. 7,
§ 1, 3; edi. 1808, c. 49.

(g) From 1792, edi. 1794, 1803, and
1814, c. 66, § 32, am. in the last clause,
at revival of 1818.

(h) *Ibid*, c. 67, § 32.

officer shall return that he hath attached any goods, and the defendant shall not appear and replevy the same, by entering his appearance and giving special bail, in case he shall be ruled so to do, the plaintiff may file his declaration, and proceed to final judgment, in the same manner as if the defendant had been arrested. The goods attached shall remain in the hands of the officer, until such final judgment be entered, and then be sold in the same manner as goods taken upon a *fieri facias*. And, if the judgment shall not be thereby satisfied, the plaintiff may sue out execution for the residue; and, in case more goods be attached than will satisfy the judgment, the surplus shall be returned to the defendant.⁽ⁱ⁾

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How replevable. Proceedings where not replevied.

Goods attached, when to be sold.

Provision if judgment be not satisfied thereby, or if there be a surplus.

62. WHERE any sheriff or other officer shall return, on any original or mesne process to him directed, that he has been kept off by force of arms, it shall and may be lawful for the plaintiff in the action in which the process so returned was issued, either to issue an *alias* or *pluries*, as the case may be, or to proceed in the said action against the defendant or defendants, as if such process had been returned executed.^(k)

How plaintiff may proceed, if service of process be prevented by force of arms.

63. If any writ or process shall be executed, and, for want of a return thereof to the office from which it is issued, an *alias*, *pluries*, attachment or other process be awarded, the sheriff shall not execute such subsequent process, but shall return the first process by him executed, if it be in his possession; but, if it be not in his possession, then he shall return the subsequent process, with an endorsement of the execution of such first process, and the name of the appearance bail, if any was taken; and shall also return a copy of the bail bond, on which there shall be the same proceedings, as if the said first process had been duly returned.^(l)

Sheriff's duty where *alias*, &c. is issued, for want of return of writ or process, which has been executed.

64. ON the return of the *pluries*, that the defendant is not found, the court instead of the process to outlawry formerly used, may order a proclamation to issue, warning the defendant to appear on a certain day therein named, or that judgment will be rendered against him; which proclamation shall be published on three successive court days, at the door of the court-house of the county or corporation, to which the last process was directed, and also three times in some public newspaper; and if the defendant fails to appear pursuant to such proclamation, the same proceedings shall be had, and the same judgment shall be given as in other cases of default.^(m)

Proclamation to issue, instead of process to outlawry.

To be published on three court days, and in newspaper.

65. ON writs of *scire facias* for the renewal of judgments, no judgment shall be rendered on the return of two *nihils*, unless the defendant resides in the county, or unless he be absent from the Commonwealth, and have no known attorney therein. But such *scire facias* may be directed to the sheriff of any county in the Commonwealth, wherein the defendant or his attorney shall reside or be found, which being returned served, the court may proceed to judgment thereupon, as if the defendant had resided in the county.⁽ⁿ⁾

Proceedings thereupon, as in other cases of default.

How judgments may be renewed by *scire facias*.

Such writ issuable to any county wherein defendant or attorney shall be found.

(i) 1792, edi. 1794, 1803, and 1814, c. 66, § 32.

(k) 1799, c. 8; edi. 1803, and 1814, c. 257.

(l) 1792, edi. 1794, 1803, and 1814, c. 66, § 34.

(m) *Ibid*, § 41.

(n) *Ibid*, § 48.

A. D. 1819.
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Manner of serving writs of *scire facias* where defendant is found. Copy left to be sufficient service where defendant cannot be found.

Notice on replevin bonds, &c. how to be served.

Duty of sheriff, &c. to serve such notices. But service good by any other person.

Process in actions against the Governor, councillors, judges or sheriffs.

Proviso; in case of *fi fa* returned 'no effects,' *ca sa* may issue as in other cases.

Rules in clerk's offices to be on first Monday in every month. How long continued. Process returnable, at plaintiff's option, to first day

66. WHERE the defendant can be found, writs of *scire facias* from any court, shall hereafter be served in the same manner as writs of *capias ad respondendum* on which no bail is required. And where the said defendant cannot be found, it shall be considered as a sufficient service of the said writ, for the sheriff, or other officer to whom the same is directed, to leave a copy thereof with the wife of the defendant, or some free white person above the age of sixteen years, then and there being one of the family of the defendant, and found at his usual place of abode, or to leave a copy thereof at such place of abode, in the manner prescribed in the next section.(o)

67. NOTICES on replevin bonds, and on all other legal occasions, wherein no particular mode is or shall be prescribed for their service, shall be good, if given to the party in person, or delivered in writing to any free white person above the age of sixteen years, who, being a member of the family of such person, and found at his usual place of abode, shall be informed of the purport of such notice; or left at some public place, at the dwelling house, or other known place of residence of such person, he being from home, and no such free white person of his family being found there, willing to receive such notice; and it shall be the duty of the sheriff or serjeant, whenever required, to serve all such notices within his bailiwick, and to make due return thereof: the service thereof, however, shall be good, when made by any other person, and verified by affidavit.(p)

68. In all actions or suits which may be commenced against the Governor of this Commonwealth, any member of the privy council, any of the judges of the superior courts, or the sheriff of any county, during his continuance in office, instead of the ordinary process, a summons shall issue directed to the sheriff or other proper officer, reciting the cause of action, and commanding him to summon such defendant to appear, and answer the same, on the proper return day: and if such defendant, being summoned, or after a copy shall have been left at his usual place of abode, ten days before the return day, shall not appear to answer the same, the court shall proceed against such defendant, in the same manner as if he had been taken upon a *capias ad respondendum*: *Provided, always, That, after judgment and the return of a fieri facias, by the sheriff of that county in which the defendant in any such case resides, that no effects, or not sufficient, are to be found in his bailiwick to satisfy the said judgment, a capias ad satisfaciendum may be issued as in other cases.*(q)

69. THE rules in the clerk's office of the county and corporation courts, of the superior courts of law, and the general court, shall be holden on the first Monday in every month, and may be continued from day to day, not exceeding six days.(r)

70. EVERY writ of *capias ad respondendum* or *scire facias*, every summons to answer any action, and every *subpœna* in

(o) 1797, c. 14, edi. 1803, and 1814, c. 231.

(p) Altered from 1792, edi. 1794, 1803, and 1814, c. 76, § 42.

(q) 1792, edi. 1794, 1803, and 1814, c. 66, § 23.

(r) Altered from 1792, edi. 1794, 1803, and 1814, c. 66, § 35; c. 67, § 27, 28; 1814, c. 31, § 10.

chancery, issued from the clerk's office of any such court shall be returnable, at the option of the plaintiff, either to the first day of the next succeeding term, or in the clerk's office to some previous rule day; and, if it shall be returned not executed, any subsequent proper process may issue thereupon returnable in like manner. All such process may be executed at any time before the return day shall have passed.(s)

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of next term, or some previous rule day.

When it may be executed.

71. PROCESS to bring the representative or representatives of any deceased party into court, may be awarded at the rules in like manner as in open court.(t)

To bring executors, &c. into court may be awarded at rules.

72. THE plaintiff shall file his declaration in the clerk's office on the rule day at which the writ or other process shall be returned executed; or, the defendant having entered his appearance, may give a rule for the plaintiff to declare; which

Declaration when to be filed.

if he fails or neglects to do, at the succeeding rule day, or shall at any time fail to prosecute his suit, he shall be nonsuited, and pay to the defendant or tenant, besides his costs, five dollars.(v)

Rule to declare.

Nonsuit, when.

Damages on nonsuit.

73. WHEN the plaintiff hath filed his declaration, he may give a rule to plead with the clerk; and if the defendant shall not plead accordingly, at the expiration of such rule, the plaintiff may enter judgment for his debt or damages and costs, and have a writ of enquiry awarded where one shall be necessary.(v)

Rule to plead.

Judgment by default.

Writ of enquiry.

74. ALL rules to declare, plead, reply, rejoin, or for other proceedings, shall be given regularly from month to month, shall be entered in a book to be kept for that purpose, and shall expire on the succeeding rule day.(w)

Rules to be given from month to month.

75. No discontinuance of any cause shall take place for failure to take any rule therein, during any vacancy in the office of clerk of the court, in which such cause may be depending; but all causes on the rule docket, shall stand continued, until the rule day after the vacancy shall be filled; and all process issued before, but not returnable till after such vacancy happened, shall be returnable to the same rule-day.(x)

No discontinuance for want of rules, in case of vacancy in office of clerk.

76. BEFORE every term of the general court, or a superior court of law, and before every quarterly term of a county or corporation court, the clerk shall enter, in a particular docket, separate and distinct from the rule docket, and, in the county court, separate and distinct from the chancery docket, all those causes and those only, in which there is an issue to be tried, or an enquiry of damages to be made, or an office judgment which may be set aside, or a special verdict, case agreed, demurrer, or other matter of law, or other question before the court, is to be argued or decided. He shall docket the causes, in the order in which they are put to issue, or writs of enquiry are awarded, or office judgments rendered in them; and no cause shall be removed from its place on the docket, unless when, being called for trial, it shall be continued at the plaintiff's motion, in which case, it shall be put at the end of the docket,

Process when returnable in such case.

Separate docket of issues, writs of enquiry, office judgments, &c.

In what order.

Causes, continued on plaintiff's motion, put at end of docket.

(s) Altered from act of 1813, c. 18, § 12; and ed. 1794, 1803, and 1814, c. 67, § 9.

(t) 1813, c. 18, § 12.

(v) Altered from 1792, ed. 1794, 1803, and 1814, c. 66, § 35, 36.

(w) 1792, ed. 1794, 1803, and '14, c. 66, § 37.

(x) 1814, c. 31, § 11.

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Apportionment of causes.
Subpœnas for witnesses.

Office judgments may be set aside, when, and how :

But not, after writ of enquiry executed.

Court to control proceedings at rules, correct mistakes, set aside rules, &c.

And re-instate causes discontinued.

New issues may be tried at same term.

Writs of enquiry may be executed at ensuing term.

Office judgments, when final.

Executions thereupon, in debt on written contract, to be for interest, from date until payment.

In actions on contracts, interest, if allowed, to continue till payment. Jury to ascertain principal sum due, and fix time when interest shall commence.

unless the defendant consent that it shall retain its place. The clerk, under the control of the court, shall apportion the causes on the docket, to so many days, and in such numbers to each day, as may be deemed most expedient; and he shall issue *subpœnas* for witnesses to attend on the day, to which the causes stand for trial.(y)

77. EVERY judgment entered in the office against any defendant, or against any defendant and bail, or against any defendant and sheriff, shall be set aside, if the defendant, at the succeeding term of the general court, or a superior court of law, or at the succeeding quarterly term of a county or corporation court, shall be allowed to appear without bail, put in good bail, being ruled so to do, or surrender himself in custody, and shall plead to issue immediately: *Provided, however*, That no such office judgment shall be set aside, at any time, after a writ of enquiry awarded thereupon shall have been executed, unless good cause be shewn therefor. The court shall have control over all other proceedings in the office, during the preceding vacation, may correct any mistakes or errors, which may have happened therein, and may, for good cause shewn, set aside any of the said rules or proceedings, and make such order concerning the same, as may be just and right. They may also, for good cause shewn, re-instate any cause discontinued during such preceding vacation.(z)

78. ANY new issue made up, on setting aside an office judgment, unless good cause be shewn for a continuance, may be tried at the same term. And any writ of enquiry awarded at the rules, may be executed at the next succeeding court, and final judgment be rendered thereupon, unless good cause be shewn for a continuance.(a)

79. ALL judgments, by default, obtained in the office, for want of appearance, or bail or plea, in which no writ of enquiry shall be awarded, and which shall not be set aside on some day of the next succeeding term as aforesaid; and all non-suits and dismissions, obtained in the office, and not so set aside, shall be considered as final judgments of the last day of the term, and executions may issue thereupon accordingly. Every such execution in favor of the plaintiff, in any action of debt, founded upon any bond, bill, promissory note, or other writing, for the payment of money or tobacco, shall be issued, as well for interest until paid, upon the principal sum due, from the time when such bond, bill, promissory note, or other writing was payable, as for such principal sum and costs.(b)

80. In all actions founded on contracts, where judgment shall be rendered in court, if interest be allowed, such interest shall be upon the principal sum due, and shall continue until such principal sum be paid. And in all actions, founded on contracts, and tried before a jury, the jury shall ascertain the principal sum due, and fix the period at which interest shall commence, if interest be allowed by them; and judgment shall

(y) 1792, edi. 1794, 1803 and 1814, c. 66, § 43; c. 66, § 31; 1804, c. 14, § 2; edi. 1808, c. 61.

(z) 1792, edi. 1794, 1803 and 1814, c. 66, § 42; c. 67, § 29, 28.

(a) 1813, c. 18, § 3.

(b) 1792, edi. 1794, 1803 and 74, c. 66, § 42; c. 67, § 29; and 1804, c. 8, § 1; edi. 1808, c. 57, § 1.

be rendered accordingly, carrying on the interest till the judgment shall be satisfied.(c)

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81. ACTIONS of account may be brought and maintained, against the executors or administrators of every guardian, bailiff and receiver, and also by one joint tenant, or tenant in common, his executors or administrators, against the other as bailiff, for receiving more than comes to his just share or proportion, and against the executors or administrators of such joint tenant or tenant in common.(d)

Actions of account against executors, &c. of guardians, bailiffs and receivers ;

And by joint tenants, or tenants in common, against each other, &c.

4 Ann. c. 16, § 27.

Breaches, how assignable in actions, on bonds, &c. for non-performance of covenants.

8 and 9 Will. 3,

c. 11, § 8.

Damages how to be assessed.

Breaches assignable, after judgments, on demurrer, by confession or *nihil dicit*.

Damages.

82. IN all actions on any bond, or on any penal sum for the non-performance of covenants or agreements, in any indenture, deed or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they may think fit ; and the jury, upon trial of such action or actions, shall and may assess damages for such of the breaches as the plaintiff shall prove ; and, on such verdict, the like judgment shall be entered, as heretofore has been usually done, in such actions. And, where judgment on a demurrer, or by confession, or *nihil dicit*, shall be given for the plaintiff, he may assign as many breaches of the covenants or agreements as he may think fit : upon which, a jury shall be summoned, to enquire of the truth of every one of those breaches, and to assess the damages the plaintiff shall have sustained thereby ; and execution shall issue for so much ; and the judgment shall remain as a security to the plaintiff, his executors and administrators, for any other breaches which may afterwards happen ; and he or they may have a *scire facias* against the defendant, his executors or administrators, and assign any other breach ; and, thereupon, damages shall be assessed, and execution issued as aforesaid.(e)

Judgment to remain as security for subsequent breaches.

Scire facias

thereupon.

New assignment and damages.

83. IN all actions which shall be brought upon any bond or bonds for the payment of money or tobacco, wherein the plaintiff shall recover, judgment shall be entered for the penalty of such bond, to be discharged by the payment of the principal and the interest due thereon, and the costs of suit, and execution shall issue accordingly ; or, if, before judgment, the defendant shall bring into court the principal and interest due upon such bond, he shall be discharged, and in that case judgment shall be entered for the costs only.(f)

Judgment for penalty of bond, to be discharged by principal, interest and costs.

4 and 5 Ann. c. 16,

§ 13.

Bond discharged by bringing money into court ; and judgment for costs only.

Plea of payment, when good.

4 and 5 Ann. c. 16,

§ 12.

84. IN any action of debt, on a single or penal bill, or in debt or *scire facias* upon a judgment, or in debt upon a bond, if, before action brought, the defendant hath paid the principal and interest due by the defeasance or condition, he may plead payment in bar.(g)

85. IF any action be brought on a bond or other writing, filed in any suit brought thereupon in any other court of this Commonwealth, it shall be sufficient for the plaintiff to file with his declaration a copy of such bond or other writing, attested by the clerk of the court in which the original may be filed ; and the defendant or defendants shall be obliged to plead thereto, in like manner as if the original bond or writing was filed, and such copy shall be admitted as evidence on the trial.

Copy of bond, &c. when admissible evidence.

(c) 1804, c. 8, § 2 ; edition 1809, c. 57, § 2.

(d) 1792, ed. 1791, 1803 and '14, c. 76, § 24.

(e) *Ibid.*, § 21.

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Original to be obtained where *non est factum* is pleaded.

Plaintiffs in actions of *indebitatus assumpsit*, to file accounts; and how stated.

Effect of failure to do so.

Defendants to file accounts of payments or set-offs; and how stated.

Effect of failure to do so.

2 Geo. 2, c. 22, § 13.

3 Geo. 2, c. 24, § 4, 5.

Several matters, of law or fact, pleadable.

4 and 5 Ann. c. 16, § 4.

In land causes, possession of part, when not to be construed possession of the whole.

Actual possession not necessary in writ of right.

Interpreters to be sworn.

Private acts, how given in evidence.

Jury may carry all written evidence from the bar.

Scroll to be a seal.

Nonsuit on trial, not permitted after jury retire.

New trial for smallness of damages, may be granted.

More than two new trials, not allowable.

Papers to be kept and filed in the clerk's office.

If, however, the defendant or defendants shall plead, that the original bond or writing is not his, her or their deed, the clerk of the court having such original paper in his custody, shall, on being summoned as a witness, attend with the same, on the trial of the issue, for the inspection of the jury. (f)

86. 'In every action of *indebitatus assumpsit*, the plaintiff shall file, with his declaration, an account, stating distinctly the several items of his claim against the defendant; and, in failure thereof, he shall not be entitled to prove, before the jury, any item, which is not so plainly and particularly described in the declaration, as to give the defendant full notice of the character thereof.'

87. 'In every action in which a defendant shall desire to prove any payment or set-off, he shall file with his plea an account, stating distinctly the nature of such payment or set-off, and the several items thereof; and in failure to do so, he shall not be entitled to prove before the jury, such payment or set-off, unless the same be so plainly and particularly described in the plea, as to give the plaintiff full notice of the character thereof.'*

88. THE plaintiff in replevin, and the defendant in all other actions, may plead as many several matters, whether of law or of fact, as he shall think necessary for his defence. (g)†

89. IN controversies affecting lands, tenements or hereditaments, possession of part shall not be construed as possession of the whole, when an actual adverse possession can be proved. (h)

90. ACTUAL possession need not be proved to maintain a writ of right. (h)

91. INTERPRETERS may be sworn truly to interpret, when necessary. (h)

92. PRIVATE acts of Assembly may be given in evidence, without pleading them specially. (h)

93. PAPERS read in evidence, though not under seal, may be carried from the bar, by the jury. (h)

94. ANY instrument, to which the person making the same, shall affix a scroll, by way of seal, shall be adjudged and holden to be of the same force and obligation, as if it were actually sealed. (h)

95. EVERY person desirous of suffering a nonsuit on trial, shall be barred therefrom, unless he do so before the jury retire from the bar. (h)

96. 'NEW trials may hereafter be granted, as well where the damages are manifestly too small, as where they are excessive.'

97. NOR more than two new trials shall be granted to the same party, in the same cause. (h)

98. ALL declarations, pleas, evidences, and other papers,

(f) 1792, edi. 1794, 1803 and '44, c. 66, § 24.

(g) *Ibid.* § 40.

* *Vid. post.* c. 127.

† In this place, the same provision as is found in § 92, *ante.* is found repeated *verbatim* in the roll, through inadvertence: it is therefore omitted here.

‡ "Offer," in roll.

(h) 1792, edi. 1794, 1803 and 1814, c. 76, § 28, 29, 30, 31, 32, 33, 34, 36.

relating to any cause in court, shall be carefully preserved by the clerk, and they shall be all filed together, in the office.(i) A. D. 1819.
A. R. C. 43.

99. WHEN any cause shall be finally determined, and an appeal, writ of error, or *supersedeas* shall be granted to the judgment, and in all causes, where the title or bounds of land shall be determined, whether an appeal, writ of error, or *supersedeas*, be granted from the judgment or not, it shall be the duty of the clerk to enter, in books to be kept for that purpose, all the pleadings and papers filed as evidence therein, and the judgment thereupon, so as to make a complete record thereof: and those, wherein the title or bounds of land is determined, shall be entered in a separate book.(k) Complete records to be made, in what cases.
Separate book for land causes.

VI.—*For remedying certain defects in proceedings in courts.**

100. BE it enacted, That, in all personal actions, where the declaration shall plainly set forth sufficient matter of substance, for the court to proceed upon the merits of the cause, the suit shall not abate for want of form.(l) Suit not to abate for want of form, if declaration good in substance.

101. WHERE a demurrer shall be joined, in any action, the court shall not regard any other defect or imperfection in the writ, return, declaration or pleadings, than what shall be specially alleged in the demurrer as causes thereof, unless something so essential to the action or defence, as that judgment, according to law, and the very right of the cause, cannot be given, be omitted.(m) What shall be regarded, on demurrer.
27 Eliz. c. 5.

102. AFTER issue joined in an ejectment, on the title only, no exception of form or substance, shall be taken to the declaration, in any court whatsoever.(n) No exception to form or substance of declarations in ejectment.

103. No judgment, after the verdict of twelve men, shall be stayed or reversed, for any defect or default, in the writ, original or judicial; or for a variance, in the writ from the declaration, or other proceedings; or for any mispleading, insufficient pleading, discontinuance, misjoining of issue, or lack of warrant of attorney; or for the appearance of either party, being under the age of twenty-one years, by attorney, if the verdict be for him, and not to his prejudice; or for not alleging any deed, letters testamentary, or commission of administration, to be brought into court; or for omission of the words *with force and arms, or against the peace*; or for mistake of the christian name, or surname of either party, sum of money, quantity of merchandize, day, month or year, in the declaration or pleading, (the name, sum, quantity or time being right in any part of the record or proceeding;) or for omission of the averment, *this he is ready to verify*; or, *this he is ready to verify by the record*; or for not alledging as *appeareth by the record*; or for omitting the averment of any matter,

(i) 1792, edi. 1794, 1803 and 1814, c. 67, § 33.

(l) 1792, edi. 1794, 1803 and 1814, c. 67 § 36.

(k) Compiled of 1792, edi. 1794, 1803 and 1814, c. 66, § 47; c. 67, § 34, and 1804, c. 14, § 5; edi. 1808, c. 61, § 5.

(m) *Ibid.* c. 76, § 27.

(n) *Ibid.* c. 76, § 35.

* The first statute of Jeofails framed in Virginia, was the act of 1789, c. 28; but all the English statutes had been adopted by general reference; edi. 1752, acts 1743, c. 6, § 24, p. 246; edi. 1769, acts 1753, c. 1, § 25, p. 301.

A. D. 1819.

A. R. C. 43.

Or where judgment is by *nil dicit*, or *non sum informatus*, or after enquiry of damages.

without proving which, the jury ought not to have given such verdict; 'or for setting forth, by way of recital, any matter 'which ought to have been set forth by averment;' or for not alleging that the suit or matter is within the jurisdiction of the court; 'or, for not alleging that the property in the declaration mentioned is the property of the plaintiff; or for 'any mistake or misconception of the form of the action; or 'for any other defect whatsoever, in the declaration or pleading whether of form or of substance, which might have been 'taken advantage of by a demurrer, and which shall not have 'been so taken advantage of;' or for any informality, in entering up the judgment, by the clerk: neither shall any judgment, entered by *nil dicit*, or *non sum informatus*, be reversed, nor a judgment, after enquiry of damages, be stayed or reversed, for any omission or fault, which would not have been a good cause to stay or reverse the judgment, if there had been a verdict.^(o)

Verdict good, for entire damages, on several counts, tho' one faulty.

Saving in defendant's favour.

Writ of enquiry, where verdict, in detinue, omits price or value.

Effect of verdict in detinue, for part only.

Judgment confessed, release of errors.

Powers of attorney for confessing judgment, &c., and general releases of error, before action brought, void.

Process, when good, though not directed to any sheriff.

Clerical mistakes amendable, and how.

14 Ed. 3, st. 1, c. 6.

9 Hen. 5, c. 4.

8 Hen. 6, c. 12, 15.

5 Geo. 2, c. 13, § 1.

Notice of application for amendment.

104. WHEN there are several counts, one of which is faulty, and entire damages are given, the verdict shall be good; but the defendant may apply to the court to instruct the jury to disregard the faulty count.^(p)

105. IF, in detinue, the verdict shall omit price or value, the court may, at any time, award a writ of enquiry to ascertain the same. If, on an issue concerning several things in one count, in detinue, no verdict be found for part of them, it shall not be error, but the plaintiff shall be barred of his title to the things omitted.^(p)

106. A JUDGMENT, on confession, shall be equal to a release of errors;^(q) but all powers of attorney for confessing or suffering judgment to pass by default, or otherwise, and all general releases of error, made or to be made, by any person or persons whatsoever, within this Commonwealth, before action brought, shall be, and are hereby declared to be, absolutely null and void.^(r)

107. AN execution, writ or other process, appearing to be duly served in other respects, shall be deemed good, although it be not directed to any sheriff.^(s)

108. 'WHERE, in the record of any judgment or decree of 'any superior court of law or equity, there shall be any mistake, miscalculation, or misrecital, of any sum or sums of 'money, tobacco, wheat, or other such thing, or of any name or 'names; and there shall be, among the record of the proceedings in the suit in which such judgment or decree shall be 'rendered, any verdict, bond, bill, note, or other writing of the 'like nature or kind, whereby such judgment or decree may 'be safely amended, it shall be the duty of the court in which 'such judgment shall be rendered, and of the judge thereof 'in vacation, to amend such judgment or decree thereby according to the very truth and justice of the case: *Provided*, 'That the opposite party, his agent, or attorney in fact, or at

(o) 1792, edi. 1794, 1803 and 1814, c. 76, § 26, am. at the late revision.

(p) *Ibid*, c. 76, § 38, 37.

(q) *Ibid*, § 43.

(r) 1792, edi. 1794, 1803 and 1814, c. 76, § 22.

(s) *Ibid*, § 39.

‘law, shall have had reasonable notice of the application for such amendment. And, if the transcript of such judgment or decree, at the time of such amendment, or at any time thereafter, shall be removed to the court of appeals, it shall be the duty of that court, upon the inspection of such amended record, (to be brought before it by *certiorari*, if need be,) to affirm such judgment, if there be no other error apparent on such record.’(t)

A. D. 1819.
A. R. C. 43.

How, in case of record removed to court of appeals.

109. ‘WHERE any bond, taken by virtue of any distress for rent or execution, by miscalculation or mistake, shall be conditioned for the payment of a larger sum of money, than by law ought to have been required thereby, or where a verdict shall be rendered for more damages than the plaintiff shall have demanded by his suit, and judgment shall be rendered accordingly, and the court in which such judgment shall be rendered, shall have adjourned to another term, without release of such excess having been made, it shall be lawful for the plaintiff, at any time before the record of such judgment shall be removed into an appellate court, at any future term of the court in which such judgment shall be rendered, to release in open court any such excess; or he may in vacation release the same by deed under his hand and seal, witnessed by the clerk or deputy clerk of such court, and filed of record among the papers of the cause; and such release, made in either of the forms aforesaid, shall cure any error growing out of such excess.’(t)

Provision where replevy bonds, &c. are taken for too much.

Or verdict is rendered for more damages than plaintiff demands.

Release of such excess authorised; when and how.

110. ‘IF the record of any such judgment shall be removed into an appellate court, before such release shall be made, it shall be competent for the defendant in error to make such release as aforesaid in the appellate court; and thereupon the said court, after reversing the judgment, shall proceed to give such judgment as the court below ought to have given if the release had been filed therein.’(t)

Such release may be made in appellate court.

Judgment thereupon in such court.

111. FOR removing all doubts concerning the courts to which this act may apply; *Be it further enacted*, That all things herein contained, ‘not restricted by their nature, or by express provision, to particular courts,’ shall be the rules of decision and proceeding in all courts whatsoever within this Commonwealth.

Courts to which regulations in this act apply.

112. ALL and every act or acts, and all parts of acts, containing any thing within the purview of this act, shall be, and are hereby repealed.

Repealing clause.

113. THIS act shall commence and be in force, from and after the first day of January, eighteen hundred and twenty.

Commencement.

(t) Sections 108, 109, and 110, were first enacted at the revival of 1818.

C. 129.

A. D. 1792.
A. R. C. 17.

*An act concerning the right of Entry, and giving remedy against collusive judgments of Lands, and wrongful alienations thereof in certain cases.**

[Passed December 19, 1792.]

Preamble.

Widow not barred of right of entry, into her land lost by her husband's default.
Westm. 2, 13.
Edw. 1, c. 3.

When wife may defend suit brought for her lands.

When reversioner may defend suit brought against tenant for life.
Westm. 2, 13.
Edw. 1, c. 4, § 1.

When the dying seized of a disseisor shall not take away right of entry.
32 Hen. 8, c. 33.

Husband's conveyance of wife's lands not to prejudice her or her heirs.
32 Hen. 8, c. 28.

1. WHERE a husband doth lose the lands of his wife by default, it is unreasonable that the wife, after the death of her husband, should have no other recovery but by writ of right :

2. *Be it therefore enacted by the General Assembly, That* a woman, after the death of her husband, shall not be injured by such default, but shall, notwithstanding, retain her right of entry, and may prosecute the same by any real or mixed action that may best suit the case. If the tenant shall object to the wife's claim, that he entered by judgment, and it be found that his entry was by default, to which he shall answer, if required, he shall then further answer and shew his right in like manner as in the writ he first purchased against the husband and wife; and if he can shew such right, the wife shall gain nothing by her writ; but if the husband absent himself and will not defend his wife's right, or, against the wife's consent, will render the wife's lands in any suit instituted against the husband and wife for lands which are her inheritance during the coverture, then the wife may come at any time before judgment, and defend her right.†

3. If tenant in dower, tenant by the curtesy, or otherwise for term of life, or by gift, where the reversion is reserved, do make default, or will give up, the heirs, or they unto whom the reversion belongeth, shall be admitted to their answer if they come before judgment; and if, upon such default or surrender, judgment happen to be given, then the heir, or they unto whom the reversion belongeth, after the death of such tenants, shall in no wise be injured by such default or surrender.

4. THE dying seised hereafter of any disseisor having no right or title, shall not be such descent in law as to take away the right of entry from such, as, at the time of the death of the disseisor, had lawful title of entry, except such disseisor hath had peaceable possession five years, next after the disseisin committed, without entry or continual claim of such as have lawful title.

5. No feoffment, or other conveyance, or other act or acts hereafter to be made, suffered, or done by the husband only, of any lands, tenements, or hereditaments, being the inheritance or freehold of his wife, during the coverture between them, shall in any wise be, or make, any discontinuance thereof, or be prejudicial or hurtful to the said wife or her heirs, or to such as shall have right, title, or interest to the same by the death of such wife; but the said wife or heirs, and such other to whom such right shall appertain after her decease, shall and may then lawfully enter into all such lands, tenements, and

* 1792, edi. 1794, 1803, and 1814, c. 114.

† *Ante*, c. 107, § 6.

hereditaments, according to their rights and titles therein ; any such feoffment, or other conveyance, or act to the contrary notwithstanding.

A. D. 1792.
A. R. C. 17.

6. ALL and every statute and act, or clause and clauses of any statute or act, coming within the purview of this act, shall be, and the same are hereby repealed : *Provided, nevertheless,* Proviso.
That nothing herein contained shall be construed to affect any right which may have accrued, or been vested before the commencement of this act.

7. THIS act shall commence in force, from and after the Commencement passing thereof.

C. 130.

An act to reduce into one, the several acts, for the relief of persons, who have been or may be injured, by the destruction of the records of certain courts of justice.

A. D. 1819.
A. R. C. 43.

[Passed March 1, 1819.]

WHEREAS divers records of courts of justice within this Commonwealth, and other papers of consequence, have been or may be destroyed by fraud, accident or otherwise, to the great injury of the citizens of this Commonwealth : For relief, therefore, of such persons, whose estates, titles or interests have been, or may be, affected thereby ;

1. *Be it enacted,* That the several superior courts of law, county and corporation courts, where any such losses may have accrued, or shall hereafter accrue, when any original deeds, with an endorsement of the acknowledgment or proof thereof, and order for recording the same, attested by the clerks of such courts, or of the former district courts, respectively, or the copies of any deeds with the endorsement so attested, or any wills, with the endorsement of the proof and the order for recording the same, so attested, or of any judgment, decree or order of court, in like manner attested, or of any inventory or other document before admitted to record in such courts, and of all bonds, bills, notes and all other papers necessarily filed in the office of such court, (the original of the same being lost, or otherwise destroyed,) shall be produced to them, shall order their clerks again to record all such original deeds, copies of deeds, or wills, with the said endorsements respectively, and all such copies of judgments, decrees and orders of court, or of inventories or other documents : and the said clerks, when they shall have recorded any thing in pursuance of this act, shall endorse on the same, that the original had been lost or destroyed, and shall make an entry to the same effect on the record, with the thing recorded, which shall have the same operation and effect in law, to all intents and purposes, as the original record would have had. (a)

Where records have been destroyed, courts to admit to record deeds, wills, judgments, inventories, &c., or copies thereof.

Also, copies of bonds and other papers filed in clerk's office.

Endorsement on paper so recorded, and entry in record book.

Effect of recording a new.

(a) Compiled of 1787, c. 17, § 2 ; 1792, edi. 1794, 1803, and 1814, c. 33, § 2 ; 1796, c. 18, edi. 1803, and 1814, c. 211.

A. D. 1819.
A. R. C. 43.

Clerk's fees, to be
the same as for
copies.

Executive to ap-
point commission-
ers to take deposi-
tions respecting
records destroyed.
Their powers and
duties.

To appoint a clerk.

His compensation.

Such depositions
where to be lodg-
ed.

Effect thereof.

Repealing clause.
Proviso.

Commencement.

2. THE clerks of the said several courts, shall do and perform the services in this act mentioned, for the same fees that are allowed by law in other cases for a copy of any thing herein before mentioned; and, in like manner, shall take no other or greater fee for recording any deed, which hath been already recorded, or shall be made only by occasion of the misfortune aforesaid, for settling the right or title of any person or persons whatsoever, to lands and tenements, slaves, or goods and chattels, than in other cases is, or shall be allowed by law, for the copy of any such deed; any law, usage or custom, to the contrary notwithstanding.(b)

3. It shall and may be lawful for the Governor, with the advice of Council, to issue one or more commissions, as the case may require, under the seal of the Commonwealth, to nine able and discreet persons directed, giving them or any of them, full power and authority, to meet at some convenient place, by them to be appointed, and to adjourn from time to time, as they shall think fit, and to summon, hear and examine all witnesses, at the instance of any person, touching the premises, and to take their depositions in writing. And the said commissioners shall have power to appoint some person, skilled in clerkship, to attend them for keeping a journal of their proceedings, and drawing the depositions aforesaid; which person shall be paid for his services by each county, respectively; and all depositions which have been taken by virtue of the act entitled, *An act for the relief of persons who have been or may be injured by the destruction of the records of county courts*, passed December the seventeenth one thousand seven hundred and eighty-seven, or by virtue of *The act to amend the said act*, passed December the twentieth, one thousand seven hundred and ninety-six, or which may hereafter be taken by virtue of this act, shall be so lodged with the clerks of the courts, in which such accident or loss may have happened, there to remain, as evidence in all cases, for establishing the rights of the person or persons injured, when better evidence cannot be obtained.(c)

4. ALL acts and parts of acts, coming within the purview of this act, shall be and the same are hereby repealed; *Provided*, That all rights and remedies vested and accrued under the same, shall remain in the same condition as if this act had not been passed.

5. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty.

(b) 1787, c. 17, § 3; 1792, ed. 1794, 1803, and 1814, c. 33, § 3.

(c) 1787, c. 17, § 4; 1792, ed. 1794, 1803, and 1814, c. 33, § 4; 1796, c. 18, § 1; ed. 1808, and 1814, c. 211, § 1.

C. 131.

An act to reduce into one act, the several acts and parts of acts, concerning witnesses, and prescribing the manner of obtaining and executing commissions for taking their depositions in certain cases.

A. D. 1818.
A. R. C. 42.

[Passed January 10, 1818.†]

1. *BE it enacted by the General Assembly, That no person convicted of treason, murder or other felony whatsoever, shall be admitted as a witness in any case whatsoever, unless he be first pardoned, or shall have received such punishment, as by law ought to be inflicted upon such conviction.*(a)

Person convicted of treason, murder, or any other felony, not to be witness, till pardoned or punished.

2. No person convicted of perjury, although he be pardoned or punished for the same, shall be capable of being a witness in any case.

No person convicted of perjury ever to be witness.

3. No negro, mulatto or Indian, shall be admitted to give evidence but against, or between negroes, mulattoes or Indians.

Negroes, &c. witnesses only against or between negroes, &c.

4. If any person summoned as a witness to attend any court within this Commonwealth, or to appear before commissioners, referees or other persons appointed by or under the authority of such court, to take or receive his deposition, or testimony, or upon any order of survey, shall fail to attend accordingly, not having a reasonable excuse for such failure, such person shall be fined by the court from whence the *subpœna* issued, sixteen dollars, to the use of the party for whom such witness was summoned; and the witness so failing shall farther be liable to the action of the party for all damages sustained by the non-attendance of such witness: *Provided*, That the witness on whom such fine shall be imposed, shall either be present in court at the time, or shall have been duly served with the rule of the court, returnable to some certain day, requiring him to shew cause why such fine should not be imposed upon him, and shall have failed to shew such cause; but if sufficient cause of his or her inability to attend be shewn, then no fine or action shall be incurred by such failure.

Witnesses not attending, may be fined, and liable to action for damages. 5 Eliz. c. 9, § 12.

5. If any person, so summoned and attending in any of the causes above-mentioned, shall refuse to give evidence upon oath or affirmation, (as the case may be,) to the best of his or her knowledge, every person so refusing shall be committed to prison by the court, commissioners, referees, or other persons authorised to take or receive his or her deposition or testimony, there to remain without bail or mainprize, until he or she shall give such evidence.

Proviso.

6. It shall not be lawful in any criminal prosecution whatever, (other than a prosecution for perjury,) or in any action founded upon a penal statute, to give in evidence, against the

Witnesses may be imprisoned for refusing to testify.

Confessions or statements by witness not to be evidence against him, except in prosecution for perjury.

(a) 1792, *edi.* 1794, 1803, and 1814, c. 141, § 1.

(d) 1792, *edi.* 1794, 1803, and 1814, c. 141, § 4; and 1812, c. 20, § 1.

(b) *Ibid.* § 2.

(e) 1792, *edi.* 1794, 1803, and 1814, c. 141, § 5.

(c) *Ibid.* § 3.

† Suspended till January 1st, 1820: *vid. ante.* c. 45.

A. D. 1818.
A. R. C. 42.

Privilege of witnesses.

Proviso.

Summons for witnesses, by whom to be issued.

Allowance for attendance within their county.

For attendance in, and travelling to, any other county.

For so attending out of their county, in prosecutions for crimes or misdemeanors.

For attending, in behalf of Commonwealth, in civil cases.

defendant, any confession or statement, which he or she may have made in the course of his or her legal examination as a witness before any competent tribunal.(f)

7. WITNESSES shall be privileged from arrests in all cases, except treason, felony and breaches of the peace, during their attendance at any court, or other place where their attendance shall, by *subpœna* first duly executed by a sworn officer, or by some indifferent person who shall have made oath to the due execution thereof, have been required; and in coming to, and returning from thence, allowing one day for every twenty miles from their places of abode: *Provided, always*, That no person whatsoever, attending any of the courts in this Commonwealth, or upon any reference or survey, by order of any such court in virtue of any *subpœna*, shall be privileged from an arrest, by original or other process, unless such person shall be actually a witness in the matter in such *subpœna* expressed.(g)

8. In all cases where witnesses are required to attend any court, commissioners or referees, or on any order of survey, a summons shall be issued by the clerk, at the request of either party, or of the commissioners, referees, or surveyor, interested in, or acting under the order of any such court, expressing the day and place where they are to appear, the names of the parties to the suit, and in whose behalf summoned. Any *subpœna*, or process to require or compel the attendance of any witness, may be served or executed in the county or corporation wherein the said witness shall be found.(h)

9. EVERY witness so summoned to appear at any county court, or superior court of law, or to attend commissioners, referees, or other persons, for the purpose of giving testimony, or upon any survey of lands, and being an inhabitant of the same county, shall be paid by the person or persons at whose suit the summons issued, fifty-three cents, for every day's attendance upon such summons, and ferriages; and every person residing in, and summoned out of another county, shall have the said allowance of fifty-three cents per day for attendance, and be paid for travelling to the places of attendance, four cents per mile, and the same for returning, and also their ferriages.(i)

10. In all cases, when any person or persons shall be summoned as a witness or witnesses, in any prosecution for a crime or misdemeanor, to attend any court out of the county or counties in which he, she, or they may reside, the same allowance shall be made him, her or them, for such attendance, as is allowed by law to witnesses attending the superior courts of law.(k)

11. EVERY person summoned and attending as a witness on behalf of the Commonwealth, before any court, in a civil case therein depending, shall be entitled to the same compensation for his or her attendance, as is allowed by law to witnesses attending such courts on behalf of individuals in like cases; and, on a certificate of such attendance, under the hand of the clerk

(f) 1811, c. 23, § 2; edition 1812, c. 108, § 2.

(g) 1786, c. 14; 1792, edi. 1794, 1803, and 1814, c. 141, § 6.

(h) *Ibid*, § 7.

(i) 1786, c. 14; 1792, edi. 1794, 1803, and 1814, c. 141, § 8; and 1807, c. 4, § 2; edi. 1808, c. 121, § 2.

(k) 1800, c. 44; edi. 1803, & 1814, c. 275.

of the court wherein the same was entered, being produced to, and filed with the auditor of public accounts, he shall issue his warrant for the amount thereof, payable out of the public treasury. And in every civil case where the Commonwealth shall prevail, all costs, which it is liable to pay, shall be taxed in the bill of costs, and recovered in like manner as is provided in the case of individuals.(l)

A. D. 1818.
A. R. C. 42.

Commonwealth prevailing in civil cases, to recover costs.

12. EVERY witness summoned and attending the court of appeals, general court, or any superior court of chancery, shall be paid, by the party at whose suit the summons issued, four cents per mile for travelling to the places of attendance, and the same for returning, besides ferriages; and one dollar and four cents per day for his attendance; which allowance shall be entered by the clerk, of course, except where disputes arise concerning the same, and then such disputes shall be determined by the court. The clerks of the several superior courts of law, and of the several county and corporation courts shall, in like manner, enter the allowances to witnesses attending the said courts. Witnesses in all cases, as well civil as criminal, shall be sworn as to their travelling, ferriages and attendance, for which purpose, the clerk, or some of his assistants, specially empowered by the court, or the commissioners, referees, or surveyor, as the case may be, shall administer the oaths.(m)

Allowance to witnesses for attending court of appeals, general court, or any superior court of chancery.

13. No witness shall be permitted to charge his attendance in more than one suit at the same time; but, if he be summoned to attend in several suits, he may charge his attendance to either of the parties by whom he shall be summoned, at his election.(n)

For attending in several suits at same time.

14. THERE shall not be allowed in the bill of costs the charge of more than three witnesses for the proof of any one particular fact.(o)

Charge allowed of only three witnesses to one fact.

15. WHEN any witness shall be about to depart the country, or, by age, sickness, or otherwise, shall be unable to attend the court, upon affidavit thereof, in open court, or before the clerk in his office, or on a certificate that an affidavit has been made to that effect, from any justice of the peace, the clerk of the court, in which any suit is or shall be depending, may, on request of either party, award a commission for taking the deposition of such witness *de bene esse*, to be read as evidence at the trial, in case the witness should be unable to attend; but the party obtaining such commission shall give reasonable notice to the other party, of the time and place of taking the deposition; otherwise, the same shall be void.(p)

Commissions for their examination how obtained, when witness is about to leave country, or is unable to attend court.

16. WHEN any plaintiff or defendant, in any suit depending in any court of law within this Commonwealth, shall wish to have the benefit of the testimony of any of the judges of the court of appeals, superior court of chancery, or general court, or of any other officer of government, who, on account of his official duties, cannot attend court to give testimony on the

Commissions how obtained, to take testimony of judges of superior courts, &c.

(l) 1804, c. 10, § 1; edition 1808, c. 59, § 1.

(m) Compiled of 1792, edition 1794, 1803, and 1814, c. 141, § 9; and 1806, c. 26; edi. 1808, c. 86.

(n) 1792, edi. 1794, 1803, and 1814, c. 141, § 10.

(o) *Ibid.*, § 11.

(p) *Ibid.*, § 12; and 1799, c. 3; edi. 1803, and 1814, c. 256.

A. D. 1818.
A. R. C. 42.

trial of such suit, the party wishing the benefit of the testimony of such judge or other officer, may, on application to the clerk of the court in which such suit is depending, obtain a commission to take the deposition of such judge or other officer, which commission the said clerk is hereby authorised to issue; and any deposition or depositions of such judge or other officer, taken before any two magistrates in the county in which such witness or witnesses reside, shall be read in evidence on the trial of such suit: *Provided*, the adverse party have reasonable notice of the time and place of taking such deposition or depositions.(g)*

Or of any witness in U. States, &c. residing out of the Commonwealth, or engaged in or about to go into military service, &c.

How commission, in such case, shall be directed, where witness resides out of Commonwealth.

And where he or she is within Commonwealth.

How commissions shall be obtained, where witness resides beyond sea, or in any foreign country.

17. WHENEVER any party to a suit depending in any court of law† shall desire to take the deposition of any witness, in the United States, or in the territories thereof, or in the District of Columbia, who resides out of this Commonwealth, or who is engaged in military service, or about to go into military service, or who from any other cause cannot be compelled, by the proper process, to attend the court, and give evidence in person, it shall be lawful for the clerk, at his office, on affidavit of the fact, to issue a commission to take the deposition of such witness. In case of a witness residing out of the Commonwealth, the commission shall be directed to any two justices of the peace of the state, territory or district in which the witness may be, who will certify themselves to be such; and the deposition taken in pursuance thereof, upon reasonable notice to the adverse party, shall be read in chief, as evidence in the cause. In the case of a witness, within the Commonwealth, the commission shall issue in the usual form; and the deposition taken in pursuance thereof, upon reasonable notice to the adverse party, shall be read in evidence, if the personal attendance of the witness cannot be had.(r)

18. UPON affidavit that any witness resides beyond sea, or in any foreign country, the court wherein the suit is depending may, on request of either party, direct a commission to issue from the clerk's office directed to such commissioners, not exceeding five, as shall be nominated and agreed upon by the parties litigant; for which purpose, the party applying for a commission in such cases shall give the adverse party, his attorney or agent, ten days previous notice of the day of his intended application to the court; without which, no commission shall issue; and if the adverse party, his attorney or agent, shall not attend for the purpose, in that case the party praying the commission may nominate the commissioners himself; any three of whom in either case may proceed to execute the said commission: *Provided nevertheless*, That reasonable notice shall be given to the party, of the time and place of taking such depositions. The costs of giving notices, as aforesaid, as well as of taking any deposition or depositions, in any or either of the United States, or territories, or district thereof, or beyond sea, or in any foreign country, may be taxed by the court against

(g) 1813, c. 18, § 14.

(r) 1814, c. 31, § 9.

* See *post*, c. 132, authorising the notaries public of Richmond to take depositions.

† See *ante*, c. 66, § 104, same provision as to depositions in suits in chancery.

the party who in their opinion ought in justice to pay the same.(s)

A. D. 1818.
A. R. C. 42.

19. If any party, in a suit at common law or in chancery, shall make oath that he verily believes his claim or defence, (as the case may be,) or a material point thereof, depends on a single witness, the court, or the clerk in vacation, may award a commission to take the deposition of such witness *de bene esse*, although he or she be not about to depart the country, nor under any disability; the party, in such case, giving reasonable notice, of the time and place of taking such deposition, to the adverse party.(t)

Where claim or defence depends on single witness.

20. WHEN any will shall be produced to any court, having jurisdiction in the case of such will, for probat, and any witness or witnesses attesting the same shall reside out of this Commonwealth, it shall be lawful for such court to issue a commission, or commissions annexed to such will, and directed to the presiding judge of any court of law, to any notary public, mayor or other chief magistrate of any city, town or corporation, or county, or to such other person or persons as, by the laws of such country where such witness or witnesses may be found, are duly authorised to administer an oath, empowering him or them to take and certify their attestations. If the person, to whom such commission shall be directed, shall certify, in the manner such acts are usually authenticated by him or them, that the witness or witnesses personally appeared before him or them, and made oath, or affirmed, as the case may require, that the testator signed and published the writing, annexed to such commission, as his last will and testament, or that some other person signed it by his direction, that he was of disposing mind and memory, and that he or they subscribed their names thereto in his presence, and at his request, such oath or affirmation shall have the same operation, and the will be recorded in like manner, as if such oath or affirmation had been made in the court from whence such commission issued.(v)

Where witness to a will resides out of state.

21. AND, whereas great inconvenience may arise to the suitors in the several courts of this Commonwealth, who are litigant with persons residing without this Commonwealth; and have not agents or attornies within the same, by the death or removal of witnesses, whose depositions cannot legally be taken for want of notice to such absent persons;(w)

BE it therefore enacted, That, when any commission shall be obtained to take the deposition of a witness in a suit depending in any of the courts of this Commonwealth, where the plaintiff or defendant in such suit doth not reside within the same, or hath not an attorney within the same, to whom notice of the time and place of taking such deposition can be given, then the person obtaining such commission, having published in some public newspaper printed within this Commonwealth, four weeks successively, the time and place, when and where the witness is to be examined, and the name of the

Notice, how given where party resides out of state, and has no agent therein.

(s) 1792, edi. 1794, 1803 and '14, c. 141, § 13.

(t) *Ibid.* § 14.

(v) 1792, edi. 1794, 1803 and '14, c. 141, § 15.

(w) *Ibid.* § 16.

A. D. 1818.
A. R. C. 42.

witness, together with the names of the parties to the suit in which such witness is to be examined, it shall and may be lawful for any plaintiff or defendant, as aforesaid, to proceed to take any deposition authorised by the commission issuing from the court, agreeably to law, where the suit depends as aforesaid; and such deposition, when taken and returned to the clerk's office, agreeably to the rules of the court from whence the commission issued, shall there be filed, and allowed to be read in evidence, in the same manner and under the like restrictions, as if notice had been duly given to the opposite party; any law, usage or custom, to the contrary in any wise, notwithstanding. And the printer may demand and receive the sum of two dollars for publishing such advertisement four weeks, which shall be taxed in the bill of costs, if the party chargeable therewith shall prevail in the suit.(x)

Repealing clause.

22. ALL and every act and acts, clauses and parts of acts, for, or concerning any matter or thing within the purview of this act, shall be, and the same are hereby repealed: *Provided*, That all rights, remedies and proceedings, fines and penalties, accrued, commenced or incurred, before the commencement of this act, shall be and remain in the same condition as if this act had never been passed.

Commencement.

23. THIS act shall commence and be in force from and after the first day of January next.

C. 132.

A. D. 1808.
A. R. C. 32.

*The fifth and sixth sections of the act increasing the number of magistrates within the city of Richmond, and for other purposes, therein mentioned.**

[Passed February 6, 1808.]

Notaries Public of
Richmond em-
powered to take
depositions.

BE it enacted, That the notaries public within the said city,† shall be and hereby are authorised to examine and take the affidavits or depositions of witnesses, in like manner as the same may be now taken by magistrates of the city, and which shall be considered as valid and effectual as if the same were taken or received by the said magistrates;† and, if any person sworn by a notary public shall give any evidence under such circumstances as would have constituted the same to be perjury if done before a magistrate, the same shall be deemed perjury, to all intents and purposes. The said notaries, for receiving or taking the affidavits or depositions of witnesses, shall be allowed and paid by the person, at whose instance the services are rendered, seventy-five cents for each affidavit or deposition so taken; and in all cases where the affidavits or depositions so taken, shall be filed in causes in a court of record, the aforesaid

(x) 1792, *edi.* 1794, 1803 and 1814, c. 141, § 17.

* 1807, c. 94

† That is, of Richmond.

fees shall be taxed in the bill of costs, and recovered by the party prevailing : *Provided*, That no charge shall be made or taxed, on the notarial seal, which shall be affixed to any of the said affidavits or depositions.†

A. D. 1808.
A. R. C. 32.
Proviso.

THIS act shall be in force from the first Wednesday in Commencement. April next.

C. 133.

An act to reduce into one the several acts allowing a bill of exceptions to be sealed.

A. D. 1819.
A. R. C. 43.

[Passed January 6, 1819.]

1. *BE it enacted by the General Assembly*, That, when one impleaded before any court, and in any cause where appeal, writ of *error* or *supersedeas*, lies to a higher court, doth allege an exception, praying that the justices will allow it, if they will not allow it, and he that allegeth the exception, do write the same exception, and require that the justices will put their seals in testimony thereof, the justices, or the greater part of them present, shall so do; and if such higher court, upon complaint made of the said justices, cause the record to come before them, and the same exceptions be not found in the roll, and the plaintiff shew the exception written, with the seals of the justices put to it, the justices shall be commanded, that they appear at a certain day, either to confess or deny their seals; and, if the justices cannot deny their seals, it shall proceed to judgment according to the same exception, as it ought to be allowed or disallowed.(a)

Bills of exceptions in civil cases. Westm. 2, 13 Ed. 1, c. 31.

When justices may be cited to confess or deny their seals.

2. *HEREAFTER*, in the prosecution of any person or persons for any crime or misdemeanor, in any court of law, of this Commonwealth, it shall be the duty of the judge or justices, before whom such prosecution is pending, to sign and seal any bill of exceptions tendered to the court during the progress thereof; *Provided*, The truth of the case be fairly stated in such exceptions. And thereupon, the said exceptions shall, by the clerk of the said court, be entered in the record of such prosecution, and become to all intents and purposes a part thereof.(b)

Bills of exceptions in criminal prosecutions.

Proviso.

3. *ALL* and every act and acts, part or parts of acts, coming within the purview of this act, shall be and the same are hereby repealed.

Repealing clause.

4. *THIS* act shall commence and be in force from and after the first day of January, eighteen hundred and twenty.

(a) 1789, c. 12; 1792, ed. 1794, 1803 and 1814, c. 44.

(b) 1814, c. 31, § 1; so amended, at the late revisal, as to extend its provisions to all the courts of law, instead of being confined to the superior courts of law, as by the act of 1814.

† This provision also, being in an act of which all the other provisions were of a merely local and private nature, was overlooked by the revisors; and not being reported by them, was not re-enacted by the legislature at the late revisal. But the provision is general and public, and still in force.

C. 134.

A. D. 1819.
A. R. C. 43.

*An act to reduce into one act the several acts concerning executions, and for the relief of insolvent debtors.**

[Passed February 25, 1819.]

Writs of execution.

When, and how issuable.

When returnable;
If issued from general court;

Or from circuit courts.

Attachments, and executions, from superior courts of chancery, to whom issuable, and when returnable.

Proviso.

Further proviso; executions from county courts, &c. when returnable.

Forms of writs.

Fieri facias, in debt;

1. *Be it enacted by the General Assembly*, That all persons who have or shall hereafter recover any debt, damages or costs, by the judgment of any court of record within this Commonwealth, may, at their election, prosecute writs of *fieri facias*, *elegit* and *capias ad satisfaciendum*, within the year, for taking the goods, lands, or body of the person or persons, against whom such judgment is obtained, in manner following. All such writs shall run in the name of the Commonwealth, and bear *teste* by the clerks of the said courts respectively, shall be returnable to the first day of the next succeeding court, so that there be always at least fifteen days between the *teste*, and return of each of the said writs: *Provided*, That executions may be issued from the general court, returnable to the second term of the said court, following the day of issuing the same, (a) and that executions shall issue to any sheriff or coroner from the clerks of the superior courts of law, returnable, at the election of the party suing out the same, on the first day of the next superior court of law for that county, or to the next rule day of the said superior court, after the emanation of such writ; (b) and that attachments to compel the performance of decrees and executions, shall issue to the marshals of the superior courts of chancery from the clerk of any such court, returnable, at the option of the party suing out the same, on the first Monday in any month after the issuing thereof, or to the first or tenth day of the next term of such court; *Provided*, There be not more than ninety days between the *teste* and return of such writ, when the same is made returnable to the first Monday in any month. (c) *And, provided, also*, That if the plaintiff in any county or other inferior court, shall desire an execution to issue, returnable at a further day, the clerk shall issue the same accordingly, so as the day of such return be upon a court day, within ninety days next after the *teste* thereof; and that the forms of the said several writs shall be as follows, *mutatis mutandis*, to wit: (d)

A FIERI FACIAS IN DEBT.

THE Commonwealth of Virginia to the sheriff of county, greeting: We command you, that of the goods and chattels of A. B., late in your bailiwick, you cause to be made the sum of _____, which C. D., lately in our court, hath recovered against him for debt, also the sum of

(a) From 1748, edi. 1752, c. 12, and
edi. 1769, c. 8; 1793, c. 3, § 1; edi.
1794, 1803 and '14, c. 151, § 1.

(b) 1813, c. 18, § 12.

(c) Compiled of 1811, c. 16, § 2;
1813, c. 16, § 8; and 1815, c. 8, § 7.

(d) 1748, edi. 1752, c. 12, § 1; edi.
1769, c. 8, § 1; 1793, c. 3, § 1; edi.
1794, 1803 and '14, c. 151, § 1.

* Former general laws on this subject; 1748, edi. 1769, c. 8; 1792, c. 5; 1793, c. 3; edi. 1794, 1803 and '14, c. 150.

, which to the said C. D. in the same court were adjudged for his damages, as well by reason of detaining the said debt, as for his costs in that suit expended, whereof he is convicted, as appears to us of record, and that you have the said before the judges or justices (as the case may be,) of our said court, the day of , to render to the said C. D. of the debt and damages aforesaid. And have then there this writ. Witness, &c.

A. D. 1819.
A. R. C. 43.

THE SAME, IN CASE UPON A PROMISE.

As before, unto , for his damages, which he sustained, as well by reason of his not performing a certain promise and assumption to the said C. D. by the said A. B., lately made, as for his costs, by him, about his suit in this behalf expended, &c.

In *assumpsit*;

IN TRESPASS.

As before, unto , for damages, as well by occasion of a certain trespass by the said A. B. to the said C. D. offered, as for his costs, &c.

In *trespass*.

IF FOR THE DEFENDANT—SAY,

FOR his costs about his defence in a certain action, at the suit of the said, &c.

If for defendant.

IN COVENANT.

As before, unto , for damages, &c. by occasion of a breach of a certain covenant between the said A. B. and C. D. lately made, &c.

For plaintiff in *covenant*.

THE FORM OF A WRIT OF ELEGIT.

THE Commonwealth, &c. greeting: Whereas, A. B. at our court, &c. before our judges, (or justices,) held, hath recovered against C. D. the sum of , which to the said plaintiff was adjudged for a certain debt or damages, (as before) ; and the said A. B. hath chosen to have delivered to him all the goods and chattels of the said C. D., saving only the oxen and beasts of his plough, and also a moiety of all his lands and tenements in your bailiwick, to have and to hold the goods and chattels aforesaid, as his own proper goods, and the said moiety as his freehold, to him and his assigns, until he shall have levied thereof the debt and damages aforesaid: Therefore, we command you that you cause to be delivered all the goods and chattels of the said C. D., saving the oxen and beasts of his plough, and also a moiety of all his lands and tenements in your bailiwick, whereof he at the day of obtaining the said judgment was seized, or at any time afterwards, by reasonable price and extent, to have and to hold the said goods and chattels, to him the said A. B., as his own proper goods and chattels, and the said moiety as his freehold, to him and his assigns, until he shall have levied thereof the debt and damages aforesaid; and that you certify our said judges, (or justices,) under your own seal, and the seals of those by whose oath you shall make this extent and appraisement, how you execute this writ, the day of . And have then there this writ, &c.

Elegit.
Westm. 2. 13 Ed.
1, c. 18.

A CAPIAS AD SATISFACIENDUM.

THE Commonwealth, &c. greeting: We command you that you take A. B. late of , if he be found within your bailiwick, and him safely keep, so that you have his body before

Capias ad satisfaciendum.

A. D. 1819.

A. R. C. 43.

our judges (or justices) of our court, &c. the day of , to satisfy C. D. the sum of , which the said C. D. hath recovered against him for debt, also, &c. as before.

IN CASE, TRESPASS OR COVENANT, AS IN THE FIERI FACIAS.

Forms of returns. WHICH said writs so issued, shall be executed by the sheriff or other officer to whom the same shall be directed, and shall be returned according to the respective forms hereafter mentioned, to wit :

Fieri facias satisfied.

THE RETURN OF A FIERI FACIAS.

Br virtue of this writ to me directed, I have caused to be made the within mentioned sum of , of the goods and chattels of the within named A. B. which said sum of before the judges (or justices) within mentioned, at the day and place within contained, I have ready, as that writ requires.

Nulla bona.

OR,

THE within named A. B. hath no goods or chattels, within my bailiwick, whereof I can make the sum within mentioned.

Partly satisfied.

OR,

Br virtue, &c. I have caused to be made of the goods and chattels of the within named A. B. the sum of , which I have ready to render to the within named C. D. in part of the debt and damages within mentioned; and I do further certify, that the said A. B. hath no more goods and chattels within my bailiwick, whereof at present I can make the residue of the said debt and damages, as by the said writ is required.

Elegit executed.

RETURN OF A WRIT OF ELEGIT.

INQUISITION indented, taken at , in the county aforesaid, the day of , in the year of our Lord , before me E. F. sheriff in the county aforesaid, by virtue of a writ to me directed, and to this inquisition annexed, and by oath of A. B. C. &c. good and lawful men of my bailiwick, who, being charged and sworn, upon their oath, do say, that A. B. in the said writ to this inquisition annexed, named the day of the caption of this inquisition, was possessed of the goods and chattels following, as of his own proper goods, to wit : of the price of , which I, the said sheriff, have caused to be delivered to the same C. D. to hold to him as his own proper goods and chattels in part of satisfaction of his debt and damages aforesaid, in the same writ mentioned: and, further, the said jurors upon their oath, do say, that the said A. B. at the time of rendering the judgment aforesaid was seized in his own demesne, as of fee, of and in (here name the houses and lands) with the appurtenances, of the annual value, in all the issues beyond reprises, of dollars; acres of which, or thereabouts, are a true and equal moiety of all and singular the lands, tenements, and hereditaments whatsoever, in the county aforesaid, of the said A. B.; which said moiety, I, the said sheriff, the day aforesaid, to C. D. in the said writ named, at a reasonable extent have delivered, to hold to him and his assigns as his freehold, according to the form of the act in that case made and provided, until he shall have levied the residue of the debt and damages

aforesaid, as the writ aforesaid requires; and, farther, the said jurors, upon their oath do say, that the said A. B. at the time of giving the judgment aforesaid had not, nor, at the day of taking this inquisition, hath any other or more goods and chattels, lands or tenements, in the county aforesaid, to the knowledge of the jurors aforesaid. In testimony whereof, as well I, the said sheriff, as the jurors aforesaid, to this inquisition have severally put our seals the day, year and place above mentioned.

A. D. 1819.
A. R. C. 43.

RETURN OF A CAPIAS AD SATISFACIENDUM.

Br virtue of this writ to me directed, I have taken the within named A. B. whose body, before the judges, (or justices,) within named, at the day and place within contained, I have ready to satisfy C. D. of the debt and damages within mentioned, as within to me is commanded.

Capias ad satisfaciendum executed.

OR,

Non est inventus.

THE within named A. B. is not found in my bailiwick.(e)

2. UNTIL the court of appeals shall direct the forms of executions returnable in vacation of the courts, the same shall be adapted by the clerks to the nature of the case.(f)

Forms of such writs returnable in vacation.

3. WHEN any writ of execution shall issue, and the party, at whose suit the same is issued, shall afterwards desire to take out another writ of execution at his own proper costs and charges, the clerk may issue the same, if the first writ be not returned and executed; and where, upon a *capias ad satisfaciendum*, the sheriff shall return, that the defendant is not found, the clerk may issue a *fieri facias*; and if, upon a *fieri facias*, he shall return that the party hath no goods, or that only part of the debt is levied, in such case it shall be lawful to issue a *capias ad satisfaciendum* upon the same judgment; and where part of a debt shall be levied upon an *elegit*, a new *elegit* shall issue for the residue; and, where *nihil* shall be returned upon any writ of *elegit*, a *capias ad satisfaciendum* or *fieri facias* may issue, and so *vice versa*; and where one judgment is obtained against several defendants, execution thereon shall issue, as if it were against one defendant, and not otherwise.(g)

Other execution how issuable, first not being served or satisfied.

Execution, if judgment against several defendants.

4. If a tenant by *elegit* be evicted of his title in the lands, tenements or hereditaments, which he holds by virtue of any extent thereof, by judgment had against him, otherwise than by his own fraud or default, before satisfaction shall be made him for his debt, or damages, and costs, he shall and may have a writ of *scire facias* against the debtor, his heirs, executors or administrators; and may thereafter sue out such other writ of execution for the residue of his debt or damages, and costs, as shall appear to remain unpaid, as if no execution had been theretofore issued.(h)

Provision, if tenant by *elegit* be evicted.

32 Hen. 8, c. 5.

Scire facias allowed him.

New execution.

5. WHEN any judgment or recognizance shall be extended, the same shall not be avoided or delayed by occasion that any

Extent, not avoided or delayed by omission of part of lands extendible.

(e) 1748, edi. 1752, c. 12, § 2; edi. 1769, c. 8, § 2; 1793, c. 3, § 1; edi. 1794, 1803, and '14, c. 151, § 1.

(f) 1798, c. 13, § 3; edi. 1803, and '14, c. 249, § 3.

(g) 1748, edi. 1752, c. 12, § 5; and 16 and 17 Car. 2, edi. 1769, c. 8, § 5; 1793, c. 3, § 2; c. 5, § 2.

edi. 1794, 1803, and '14, c. 151, § 2. Perpetuated by (h) 1792, edi. 1794, 1803, and '14, 22 and 23 Car. 2, c. 151, § 3.

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Remedy for contribution, against owners of lands omitted.

16 and 17 Car. 2, c. 5, § 3.

Proviso, in favor of infant heirs or devisees.

16 and 17 Car. 2, c. 5, § 4.

Where defendant dies in prison, charged in execution, new execution allowed against his estate; 21 Jac. 1, c. 24, § 2.

Except lands *bona fide* sold, for payment of debts to creditors who charged him in execution. 21 Jac. 1, c. 24, § 3.

Sales, &c. of lands, by debtors charged in execution, void.

Exception.

Capias ad satisfaciendum, when levied, to bind real estate.

Provision, as to persons delivered from execution by privilege of either House of Assembly.

part of the lands or tenements extendible are or shall be omitted out of such extent.(i)

6. SAVING, always, to the party and parties, whose lands shall be extended, his and their heirs, executors and assigns, his and their remedy for contribution against such person and persons, whose lands are or shall be omitted out of such extent, from time to time.(i)

7. *PROVIDED nevertheless*, That this act, or any thing therein contained, shall not be construed to give any extent or contribution against any heir or devisee within the age of twenty-one years, during such minority of such heir or devisee, for or in respect of any lands to such heir or devisee descended or devised, farther, or otherwise, than might have been made before the making of this act.(i)

8. If any person, being in prison charged in execution, shall happen to die in execution, the party or parties, at whose suit, or to whom such person shall stand charged in execution, for any debt or damages recovered, his or their executors or administrators, may, after the death of the person so dying in execution, lawfully sue forth and have new execution against the lands and tenements, goods and chattels, or any of them, of the person so deceased.(k)

9. *PROVIDED, always*, That this act shall not extend to give liberty to any person or persons, their executors or administrators, at whose suit any such party shall be and die in execution, to have or take any new execution, against any the lands, tenements, or hereditaments of such party dying in execution, which shall, at any time after the said judgment or judgments, be by him sold *bona fide* for the payment of any of his creditors, at whose suit he shall be in execution, and the money paid, or secured to be paid, to any such creditors, with their privacy, in discharge of his or their debts, or some part thereof.(l)

10. *And it is hereby declared and enacted*, That every sale, conveyance and transfer of any lands or tenements, made by any person charged in execution for any debt or damages, shall be absolutely null and void, as to the creditor or creditors at whose suit he is so charged in execution; unless such sale, transfer or conveyance, be absolute and *bona fide*, and be made for the payment of the debt and damages due to such creditor or creditors, and the proceeds of such sale, conveyance or transfer, be paid, or be secured to be paid within a reasonable time, to such creditor or creditors: and that all executions of *capias ad satisfaciendum*, levied after the commencement of this act, shall bind the real estate of the defendant, from the time when they shall be levied.

11. If any person, taken in execution, be delivered by privilege of either House of Assembly, so soon as such privilege ceaseth, he shall return himself a prisoner in execution, or be liable to an escape.(m)

(i) 1748, ed. 1752, c. 12, § 6, 7, 8, 9; and ed. 1769, c. 8, § 6, 7, 8, 9; 1793, c. 3, § 4, 5, 6; ed. 1794, 1803, and '14, c. 151, § 4, 5, 6.
(k) 1748, ed. 1752, c. 12, § 3; and

ed. 1769, c. 8, § 3; 1793, c. 3, § 7; ed. 1794, 1803, and '14, c. 151, § 7.
(l) *Ibid*, § 4, 8.
(m) 1785, c. 55, § 11; 1793, c. 3; ed. 1794, 1803, and '14, c. 151, § 9.

12. WHERE judgment shall be obtained in any court of record within this Commonwealth, for any debt or damages, and the person against whom such judgment shall be obtained, shall remove himself or his effects,* or shall reside out of the limits of the jurisdiction of such court, it shall be lawful for the clerk of the court where judgment was given, at the request of the party for whom the same was rendered, to issue a writ of *feri facias* or *capias ad satisfaciendum*, or any other legal or proper writ of execution, or attachment for the non-performance of a decree in chancery, (as the case may require,) in the form and under the *teste* herein-before prescribed, and to direct the same to the sheriff of any county, or serjeant of any corporation within this Commonwealth, where the defendant or debtor, or his goods shall be found; which said sheriff, or other officer, to whom the same shall be directed, is hereby empowered and required to serve and execute the same, and shall make return thereof, to the court where the judgment was given, in the manner herein-before prescribed and directed.(n)

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When and how execution may be issued to any county, &c., tho' not within court's jurisdiction.

13. No writ of *feri facias*, or other writ of execution, shall bind the property of the goods, against which such writ is sued forth, but from the time that such writ shall be delivered to the sheriff, under-sheriff, coroner, or other officer, to be executed; and, for the better manifestation of the said time, such sheriff, coroner, or other officer, his deputy or agent, shall, upon the receipt of any such writ, without fee for doing the same, endorse upon the back thereof the day of the month and year when he received the same; and, if two or more writs shall be delivered against the same person in the same day, that which was first delivered shall be first satisfied. If any sheriff, coroner or other officer, to whom any execution shall be delivered, shall fail or neglect to endorse thereon the day of the month and year when he received the same, every such person, for every such failure, shall be liable, on a motion to be made before the court from whence the execution issued, to a penalty not exceeding fifteen *per centum* upon the amount of the said execution, if it be for money or tobacco, and if it be for a specific thing, one hundred dollars, to the use of the party injured, upon giving ten days previous notice of such motion; and, shall moreover be liable to the action of the party grieved, for all damages arising from such failure.(o)

Property in goods bound from delivery of execution to officer.

29 Car. 2, c. 3, § 16.
Time of delivery to be endorsed.

Writ first delivered to be first satisfied.

Penalty for neglect to make such endorsement.

(n) From 1748, edition 1752, c. 12, § 20; and edi. 1769, c. 8, § 20; 1792, c. 5, § 10; 1793, c. 3, § 10; editions 1794, 1803, and 1814, c. 151, § 10.

(o) 1748, edition 1752, c. 12, § 10; and edi. 1769, c. 8, § 10; 1793, c. 3, § 11; editions 1794, 1803, and 1814, c. 151, § 11.

* The act of 1792, c. 5, § 10, authorised the execution, in case the defendant removed himself and his effects; the act of 1793, c. 3, § 10, authorised it when the defendant removed himself or his effects. The act of 1793 authorised executions in such case, only where judgment was obtained in any *county or other inferior court*; those words were struck out at the late revision, and the provision thereby applied to the judgments of *all courts*. But the former laws contained a provision that an execution duly served in other respects, should be deemed good, though not directed to any sheriff; which provision was struck out at the late revision: *vid.* edi. 1794, 1803, and 1814, c. 151, § 47.

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Arms, &c. of militia, exempt from executions and distresses.

Goods taken by execution, when and how to be sold.

Forthcoming bonds, when and how to be taken.

Proceeding thereon, if goods be not delivered.

Bond to be returned to clerk's office, and have the force of a judgment.
Clerk to issue execution thereupon.

No security then to be taken.

Endorsement.

14. ALL arms, ammunition and equipments of the militia, shall be exempted from executions and distresses at all times.^{(p)*}

15. ON all executions, which have heretofore issued, or shall hereafter be issued, the sheriff or other officer, having published notice of the time and place of sale, at the door of the court-house of his county on some court day, and at some public place near the residence of the debtor, at least ten days before such sale, shall proceed to sell, by auction, the goods or chattels so taken, or so much thereof as shall be sufficient to satisfy the judgment or decree, for the best price that can be got for the same.^(g)

16. *PROVIDED always*, That if the owner of such goods and chattels shall give sufficient security to such sheriff or officer, to have the same goods and chattels forthcoming at the day of sale, it shall be lawful for the sheriff or other officer, to take a bond from such debtor and securities, payable to the creditor, reciting the service of such execution, and the amount of money or tobacco due thereon, and with condition to have the goods or chattels forthcoming at the day of sale appointed by such sheriff or officer, and shall thereupon suffer the said goods and chattels to remain in the possession, and at the risk of the debtor, until that time; and if the owner of such goods and chattels shall fail to deliver up the same, according to the condition of the bond, or to pay the money or tobacco mentioned in the execution, such sheriff or officer shall return the bond to the office of the clerk of the court from whence the execution issued, to be there safely kept, and to have the force of a judgment; and thereupon, it shall be lawful for the 'clerk of the' court, where such bond shall be lodged, upon motion of the person to whom the same is payable, his executors or administrators, to award execution for the money and tobacco therein mentioned, with interest thereon from the date of the bond, till payment and costs; and, upon such execution, the sheriff or officer shall not take any security, either to have the goods forthcoming at the day of sale, or for the payment of the money at a future day; but shall levy the same immediately, and keep in his hands the goods and chattels taken thereupon, until he shall have sold sufficient thereof to raise the money and tobacco mentioned in the execution, or the same be otherwise satisfied: and for the better direction of such officer, the clerk shall endorse upon every such execution, that *no security of any kind is to be taken.*^{(r)†}

(p) 1803, c. 1, § 51; edi. 1808, c. 36, § 51.

(g) From 1748, edi. 1752, c. 12, § 11; and edi. 1769, c. 8, § 11; 1787, c.

7, § 3; 1793, c. 3, § 12; edi. 1794, 1803 and '14, c. 151, § 12.

(r) 1769, c. 3, § 2, 3; Chan. Rev. p. 4; 1788, c. 77, § 7; 1793, edi. '94, 1803 and 1814, c. 151, § 13.

* This provision is as old as 1684; *vid. 3 Hen. st. at law*. p. 13; repeated 1738, c. 2, § 12; 5 *id.* p. 21; 1757, edi. 1769, c. 1, § 15.

† This section was very materially amended at the late revision, by authorising the clerk to issue execution, on forfeited forthcoming bonds, without previous award thereof by the court, and striking out the provision requiring ten days notice, to the obligors, of motion for award of execution.—By the act of 1748 (edi. 1769, c. 8, § 12, 13, 14,) when an execution was levied, the defendant might give a forthcoming bond, or what was called a *replevy* bond, conditioned for payment of the debt, &c., within three months, or if, in the opinion of the officer, the

17. If any sheriff or other officer shall fail to deliver to the creditor, his agent or attorney, or other legal representative, on demand, any bond taken for the forthcoming of property, or to return the same to the office from whence it issued, on the return day* of the execution, such sheriff or other officer, his executors or administrators, shall be liable to the same fine and penalty, for every month of such failure, to be recovered in the same manner by the party injured, as is directed by law against a sheriff failing to return an execution.(s)†

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Penalty on officer failing to deliver forthcoming bond to creditor, &c., or to return it to clerk's office.

18. If a forthcoming bond be, at any time, quashed as faulty, the obligee or obligees in such bond, besides his or their remedy against the sheriff or other officer, may moreover have execution on New execution on original judgment, if forthcoming bond be quashed as faulty.

(s) Altered from 1791, c. 3, § 4; 1793, c. 3, § 15; edi. 1794, 1803 and '14, c. 151, § 15; and 1794, c. 3, § 3; 1793, c. 3, § 15; edi. 1794, 1803 and '14, c. 176, § 3.

* Amended at the late revision; former law imposed the penalty, if the bond was not delivered or returned, *within sixty days* from the return day of the execution.

† *Vid. post*, § 47.

property taken in execution would not bring three fourths of its value, he might sell it on three months credit, taking bonds for payment of the purchase money: on these *three months bonds*, if forfeited, executions were awarded by the court, on motion, upon ten days previous notice to the obligors. But the provision in respect to the *forthcoming bonds* was defective, in not providing how execution should be awarded on them, if forfeited; the act of 1769, c. 3, (edi. 1785, p. 3,) therefore provided, that execution on forfeited *forthcoming bonds* should be awarded by the court, on motion, upon ten days previous notice; and so the law continued till this act was passed: *vid. acts 1792, c. 5; 1793, c. 3, (edi. '94, '03 and '14, c. 151, § 15.)* By the act of 1787, c. 7, § 2, 3, the *three months replevy bonds* were abolished; and it was provided in lieu thereof, that if, in the opinion of commissioners, to be appointed according to the directions of that act, the property would not sell for three fourths of its value, the debtor might give a replevy bond conditioned for payment of the debt within *twelve months*, or the property taken in execution might be sold on *twelve months credit*: this act was limited in its duration to three years; amended by the act of 1788, c. 77; and, by the acts of 1790, c. 18, and 1791, c. 3, continued till January 1st, 1793. The revised act of 1792, (sess. acts, c. 5, § 22,) and the act of 1793, c. 3, (edi. 1794, '03, and '14, c. 151, § 22, 23, 24,) contained the same provisions with respect to *twelve months replevy bonds*; but the act of 1792 was limited to January 1st, 1794; and the act of 1793, to January 1st, 1795; and by the act of 1794, c. 3, (edi. '94, '03 and '14, c. 176,) the act of 1793, c. 3, was farther continued till January 1st, 1796; at last, the act of 1795, c. 2, (edi. 1803 and '14, c. 183,) perpetuated the act of 1793-'4, *except so much thereof as related to the twelve months replevy bonds*; and thus the provisions in respect to them expired on the 1st January, 1796. These *twelve months replevy bonds* had the force of judgments and were assignable; and execution might be awarded upon them by the clerk, upon affidavit of the creditor, that the debt, or any part of it, was still due, after the expiration of the twelve months. By the acts of 1807, c. 6; and 1808, c. 5; and 1809, c. 13, 18, the provisions of the act of 1793, c. 3, in relation to twelve months bonds, were revived and continued till May 31st, 1810, when they again expired. These acts were occasioned by the exigencies of the times, produced by the system of embargo and commercial restrictions adopted by the government of the United States. During the late war between the United States and Great Britain, the act of 1814, c. 27, authorised what were called *stay bonds*, to be taken on judgments, decrees, deeds of trust, &c., in court, or in the clerk's office, conditioned for the payment of the debt, &c., at the expiration or repeal of the act, which was limited to March 1st, 1816. By the acts of 1815, c. 5, 6, 7, and 1816, c. 40, the act of 1814 was amended, and farther continued, and with respect to the recovery of the debts due on *stay bonds*, taken pursuant thereto, perpetuated; and provision was made for staying all executions, unless the creditor would take the notes of certain banks in payment; and a mode was provided for ascertaining the depreciation of such notes. The 1st September, 1817, was fixed for the expiration of all these laws suspending executions. The mode of enforcing payment of the *stay-bonds* was so variously modified, by these several acts, that they must be minutely examined, in order to acquire accurate information on that head.

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Sheriff's commission and fee, included in such bond but not receivable unless it be forfeited.

No security to be taken on executions against sheriffs, &c.

Endorsement.

Or in favour of sheriffs, &c., against their deputies, &c ;
Or against collectors of poor rates, overseers of the poor, &c.

Endorsement.

Slaves when not to be taken in execution.

Proviso.

Names of slaves taken and sold, to be endorsed.

tion on his or their judgment, in the same manner, as if such forthcoming bond had never been taken.(t)

19. EVERY sheriff or other officer may include his commission, and fee for taking the bond, in any forthcoming bond, taken by virtue of any writ of execution, but he shall not demand or receive such commission, unless the same shall be forfeited.(v)

20. WHEN execution shall issue against the estate of any sheriff, under sheriff, sergeant of a corporation, coroner or constable, or their securities, or the heirs, executors or administrators of either of them, upon a judgment obtained against such sheriff, under sheriff, sergeant of a corporation, coroner or constable, or securities, or the heirs, executors or administrators of either of them, for money or tobacco received by such sheriff, under sheriff, sergeant of a corporation, coroner or constable, by virtue of any execution or process, levied or executed by him, or them, or for any money collected or received by them in any manner, as sheriffs, sergeants, coroners, or constables, no security, for payment of the money or tobacco, mentioned in such execution, at a future day, or to have the goods forthcoming at the day of sale, shall be taken or received ; but, the officer taking such estate in execution, shall proceed immediately to the sale thereof, notwithstanding such security shall be tendered ; and for the better direction of such officer, the clerk issuing such execution shall endorse thereon, *that no security of any kind is to be taken.* In like manner, 'on all executions upon judgments obtained by any sheriff, his heirs, executors or administrators, against any deputy and his securities, their heirs, executors or administrators, or either of them,' and on all executions which may issue against any collector of the poor rates, his heirs, executors or administrators, or against any overseer or overseers of the poor, his or their heirs, executors or administrators, on any judgment obtained, or which may hereafter be obtained, against him or them, for, or on account of any money or tobacco, which have or may hereafter come to his or their hands, levied for the support of the poor, the clerk shall endorse *no security to be taken.*(w)

21. No sheriff or other officer, to whom any writ of *fiery facias* shall be directed, shall take in execution any slave or slaves, unless the debt and costs mentioned in such *fiery facias* shall amount to the sum of thirty-three dollars, or two thousand pounds of tobacco ; *Provided*, There be shewn to such sheriff or officer, by the defendant, or any other person, sufficient other goods or chattels of such defendant, within the bailiwick of such sheriff or officer, upon which he may levy the debt and costs mentioned in such *fiery facias.*(x)

22. WHERE any slave or slaves shall be taken in execution and sold, the names of such slaves shall be certified on the back of such execution, and returned to and recorded among

(t) 1794, c. 3, § 6 ; edi. 1794, 1803 and '14, c. 176, § 6.

(v) *Ibid*, § 11.

(w) 1793, c. 3, § 16 ; edi. 1794, 1803, and '14, c. 151, § 16 ; which was com-

plied of 1769, c. 3, § 6 ; chan. rev. p. 4 ; and 1791, c. 20, § 6.

(x) 1748, edi. 1752, c. 12, § 16 ; and edi. 1769, c. 8, § 16 ; 1793, c. 3, § 17 ; edi. 1794, 1803 and '14, c. 151, § 17.

the records of the court from which such execution shall issue. (y)

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23. If the goods taken by any sheriff or other officer, or any part thereof, shall remain in his hands unsold, he shall make return accordingly; and, thereupon, the clerk of the court from whence the execution issued, shall and may, and he is hereby required to issue a *venditioni exponas*, to such sheriff or other officer directed; whereupon, the like proceedings shall be had as might and ought to have been had on the first execution; which writ of *venditioni exponas* shall be in the form following:

Return to be made of goods remaining unsold.

Venditioni exponas.

THE Commonwealth, &c. greeting: We command you that you expose to sale those goods and chattels of A. B., to the value of , which, according to our command, you have taken, and which remain in your hands unsold, as you have certified to our judges (or justices,) of our court, to satisfy C. D. the sum of , whereof, in our said court, he hath recovered execution, against the said A. B., by virtue of a judgment in the said court, and that you have, &c. (z)

Form thereof.

24. WHEN any sheriff, or other officer, shall serve any writ of execution on slaves, horses, or any live stock, and the same shall not be immediately restored to the debtor, it shall and may be lawful for such officers, and they are hereby required to provide sufficient sustenance for the support of such slaves or live stock, until such slaves or stock be sold, or otherwise legally discharged from such execution. And the county and corporation courts within this Commonwealth shall be, and they are respectively authorised and empowered, in the months of May and October, in each and every year, to settle and adjust the compensation to be allowed to sheriffs and other officers within their respective counties and corporations, for supporting slaves or live stock, taken by them as aforesaid, till the same be sold or otherwise legally discharged from such execution: *Provided*, The allowance so made shall not exceed twenty cents per day for each slave, seventeen cents per day for each horse or mule, nine cents per day for each head of horned cattle or hog, and six cents per day for every sheep or goat; which allowance such sheriff or other officer shall charge to the plaintiff, to be collected in the same manner as commissions arising on executions, and shall be paid by the defendant to the plaintiff, to be taxed in the bills of costs by the said sheriff or other officer. (a)

Slaves and live stock taken in execution, to be supported by officer.

Allowance therefor, how ascertained; and when.

Such allowance not to exceed certain rates.

To whom charged: how to be collected and taxed in bill of costs.

25. If any sheriff or other officer shall levy an execution on property, and a doubt shall arise whether the right of such property is in the debtor or not, such sheriff or officer may apply to the plaintiff, his attorney or agent, for his bond, with good security, payable to the high sheriff of the county, or other officer, and conditioned to indemnify the said sheriff or

Where the officer may demand indemnifying bond.

Condition thereof.

(y) 1764, edi. 1769, c. 6, § 7; 1793, c. 3, § 18; edi. 1794, 1803 and '14, c. 151, § 18.

(z) 1793, c. 3, § 19; edi. 1794, 1803 and '14, c. 151, § 19; which was compiled of 1748, edi. 1769, c. 8, § 19; and 1791, c. 3, § 6.

(a) 1772, c. 6, § 2; Chan. Rev. p. 24; 1793, c. 3, § 20; edi. 1794, 1803 and '14, c. 151, § 20; 1794, c. 3, § 10; edi. 1794, 1803 and '14, c. 176, § 10; 1806, c. 27, § 1; edi. 1808, c. 108, § 1.

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Effect of failure to give it.

Notice of such demand.

Such bond to be returned to clerk's office.

Person claiming the property may sue upon it, in officer's name.

Action against officer barred, unless obligors become insolvent.

Debtor taken on ca. sa. may tender property to officer.

Discharge of debtor from custody.

Proviso, if property so tendered be insufficient or incumbered.

Second ca. sa. &c.

on which no such tender can be made; &c.

Money levied by execution to be repaid to defendant obtaining injunction.

other officer, against all damages, which he may sustain in consequence of the seizure or sale of the property on which the execution shall have been levied; and, moreover, to pay and satisfy to any person or persons, claiming title to such property, all damages which such person or persons may sustain in consequence of such seizure or sale, which, if the plaintiff, his attorney or agent, shall refuse or fail to give, on or before the day of sale, the sheriff or other officer shall be justifiable in delivering such property to the party from whose possession it was taken: *Provided, however,* That such property shall not be so restored, unless the plaintiff, his agent or attorney, shall have reasonable notice, before the time of sale, that such bond and security would be required of him.(b)

26. If such bond and security be given, it shall be returned, with the execution, to the office of the court, from whence it issued, and any person claiming such property, may, in the name of such high sheriff, or other officer, prosecute his or her suit upon the bond, and recover such damages as a jury may assess.(c)

27. The party claiming such property shall, after the due execution of such bond, be barred of his right of action, against the sheriff or other officer levying such execution, unless the obligors in the said bond shall become insolvent.(d)

28. WHERE any writ of *capias ad satisfaciendum* has been or shall be served on any debtor, it shall be lawful for such debtor to tender to the sheriff or other officer serving the same, slaves or personal property to the value of the debt and costs, for which such execution has issued, or may hereafter issue, which property the said sheriff or other officer shall receive and proceed to sell in like manner as is herein directed, in the case of goods taken in execution upon a writ of *feri facias*, and shall thereupon discharge such debtor out of custody: *Provided always,* That, if such property, so tendered, shall not be sufficient to satisfy the debt or damages, and costs, or shall be under any lien or incumbrance, so as that the whole cannot be sold, a new *capias ad satisfaciendum*, or *feri facias*, at the option of the plaintiff, shall issue for any balance, and the clerk of the court, from which such execution originally issued, shall, upon the return of the sheriff of the insufficiency or incumbrance, as aforesaid, issue a new *capias ad satisfaciendum*, or *feri facias*, if required. But, where such property shall have been under any incumbrance, the debtor shall not be at liberty to tender slaves or personal estate on a second *capias ad satisfaciendum* being served, or, in case of a *feri facias* issued in consequence of such return, to avail himself of the privileges of this act.(e)

29. WHEN any sheriff, or other officer, under any execution, shall receive the whole, or any part of the money or tobacco

(b) Compiled of 1807, c. 20, § 1, 2; edi. 1808, c. 129, § 1; and 1812, c. 16, being amendments of 1793, c. 3, § 21; edi. 1794, 1803 and '14, c. 151, § 21.

(c) 1807, c. 20, § 2; edi. 1808, c. 129, § 2.

(d) *Ibid.*, § 3.

(e) 1793, c. 3, § 29; edi. 1794, 1803, and 1814, c. 151, § 29; which was compiled of 1787, c. 7, § 6, and 1788, c. 77, § 5.—The humane principle of this provision very early existed in Virginia. *Vid.* 1 *Men. St. at Lar.* p. 294, 346.

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for which the said execution was issued, and the person against whom such execution may have issued, his executors or administrators, shall obtain an injunction to such execution, or for any part of the money or tobacco mentioned therein, before the money or tobacco so received by such sheriff or officer is paid to the plaintiff, his agent or attorney, or his executors or administrators, in every such case, the sheriff or other officer, his executors or administrators, shall repay the person or persons, against whom such execution issued, his or their executors, administrators or agent, the money or tobacco so received, or such part thereof as may be enjoined; and if any sheriff or other officer, his or their executors or administrators, shall fail or refuse, when required, to pay such sum of money or tobacco, so received and enjoined, to the person having a right to demand the same, such sheriff or other officer, and their securities, his and their executors, and administrators, and every of them, shall be liable to the like penalty and judgment, in favor of the person, his executors or administrators, by whom the said injunction is obtained, as is directed by law, in favor of the plaintiff, against the sheriff, for not paying the money or tobacco levied on an execution. (f)*

Remedy against officer failing to make such re-payment.

30. If any person or persons taken or charged in execution, shall enter into bond with good and sufficient securities, under bond. a reasonable penalty, upon condition that he, she or they shall not depart or go out of the rules or bounds of the prison, to which he, she or they be committed, and that he, she or they will render his, her or their body or bodies to prison, in satisfaction of such execution, at or before the expiration of one year from the date of such bond; it shall be lawful for the sheriff or other officer, in whose custody such prisoner or prisoners shall be, to permit him, her or them to go out of the prison and return at his, her or their pleasure, during one year after the date of such bond; after the expiration of which time, if the person or persons so taken or charged in execution, shall not have been discharged by due course of law, and shall not have rendered his, her or their body or bodies to prison, according to the condition of such bond, the sheriff or other officer of the county or corporation, where such prisoner or prisoners were in custody, shall immediately proceed in the same manner, and the creditor, at whose suit he, she or they was or were in custody, shall be entitled to the same remedies, as are prescribed by law in relation to prisoners escaping and going out of the prison rules. And if the person or persons so charged in custody shall render his, her or their body or bodies to prison, according to the condition of such bond, or shall be taken and committed to jail on an escape warrant, after the expiration of the time during which he, she or they was or were entitled to the benefit of the rules or bounds of the prison, such prisoner or prisoners shall thereafter be closely confined in jail, and shall not be discharged, until the debt or demand for which he, she or they was or were taken or charged in execution shall be paid, or until he, she or

Prisoner may have benefit thereof, one year.

After which to return into close custody, or be treated as in case of escape.

How long to remain in close custody.

(f) 1791, c. 3, § 3; 1793, c. 3, § 36; edi. 1794, 1803, and '14, c. 151, § 38.
† "Is" in the roll.
• *Vid. post*, § 48.

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they shall have taken and subscribed the oath and schedule, and shall have made the delivery and transfer of his, her or their property as required by law for the discharge of insolvent debtors.^(g)*

How insolvent
debtors in execu-
tion may be re-
lieved.

Warrant to bring
prisoner before
court,

or before two jus-
tices,

with list of execu-
tions against him.
Notice to plain-
tiffs.

Schedule of estate
to be rendered.

Oath of insolven-
cy.

51. AND for the relief of insolvent debtors, who shall be taken in execution, and to prevent the long imprisonment of unfortunate people, which can be of no benefit, but rather a disadvantage to their creditors: *Be it further enacted*, That, if any person hereafter be taken or charged in execution, in any suit commenced or prosecuted in any court of record within this Commonwealth, it shall be lawful for any judge or justice of the said court, or of the court of that county or corporation to whose jail such person shall be committed, by warrant under his hand and seal, to command the jailor or keeper of the said prison, to bring before the said court, if sitting, or, if not sitting, before any two justices of the county or corporation, to whose jail he may be committed, at the court-house of such county or corporation, on a certain day, to be appointed by such warrant, the body or bodies of such person or persons so in prison as aforesaid, together with a list of the several executions, with which he or she shall stand charged in the said jail; which warrant such jailor is hereby required to obey, and reasonable notice thereof shall be given to the party or parties, his or their executors, administrators or agents, at whose suit such prisoner or prisoners shall be in execution. And every such prisoner, coming before the said court, or justices, as the case shall be, shall subscribe and deliver in a schedule of his whole estate, and make oath and swear, that is to say: *I, A. B. do, in the presence of Almighty God, solemnly swear or affirm, (as the case may be,) that the schedule now delivered and by me subscribed, doth contain, to the best of my knowledge and remembrance, a full, just, true and perfect account and discovery of all the estate, goods and effects unto me, in any ways belonging, and such debts as are to me owing, or to any person in trust for me; and of all securities and contracts, whereby any money may hereafter become payable, or any benefit or advantage accrue to me, or to my use, or to any other person or persons in trust for me; and that I, or any other person or persons in trust for me, have not land, money, stock, or any other estate, real or personal, in possession, reversion, or remainder, of the value of the debt, or debts with which I am charged in execution; and that I have not, directly or indirectly sold, lessened or otherwise disposed of in trust, or concealed, all, or any part of my lands, money, goods, stocks, debts, securities, contracts, or estate, whereby to secure the same; or to*

(g) Compiled of 1748, edi. 1752, c. 12, § 21; and edi. 1769, c. 8, § 21; 1793, c. 3, § 37; edi. 1794, 1803, and '14, c. 151, § 37; 1806, c. 27, § 2; edi. 1808, c. 107, § 2; 1812, c. 26, § 9, 10; amended and new modelled at late Revision.

* See *post*, c. 136, (the act of 1817, c. 28,) giving a remedy against the sheriff, for failing to retake the debtor and commit him to close custody, after the expiration of the year. This section provides a remedy for the creditor against the debtor only; therefore, neither repeals nor supersedes the act of 1817, prescribing the sheriff's duty in such cases, and giving a remedy against him for neglecting to perform it.

receive or expect any profit or advantage therefrom; or to defraud or deceive any creditor, or creditors, to whom I am indebted in any wise howsoever. So help me God.^(h) And shall, moreover, before he shall be discharged, under the directions of the court or persons before whom such oath of insolvency shall be taken, transfer, and deliver all the personal estate contained in such schedule, and convey all the real estate therein, to the sheriff of the county where they lie or shall be found, to be by him disposed of according to law, which schedule being so subscribed in open court, if taken in court, and if not, in the presence of two justices, shall, if taken in the court from whence the execution issued, be retained by the clerk of such court, there to remain for the information of the creditors. But when such oath shall be administered in any other court, than that from which such execution issued, the clerk of the court shall in like manner retain the original schedule, but shall deliver to the sheriff or other officer a certified copy thereof, to be returned to the office from whence such execution issued, to have there the same force and effect, that the original would have if returned with the execution. And, if the oath shall be taken before two justices of the peace, it shall be the duty of the sheriff, or other officer, from whose custody he shall be discharged, to return the schedule subscribed and delivered in, by such insolvent debtor, to the office from which such execution issued: *Provided always*, That, if there be more than one execution, the schedule shall be returned with that which came first to the officer's hands. And it shall moreover be, the duty of such sheriff, or other officer, to make a return to each office from which any other execution issued, under which such insolvent debtor may have been committed, stating the truth of the case, and specifying the office to which such schedule may have been returned.⁽ⁱ⁾

32. 'If any sheriff or other officer shall fail to make the returns hereby required, or any of them, within thirty days after such schedule is rendered and oath taken, he shall be fined, at the motion of the plaintiff in each of the said executions, in the same manner and to the same extent, as for a failure to return such execution.'^(k)*

33. AFTER delivering in such schedule, and taking such oath, such prisoner shall be discharged by warrant from such court, or from two justices, (as the case may be;) which warrant shall be sufficient to indemnify such sheriff or other officer against any escape or escapes, action or actions whatsoever, which shall or may be brought or prosecuted against him or them by reason thereof. And, if any action shall be commenced against any sheriff or officer, for performing his duty in pursuance of this act, he may plead the general issue, and give

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Transfer and delivery of personal, and conveyance of real estate, to the sheriff.

Schedule, if taken in court, to be retained by the clerk.

Where copy shall be returned to the office whence execution issued. Effect of such Officer's duty to return schedule, where taken before two justices.

If more than one execution, what returns to be made.

Penalty on officer failing to make such returns.

Prisoner to be discharged by warrant. Effect thereof.

Officer sued, may plead general issue, and give this act in evidence.

(h) 1748, edi. 1752, c. 12, § 24, and edi. 1769, c. 8, § 24; 1753, edi. 1769, c. 1, § 31; 1769, c. 3, § 7; Chan. Rev. p. 4; 1794, c. 3, § 2; edi. 1794, 1803, and '14, c. 176, § 2; 1812, c. 26, § 1.

* Vid. post, § 47.

(i) The latter part of this section compiled of 1798, c. 13, § 8; edi. 1803, and '14, c. 249, § 8; and 1812, c. 26, § 2, amended at late Revisal.
(k) Altered at late Revisal, from 1812, c. 26, § 2.

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Proviso.

Scire facias, to have execution against lands, &c. thereafter acquired.

Debtor not to be again imprisoned for any previous judgment, but on *ca. sa.* issued by order of court. *Fi. fa.* may be obtained on motion.

this act in evidence: *Provided, always, That, notwithstanding* such discharge, it shall be lawful for any creditor, or creditors, by judgment at any time afterwards, to sue out a writ of *scire facias*, to have execution against any lands or tenements, goods or chattels, which such insolvent person shall thereafter acquire or be possessed of. But, no person delivering in such schedule, and having taken the said oath, shall again be imprisoned on account of any judgment which shall have been obtained against him previous to the time of taking such oath; unless by virtue of a *capias ad satisfaciendum*, directed to issue by the court in which the said judgment shall have been rendered. And it shall moreover be lawful for the court, from which any execution shall issue, under which such oath of insolvency shall be taken by any debtor, on motion to award execution against the goods and chattels by him or her acquired after taking such oath: *Provided, That the defendant shall have ten days previous notice of such motion.*(l)

Estate contained in schedule, vested in sheriff.

Sale, when and how.

Necessary apparel, and tools of trade, saved to prisoner.

Penalty on sheriff failing to pay proceeds of sale.

Provision where schedule contains debts, or property of prisoner in hands of another.

Summons to issue.

54. ALL the estate which shall be contained in such schedule, and any other estate which may be discovered to belong to the prisoner, for such interest therein as such prisoner hath, and may lawfully depart withal, shall be vested in the sheriff of the county wherein such lands, tenements, goods or chattels shall lie or be found; and such sheriff is hereby authorised, empowered and required, within sixty days after the taking the said oath, ten days previous notice of the time and place of sale being given, to sell and convey the same to any person or persons whatsoever, for the best price that can be got for the same; and the money arising from such sale shall be, by such sheriff or officer, paid to the creditor or creditors, at whose suit such prisoner or prisoners shall be imprisoned; saving to every such prisoner, his or her necessary apparel and utensils of trade. And, if any sheriff or other officer shall fail to pay the money arising from such sale according to law, he shall be liable to the same penalty, to be recovered in the same manner, and by the same persons, as if the said money had been levied by a *fi. fa. scire facias*.(m)*

35. WHEN any insolvent debtor shall be discharged pursuant to this act, and the schedule subscribed and delivered in by such prisoner shall contain articles of money or tobacco, due to such prisoner, or goods, chattels, or estates belonging to him, and in the possession of any other, in that case the clerk of the court, with whom such schedule is directed to remain, may, at the instance of the creditor, issue a summons against each of the persons named as debtors, to have possession of any goods, chattels, or estates, of the property of the prisoner, reciting the sum of money or the quantity of tobacco, he or she is charged with, or the particular goods, chattels or estates said to be in his possession, and requiring him or her to appear at the next court, and to declare on oath, whether the said money or tobacco, or any part thereof, be really due to such

(l) 1748, *edi.* 1752, c. 12, § 26, 27; and *edi.* 1769, c. 8, § 26, 27; 1769, c. 3, § 7, 8; *Chan. Rev.* p. 4, 5; 1812, c. 26, § 8.

(m) 1748, *edi.* 1752, c. 12, § 25; and *edi.* 1769, c. 8, § 25; 1769, c. 3, § 9; *Chan. Rev.* p. 5; 1793, c. 3, § 40; *edi.* 1794, 1803, and '14, c. 151, § 40.

* *Vid. post.*, § 48.

prisoner, or whether such goods, chattels or estate be really in his or her possession, and are the property of such prisoner; and shall moreover endorse thereon, and on the subsequent process, at whose instance the same was issued. And all officer's fees in such prosecution shall be charged to such creditor. And, if the person so summoned shall fail to attend according to such summons, or to shew good cause for his non-attendance, it shall be lawful for the court to enter judgment against every such person, for the money, tobacco, goods, chattels, or estates in such schedule mentioned, together with costs of suit, a lawyer's fee excepted; and, if any such person so summoned shall appear and be sworn, judgment shall be entered for so much of the money, tobacco, goods, chattels or estates, as he or she shall acknowledge to be due, or to be of the property of such prisoner, and in his possession, with costs as aforesaid, which judgment shall be entered in the name of the sheriff, who may thereupon proceed to levy the executions, as in other cases, and to dispose of the money, tobacco, goods, chattels or estates so recovered, in the same manner as the estate contained in the schedule is hereby directed to be disposed of. ^{A. D. 1819. A. R. C. 43.} ^{Endorsement. Officer's fees to whom chargeable.} ^{Judgment by default, against person summoned.} ^{Costs, lawyer's fee excepted.} ^{Judgment on appearance and oath of garnishee.} ^{Effect thereof.}

36. *PROVIDED, always,* That, where any such garnishee shall not acknowledge the whole money, or tobacco to be due, or all the goods, chattels, or estates mentioned in the schedule, to be of the property of the prisoner, and in his possession, the sheriff or such prisoner, at any time after, unless barred by any of the acts limiting the time for the commencement of actions, shall be at liberty to claim the residue by legal process; and the former judgment as to such garnishee, shall be no further bar to such process than for so much money or tobacco, or such goods, chattels and estates, as the garnishee is thereby ordered to pay or deliver. ^{Saving right of further recovery by legal process against garnishee.}

37. If any garnishee shall, at the time of executing such summons, tender to the officer executing the same, the money, goods or chattels mentioned therein, or any part thereof, it shall be the duty of such officer to receive the same, and give a receipt therefor; and any goods and chattels, thus received, shall be sold by such officer in the same manner as goods and chattels taken in execution: *Provided always,* That, where all the money, goods or chattels mentioned in such summons shall not be paid or delivered to such officer as aforesaid, like proceedings may be had for the residue, as in cases where no part is paid or delivered. ^{Garnishee may tender money or goods to the officer.} ^{Goods so tendered how to be sold.} ^{Provido, where part only is tendered.}

38. If any sheriff or other officer shall receive any money, goods or chattels in pursuance of the above section, and shall fail to return the summons, or make a false return thereon, or shall fail to pay the money by him received, he shall be liable to the same recovery as for like delinquency in the case of an execution.* And the court, before whom such motion may be made, shall estimate the value of any goods or chattels named in such summons, and assess the fine accordingly. ^{Penalty on officer receiving money or goods, and failing to return the summons, or making false return.} ^{Fine against him, how to be assessed.}

(n) 1769, c. 3, § 10, 11; Chan. Rev. p. 5; 1793, c. 3, § 41, 42; ed. 1794, 1803, and '14, c. 151, § 41, 42; 1812, c. 26, § 3.

(o) 1812, c. 26, § 4.
(p) *Ibid*, § 5.

* *Vid. post*, § 48.

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Costs, where not payable by garnishee; but out of debtor's estate.

Any creditor may proceed against the garnishees. Effect of such proceeding.

Expenses retainable by sheriff, out of debtor's effects.

By whom payable, if such effects be insufficient.

Prison fees, when demandable of creditor.

Effect of refusal to give security for payment.

Amount of such fees.

Payment required quarter-yearly.

Jailor's remedy for non-payment.

Endorsement on execution in his favour.

39. If the garnishee shall pay the money, or so much thereof as may be due, or shall deliver the goods and chattels, in his or her hands, to the sheriff or other officer, at the time of executing the summons, such garnishee shall not be liable to costs; but the legal costs, together with a commission of five *per centum* to the officer collecting the same, shall be paid out of such insolvent debtor's estate.(g)

40. ANY of the creditors may proceed against the garnishee or garnishees, or either of them, 'but he shall thereby acquire 'no preference to the money or other thing sued for,' except that, out of the subject recovered, it shall be the duty of the sheriff, in whose name the claim is prosecuted, to pay to him his costs expended in the prosecution.(r)

41. EVERY sheriff shall be allowed to retain, out of the effects of such insolvent debtor, all reasonable expenses in recovering such money, tobacco, goods, chattels and estates as aforesaid, including such a fee to a lawyer, for the proceeding against the garnishee, as shall be judged reasonable by the court; and if such effects be not sufficient, he shall be reimbursed such expenses, by such creditor as would have been entitled to receive the thing sued for; or, if there be more than one so entitled, then by such creditors in proportion to the debts due them.(s)

42. WHERE such insolvent person shall not be able to satisfy and pay his ordinary prison fees, the sheriff or jailor may demand and receive of the party, or parties, at whose suit such insolvent person shall be imprisoned, all such fees as shall become due, until such creditor shall agree to release such prisoner; and, if the creditor, upon notice given to him or her, his or her attorney or agent, shall refuse to give security to the sheriff or jailor, for the payment of such prison fees, or shall fail to pay the same when demanded, such sheriff or jailor shall discharge such debtor out of prison. And whenever a creditor shall be liable to a jailor for prison fees, on account of his debtor, it shall and may be lawful for such jailor, to charge the same fees as may be charged against the Commonwealth, by virtue of the act, entitled, *An act to reduce into one, the several acts concerning the method of prosecuting free persons charged with certain crimes, declaring the mode of proceeding on indictments, informations, and prosecutions on penal statutes; and for preventing vexatious and malicious prosecutions and moderating amercements.* And it shall be lawful for any jailor to demand, at the end of every three months, of the creditor at whose suit the debtor is in custody, or his agent, where by law the creditor is now liable, the amount of his account for maintenance of such debtor; and, in case such creditor shall fail to make immediate payment thereof, it shall be lawful for such jailor, upon giving ten days notice to such creditor, or his agent, to recover, by motion to the court of which he is jailor, the amount thereof; and the clerk of the court, before whom such judgment shall be had, shall endorse upon

(g) 1812, c. 26, § 6.

(r) Altered at the late revision, from 1812, c. 26, § 7.

(s) From 1769, c. 3, § 12; Chan:

Rev. p. 5, 1793, c. 3, § 43; *edi.* 1794, 1803, and '14, c. 151, § 43; *am.* at late revision, as to liability of creditors for expenses.

any execution issued thereon, that *no security is to be taken*; and, if the sheriff or other officer shall make return, on two several executions, that he cannot make the amount therein mentioned, it shall and may be lawful for such jailor to discharge such debtor out of his custody: but nothing in this, or any other act, is to be construed so as to compel any creditor to pay for the maintenance of his debtor, or the jailor to support him, when such debtor hath taken the benefit of the prison bounds.(t)

A. D. 1819.
A. R. C. 43.

If money not made on two executions, prisoner may be discharged.
Creditor not to pay fees for debtor in prison-bounds.

43. *PROVIDED, nevertheless*, That such insolvent prisoner shall be afterwards liable to the action of the creditor to recover such fees; and such creditor shall and may, notwithstanding his consent to the releasing such prisoner, at any time afterwards sue out a *scire facias* to have a new execution against the lands and tenements, goods and chattels of such prisoner.(v)

Creditor's remedy for prison fees.

Scire facias allowed him, tho' consenting to prisoner's discharge.

44. EVERY person on whom any fine or amercement has been or hereafter shall be imposed by the judgment of any court, and who by such judgment is directed to stand committed until the fine or amercement is paid, or who is or shall be in custody by virtue of any *capias pro fine*, or execution on behalf of the Commonwealth, may take the oath of insolvency in the same manner as is now directed by law in the case of insolvent debtors, and shall thereupon be discharged out of custody: *Provided, nevertheless*, That nothing in this act contained shall be so construed as to comprehend cases, when, by the judgment of any court, a certain period of imprisonment is imposed as a punishment; but, in every such case, the party shall remain in custody, until such period is expired, or until he or she shall be otherwise discharged by due course of law.(w)

Persons imprisoned to compel payment of fines, or in execution at suit of Commonwealth, may take oath of insolvency.

But not where imprisonment is imposed as a punishment.

45. WHEN any debtor is in custody on several executions, it shall not be lawful for such debtor to demand any more or other dieting than if he was in custody on one execution only; nor shall any sheriff or jailor demand or receive more than the rate fixed by law, in case of a debtor confined on one execution only; which shall be paid by the creditor, at whose suit such debtor was first taken.(x)

Rule as to dieting of debtor in custody on several executions.

46. IF a *distringas* issue in detinue, the court, for good cause shewn, may direct it to be superseded, so far as it relates to the specific thing, and to be executed for the alternative price or value only, if fixed in the judgment, or if the same shall afterwards be fixed by a writ of enquiry.(y)

Distringas in detinue may be superseded as to specific thing, and executed for alternative value.

47. AND whereas doubts have arisen, in what manner judgment should be rendered, against any sheriff, coroner or serjeant of a corporation, who shall fail to return an execution to the office from whence it issued, on or before the return day

Remedy against sheriffs, &c. failing to return executions or attachments on decrees in chancery.

(t) Compiled of 1748, edi. 1752, c. 12, § 28; and edi. 1769, c. 8, § 28; 1772, c. 13, § 1; Chan. Rev. p. 23; 1793, c. 3, § 44; edi. 1794, 1803, and 1814, c. 151, § 44; 1796, c. 20, § 3; edi. 1803, and '14, c. 213, § 3; 1804, c. 14, § 7; edi. 1808, c. 61, § 7.

(v) 1769, c. 3, § 8; Chan. Rev. p. 5; 1793, c. 3, § 45; edi. 1794, 1803, and 1814, c. 151, § 45.

(w) 1803, c. 21, § 1; edi. 1808, c. 24, § 1.

(x) 1789, c. 13, § 38; 1793, c. 3, § 46; edi. 1794, 1803 and '14, c. 151, § 46.

(y) 1778, c. 67, § 76; 1793, c. 3, § 48; edi. 1794, 1803 and '14, c. 151, § 48.

A. D. 1819.
A. R. C. 43.

Penalty imposed.

thereof; *Be it enacted*, That where any writ of execution, or attachment for not performing a decree in chancery, shall come into the possession of any sheriff, coroner, serjeant of a corporation, or other officer, and he shall fail to return the same to the office from whence it was issued, on or before the return day thereof, it shall be lawful for the court, ten days' previous notice being given, upon the motion of the party injured, to fine such sheriff, coroner, serjeant of a corporation, or other officer, or the executors or administrators of such sheriff, coroner, serjeant or other officer, as well as the securities of such sheriff, coroner, serjeant or other officer, and the executors or administrators of such securities, at their discretion, in any sum not exceeding five dollars *per* month, for every hundred dollars contained in the judgment or decree, on which the execution or attachment, so by him detained, was founded; and so in proportion for any greater or lesser sum, counting the aforesaid months, from the return day of the execution or attachment, to the day of rendering judgment for the said fine.(z)*

Remedy against them, failing to pay money levied;

48. If any sheriff, under-sheriff or other officer, shall make return, upon any writ of *fiery facias* or *venditioni exponas*, that he hath levied the debt, damages or costs, as in such writ is required, or any part thereof, and shall not immediately pay the same to the party, to whom the same is payable, or his attorney; or shall return, upon any writ of *capias ad satisfaciendum*, or attachment for not performing a decree in chancery, for payment of any sum of money or tobacco, that he hath taken the body or bodies of the defendant or defendants, and hath the same ready to satisfy the money and tobacco in such writ mentioned, and shall have actually received such money or tobacco of the defendant or defendants, or have suffered him, her or them to escape, with the consent of such sheriff, under-sheriff or officer, and shall not immediately pay such money or tobacco to the party to whom the same is payable, or his attorney; or shall make any other return, upon any such execution, as will shew that such sheriff, under-sheriff or other officer, hath voluntarily, and without authority, omitted to levy the same, or as would entitle the plaintiff to recover from such sheriff or other officer, by action of debt, the debt, damages or costs in such execution mentioned, and such sheriff or other officer shall not immediately pay the same to the party to whom it is payable, or to his attorney: then, or in either of the said cases, it shall and may be lawful for the creditor, at whose suit such writ of *fiery facias*, *vendi-*

Or suffering escape of debtor in execution;

Or making return, shewing voluntary neglect to levy, or rendering them responsible, by action of debt.

(z) Compiled of 1753, *edi.* 1769, c. 1, § 35; 1791, c. 3, § 5; 1793, c. 3, § 50; *edi.* 1794, 1803 and '14, c. 151, § 50; 1794, c. 3, § 8; *edi.* 1794, 1803 and '14, c. 176, § 8.

* The act of 1753, (*edi.* 1769, c. 1, § 35,) imposed a fine of 10*l.* on the sheriff failing to return any execution, in addition to the fine of one thousand pounds of tobacco, and liability to the action of the party grieved, provided by the act of 1748, (*edi.* 1769, c. 6, § 5.) Under that act, without doubt, only one set of fines were incurred. Under the provisions of the acts of 1791 and 1793, (*edi.* '94, '03 and '14, c. 151, § 50,) from which this section is taken, it has been the practice to fine the sheriff, *toties quoties*, as long as he withheld due return of the execution, computing the fine in each successive judgment from the date of the last preceding judgment for a fine. Yet, it may well be doubted, whether this section authorises more than one fine for the offence.

tionis exponas, capias ad satisfaciendum, or attachment, shall issue, upon a motion made in the next succeeding general court, or other court from whence such writ shall issue, to demand judgment against such sheriff, under-sheriff or other officer, or the 'securities of either of them, or their legal representatives jointly,' for the money or tobacco mentioned in such writ, or so much as shall be returned levied on such writs of *fieri facias* or *venditioni exponas*, with interest thereon, at the rate of fifteen *per centum per annum*, from the return day of the execution, until the judgment shall be discharged; and such court is hereby authorised and required to give judgment accordingly, and to award execution thereon; *Provided*, such sheriff or officer have ten days' previous notice of such motion.^(a)

A. D. 1819.
A. R. C. 43.

49. WHERE any fine or penalty is inflicted on the executors or administrators of any sheriff, under authority of this act, the same shall be considered to affect only the assets in their hands as executors or administrators.^(b)

Penalties against executors, &c. of sheriffs, &c. to affect assets only.

50. No sheriff or other officer shall return any execution or attachment for not performing a decree in chancery, to the office from whence the same issued, without noting thereon how he hath executed the same, unless by the express directions, in writing, of the plaintiff, his agent or attorney; and, if any sheriff or other officer, having no such directions, shall return such execution or attachment to the office from whence the same issued, without noting or endorsing thereon how he hath executed the same, such sheriff or other officer, and his securities, and the executors or administrators of all and every of them, shall, in every such case, be liable to the like fine, and recoverable in the same manner as a recovery may be had against a sheriff failing to return an execution;* and, moreover, every sheriff and other officer whatsoever, in returning all executions by them levied or settled, and the monies thereon received, or any part thereof, shall make a statement on every execution of the amount thereof, including their own fees and commissions, and return the same, with the execution, to the office from whence it issued.^(c)

Returns of executions, &c. how to be made.

Penalty for neglect.

Statements to be returned with executions.

51. In all cases where the sheriff or other officer, taking property under execution, shall die before he sells such property, it shall be lawful for the clerk of the court from which such execution issued, and he is hereby required, to issue a *venditioni exponas*, directed to the sheriff or serjeant of the county or corporation in which the property was taken in execution; and the said sheriff or serjeant shall, under the said *venditioni exponas*, receive the property from the representatives of the former sheriff or other officer, who are hereby required to deliver such property to the said sheriff, upon his

Venditioni exponas, where officer levying execution, dies before sale.

Duty in such case of successor in office.

(a) From 1753, ed. 1769, c. 1, § 36; 1763, ed. 1769, c. 5, § 1; 1789, c. 13, § 37; 1793, c. 3, § 51; ed. 1794, 1803 and '14, c. 151, § 51; 1803, c. 109, § 2; ed. 1808, c. 43, § 2; 1806, c. 18, § 4; ed. 1808, c. 97, § 4; amended at late revision, in the clause subject-

ing the securities and legal representatives of sheriffs, &c.

(b) 1794, c. 3, § 12; ed. 1794, 1803 and '14, c. 176, § 12.

(c) *Ibid*, § 9; and 1802, c. 30, § 2; ed. 1808, c. 17, § 2.

* *Vid. ante*. § 47.

A. D. 1819.
A. R. C. 43.

Provision where
executors, &c. of
deceased sheriff
fail to deliver the
property.

Return on the
renditioni exponas.
New execution.

Or motion against
such executors,
&c.

Proviso.

Powers and com-
pensation of suc-
cessor in office, in
such case.

Agents to be ap-
pointed by non-
resident creditors, to
receive money on
executions, and
give or receive no-
tices from sheriffs.

Effect of failure
to appoint such
agent.

producing to them the *renditioni exponas*, and executing to them a receipt for the property; and the said sheriff shall proceed to sell such property in the manner prescribed by law in other cases of *renditioni exponas*.(d)

52. IF the representatives of the deceased sheriff shall refuse or neglect to deliver to the sheriff the property so taken under execution by their testator or intestate, upon the sheriff's producing the *renditioni exponas*; or if, after the expiration of three months from the death of the sheriff, collector or other officer, there be no executor or administrator of the same; he shall return the truth of the case on the said writ; upon which return, the plaintiff, (or, if it be a Commonwealth's case, the auditor,) may, at their option, have an execution, by virtue of which the sheriff or other officer may seize the property taken by the former sheriff or other officer, wherever it may be found, and sell the same in manner prescribed by law, under similar executions. Or the said plaintiff or auditor, as the case may be, may move, in the court from which the original execution issued, against the representatives of the deceased sheriff or other officer; upon which motion, judgment shall be entered up against the representatives of the deceased sheriff or other officer, for the amount of the execution, which came to the hands of their testator or intestate, with lawful interest, thereon, and the costs of the said motion; *Provided always*, That the execution issuing on such judgment shall be levied on the estate of the said deceased sheriff or other officer, in the hands of his representatives, who shall, in all cases, have ten days' previous notice of the time and place of making such motion.(e)

53. The sheriff, or other officer, discharging the duties aforesaid, shall have the same powers, receive the same fees and commissions, and be liable to the same penalties as in other cases.(e)

54. AND, whereas it is unreasonable that sheriffs should be obliged to go out of their counties, to give notice to creditors, at whose suit any person may be in the custody of such sheriff, or to pay money levied by execution; *Be it therefore enacted*, That, where any execution shall be delivered to the sheriff of any other county, than that where any creditor resides, such creditor shall name some person, in the county where the execution is to be levied, to be his, her or their agent, for the particular purpose of receiving the money on such execution, and for giving to, and receiving from the sheriff, any notices which may be necessary relating thereto; and payments made, and notices given to such agent, shall be as effectual as if made or given to the creditor: And, if any creditor shall fail to appoint such agent, no judgment shall be entered against the sheriff for non-payment of the money and tobacco mentioned in such execution, unless a demand thereof shall have been first made of such sheriff, in his county, by the creditor, or some other person having a written order from him: Nor, in case of failure in appointing such agent, shall the sheriff or prisoner be

(d) 1801, c. 12, § 2; edi. 1803 and '14, c. 293, § 1.

(e) 1801, c. 12, § 3, 4; edi. 1803 and '14, c. 295, § 2, 3.

obliged to give notice, previous to the discharge of such prisoner, either for want of security for his prison fees, or upon his taking the oath of an insolvent debtor; but such prisoner shall be discharged, in those cases respectively, without any notice to be given to the creditor so failing.(f)

A. D. 1819.
A. R. C. 43.

55. AFTER obtaining a final decree, for lands, slaves, or money, or things of a specific nature, in any court having chancery jurisdiction, the clerk of such court shall, upon the request of the party obtaining such decree, issue any writ of execution, either a *feri facias*, *capias ad satisfaciendum*, *habere facias possessionem*, or any judicial process which may now issue from any court of common law, according to the nature of the case, for carrying the said decree into effect; which writ shall issue in the name of the Commonwealth, and bear *teste*, and be signed by the clerk of the court; and all process so issued shall be executed and returned to the clerk's office from which the same issued, on the return days thereof, by the officer or officers to whom the same shall be directed, and shall have the same operation, and possess the same force, to all intents and purposes, as similar process issued upon judgments at common law. The officer or officers, to whom any such process is directed, shall be subject to the like penalties for misconduct or neglect, and the court shall exercise, in this, and in all cases relating to such process, the same powers, as if the said process had issued upon a judgment obtained at common law. But nothing herein contained shall prohibit any party from proceeding to carry an order or decree in chancery into execution, in any manner of which he might avail himself before the passing of this act.(g)

Executions issuable on decrees in chancery,

in like manner as executions on judgments at law.

Former remedies to enforce decrees, retained.

56. UPON any interlocutory decree of any superior court of chancery, which shall not be appealed from, or upon such interlocutory decree as shall be appealed from and affirmed, such process of execution shall be awarded, as, to such court, or the judge thereof in vacation, shall seem proper.(h)

Executions on interlocutory decrees, discretionary with court, or judge in vacation.

57. THE marshal of each superior court of chancery, for failure to execute and make due return of any decree for sale, or execution, besides being liable to an action of the party aggrieved, for damages, shall be fined at the discretion of the court, from which such decree or execution shall have issued, for the use of the party injured, in any sum not exceeding five per centum per month, to be computed from the time when such execution or decree ought to have been returned, until the time of entering such fine, upon the whole amount of money to be levied, or upon the value of the specific property to be recovered or sold; and the court imposing the fine shall estimate the value of such property. For failure to pay any money, which shall appear by his return to have been received by him in virtue of any execution or decree, 'or for which he shall have made himself liable by his return on such execution or decree,' he shall forfeit and pay, to the person entitled

Penalty on marshals of superior courts of chancery, failing to execute and make due returns of decrees for sale, or executions;

Or to pay money levied, or for which they have made themselves liable by their returns.

(f) 1769, c. 3, § 13; Chan. Rev. p. 5; 1793, c. 3, § 52; editions 1794, 1803, and 1814, c. 151, § 52.
(g) 1787, c. 10, § 4; 1793, c. 3, § 53; editions 1794, 1803, and 1814, c. 151, § 53.
(h) 1797, c. 5, § 3; edi 1803, and 1814, c. 223, § 3.

A. D. 1819.
A. R. C. 43.

Proviso, as to non-residents.

Remedy against sureties of marshals.

Defendant taken in execution by a marshal, to what jail to be committed.

Proviso as to executions against non-residents.

Return of *non est inventus* required in district where they reside. Marshal's duty on committing defendant to jail.

Duty of sheriff or jailor.

Liability for breach.

Defendant so committed, to be kept, &c. as on execution directed to sheriff.

Other proceedings on executions levied by marshals.

Forthcoming bonds.

to receive such money, fifteen *per centum per annum* damages thereon, to be computed from the time when such money ought to be paid, until the time when it shall be paid, and to be recovered, together with the principal sum, by motion on reasonable notice, before the court from which such execution or decree issued: *Provided*, That the marshal shall not be subjected to damages for not paying such money to any person residing out of his district, unless it shall previously have been demanded of him, by such person or his attorney, or by some other person having written authority to make such demand. (i) ' In all cases where a fine is imposed on the marshal for his ' failing to execute or return an execution or decree, or pay ' money for which he is liable as above, the securities of such ' marshal, or his or their legal representatives, shall be liable ' for the same, to be recovered by motion on reasonable notice ' before the court from which such execution or decree issued.'

58. WHEN any execution shall be levied upon the body of a defendant by the marshal, he shall commit him to the jail of the county, in which such defendant may reside, if resident within the district, and if not, then to the jail of the county in which the execution shall have been levied: *Provided, however*, That no execution shall be levied on the body of any defendant in any other district, than that in which he resides, unless an execution against his body shall have been previously issued to that district, and returned *non est inventus*, or unless such defendant shall have no fixed residence within the Commonwealth. At the time of committing such defendant to jail, the marshal shall deliver to the sheriff of the county, or keeper of the jail, a copy of the execution, under which the arrest shall have been made, and shall take from such sheriff or keeper, a receipt for the body of the defendant, which he shall return, together with the execution, to the court from whence it issued. It shall be the duty of such sheriff or keeper, to receive the body of such defendant, and to give a receipt therefor; and, in failure thereof, the sheriff shall be liable to an action for the escape of the defendant, in which the same recovery shall be had, as if the execution had issued from a court of law, in due form directed to such sheriff, had been levied by him upon the defendant, and such defendant had then been voluntarily permitted by him to escape. When any defendant shall have been so committed to jail by the marshal, and a receipt shall have been so taken for his body, he shall be kept, in all respects, by the sheriff of the county, and the keeper of the jail, and be entitled, in all things, to the same immunities and privileges, as if the execution, under which he had been arrested, had been directed to the sheriff of the county and had been executed by him. (k)

59. IN all other respects, executions levied by a marshal shall be proceeded on, in the same manner, as such executions would have been proceeded upon, if directed by law to a sheriff, and levied by him; and forthcoming bonds taken by a marshal shall have the same force and effect, as forthcoming bonds taken by a sheriff. (k)

(i) 1815, c. 8, § 7.

(k) 1815, c. 8, § 7.

60. THE commission allowed to marshals, upon all monies received by them in virtue of their office, and upon all forthcoming bonds, shall be the same with that allowed to the sheriffs upon similar receipts and bonds; and their fees shall be regulated by the courts to which they belong, so that they shall, in no case, exceed three times the amount allowed to sheriffs for similar services.^(k)

A. D. 1819.
A. R. C. 43.

Marshal's commissions.
How to be regulated.

61. ALL acts or parts of acts, coming within the purview of this act, shall be, and are hereby repealed: *Provided, always*, That nothing in this act shall be construed to affect any rights, remedies, fines, forfeitures, penalties or amercements, which have accrued, been vested, or incurred, prior to the commencement of this act.

62. *PROVIDED, also*, That all executions issued under any former act, shall go on to be satisfied as such former act directs.

63. THIS act shall commence and be in force from and after the first day of January, eighteen hundred and twenty.

C. 135.

*An Act concerning such debtors in execution as may have had the benefit of the prison rules for the term of one year.**

A. D. 1818.
A. R. C. 42.

[Passed February 25, 1818.]

1. *BE it enacted by the General Assembly*, That, whenever any debtor taken or charged in execution since the first day of May, 1807, who may have had, or hereafter may have the benefit of the prison rules or bounds for one year, shall not have been discharged by due course of law, or broken the condition of his prison bounds bond, at or before the expiration of the said year, and the sheriff or other officer, in whose custody such prisoner may be, shall not, without delay, after the said term of one year shall have expired, recommit such prisoner to close jail and confinement, it shall be lawful for the court in which the judgment was rendered, or from which the execution issued, by virtue of which such debtor shall have been committed or charged in execution, upon motion of the person or persons entitled to such judgment or execution, his, her or their executors or administrators, ten days previous notice of such motion being given, to impose, from time to time, a fine upon such sheriff or other officer, and his securities, his, her or their executors or administrators, not exceeding five per centum per month, on the whole amount of the principal, interest and costs, of such judgment, during the time for which such duty shall be neglected by such sheriff or other officer. After the

Remedy against sheriffs, &c., for not re-committing a debtor, who has remained in prison bounds one year, and not discharged by due course of law.
After such re-commitment prison bounds bond to be

(k) 1815, c. 8, § 7.

* See ante. c. 134, § 30. That provision is of later date than this law, yet is supposed neither to repeal nor supersede the provision of this act; since the two provisions may well consist with each other; this giving a remedy against the sheriff, that against the debtor.

A. D. 1818.

A. R. C. 42.

considered as discharged.

Commencement.

said recommitment, the prison bounds bond, which had been executed by the said debtor and his securities, shall be considered as discharged, and not sooner.

2. This act shall be in force from the first day of July next.

C. 186.

A. D. 1792.

A. R. C. 17.

An act declaring the law concerning the Escape of Debtors and other Prisoners.

[Passed November 24, 1792.]

Process against
prisoners escaped.

1. FOR the more effectual retaking and securing persons who escape out of prison; *Be it enacted*, That if any person committed, rendered, or charged in custody, in execution or upon mesne process, to any county or corporation prison, or to the jail of any district, shall thence escape, it shall and may be lawful for any justice of the peace in the county or corporation where such prisoner was in custody, upon oath of such escape before him made by the sheriff, under-sheriff, jailor, or other credible person, to grant unto any one demanding the same, one or more warrants under his hand and seal, directed to all sheriffs, mayors, serjeants, bailiffs and constables, within this Commonwealth, reciting the cause of such prisoner's commitment, and time of his or her escape, and commanding them, and every of them in their respective counties, cities, towns, and precincts, to seize and retake such prisoner so escaped or going at large, and being so retaken, forthwith to convey and commit to the prison where debtors are usually kept in the county or corporation where such retaking shall be, there to be kept in safe custody, until he or she be thence discharged by due course of law; which warrant the sheriff or other officer is hereby required to obey, and to receive the prisoner into his safe custody, and to give a note to the person or persons delivering him or her, testifying his receipt of such prisoner, and

Escape warrants.

Return thereof upon
retaking the
prisoner, and pro-
ceedings thereon.

shall also make return of the execution of such warrant to the court of that county, corporation, or district from whence the prisoner escaped; and if he or she was there in custody, charged in execution, then the sheriff or other officer shall safely keep him or her, without bail or mainprize, until he or she shall make full payment and satisfaction to the plaintiff or plaintiffs, creditor or creditors, in whose name such execution was sued out, or until the judgment or judgments obtained against him or her shall be reversed or discharged by due course of law. And if such prisoner shall have been in custody upon mesne process, in any action of debt, or upon the case, the sheriff or other officer to whom he or she shall be so recommitment, shall, in like manner, keep such prisoner in his safe custody, and make return of the execution of the warrant by which he or she was retaken, to the court of that county, corporation, or district wherein he or she was first arrested; and thereupon it shall be lawful for the said court, upon the plain-

tiff's or creditor's filing his declaration, to proceed and give judgment thereon according as the truth of the case shall appear to them, in the same manner as if the defendant had appeared in the said court and refused to plead; unless such defendant shall cause special bail to be entered in the said court, and shall immediately plead to issue; and then, upon certificate under the hand of the clerk of the said court, that such bail is given, delivered to the sheriff or other officer in whose custody such defendant then shall be, it shall be lawful for the said sheriff or other officer, to set at large such prisoner, and not otherwise: but, where any prisoner escaped and retaken upon such warrant as aforesaid, shall thereafter be charged with treason, felony, or other crime or cause in behalf of the Commonwealth, for which he or she ought to be tried in the district court, and shall be for such cause removed to the jail of the district court, every such prisoner shall be charged, in the said district jail, with all the causes wherewith he or she stood charged in the prison from whence he or she was removed, until he or she be thence delivered by due course of law, in like manner as is herein before directed.(a)

A. D. 1792.

A. R. C. 17.

2. WHEN any person in execution, who shall have obtained the liberty of the prison rules by giving bond and security for the same, shall hereafter escape and go out of the same, the sheriff or other officer of the county or corporation, where such prisoner was in custody, shall, and he is hereby required immediately to apply to a justice of the peace for an escape warrant to retake such prisoner according to the directions of this act; and such sheriff or other officer shall, and he is hereby required immediately to give notice thereof to the creditor at whose suit he was in custody, or to his attorney or agent, and shall assign over and deliver to such creditor, or his attorney, the bond by him taken for the liberty of the prison rules, who shall be obliged to receive the same; and thereupon it shall and may be lawful for such creditor, or his attorney, to pursue the method directed by this act for retaking such debtor upon the escape warrant aforesaid; and if he be retaken thereupon, and committed to jail, the securities for his keeping the prison rules shall be discharged from their bond; or such creditor, or his attorney, shall or may, at their election, commence and prosecute an action or suit at law against the security or securities named in such bond, for the recovery of his debt, notwithstanding he shall have applied for and obtained an escape warrant against his debtor, as aforesaid, if such debtor is not retaken and committed to jail thereupon; and the sheriff or other officer shall not be liable or answerable for the payment of the debt for which such prisoner was in custody, unless the security or securities, named in the bond by him taken of such prisoner for the liberty of the prison rules, shall afterwards be found to have been insufficient for the payment of such debt at the time the same was taken.(b)

Proceedings
against prisoners
escaping from pri-
son rules.

(a) 1748, edi. 1752, c. 10, § 12, and
edi. 1769, c. 6, § 13; 1792, edi. 1794,
1803 and '14, c. 79, § 1.

(b) 1764, edi. 1769, c. 6, § 1; 1792,
edi. 1794, 1803 and '14, c. 79, § 2.

A. D. 1792.
A. R. C. 17.

Sheriff not liable, unless prisoner escaped with consent, or through negligence, or he neglected to retake him when he might.

Debt maintainable against sheriff suffering debtor in execution to escape.

Penalty on private persons suffering criminals in their custody to escape.

Repealing clause.

Proviso.

Commencement.

3. AND whereas the situation of most prisons in this Commonwealth hath given opportunities to evil disposed persons to break open the same, and turn out debtors and others in custody, to the hindrance of justice, prejudice of creditors, and ruin of sheriffs, who have been compelled to pay the debts with which such prisoners stood charged: For remedy thereof, *Be it further enacted*, That no judgment shall be entered against any sheriff or other officer, in any suit brought upon the escape of any debtor in his or their custody, unless the jury, who shall try the issue, shall expressly find that such debtor or prisoner did escape with the consent or through the negligence of such sheriff, (or serjeant,) or his officer or officers, or that such prisoner might have been retaken, and that the sheriff, (or serjeant,) and his officers, neglected to make immediate pursuit: *Provided always*, That, where any sheriff or other officer shall have taken the body of any debtor in execution, and shall wilfully and negligently suffer such debtor to escape, the person suing out such execution, his executors or administrators, shall and may have and maintain an action of debt against such sheriff or other officer, his executors or administrators, for the recovery of all such sums of money and tobacco, as are mentioned in the said execution, and damages for detaining the same; any law, custom, or usage to the contrary, notwithstanding. If any private person have any prisoner in his keeping arrested for suspicion of felony, treason or murder, and the person that is so arrested escape by negligent keeping, before that he be brought to the jail, then the person, from whom such prisoner so escaped, shall be liable to a fine on being found guilty on an indictment in the court of that district in which such escape was made.(c)

4. ALL and every act and acts, clause and clauses of acts, coming within the purview of this act, shall be, and the same are hereby repealed: *Provided always*, That all rights, remedies, fines, forfeitures and penalties, incurred previous to the passing of this act, shall remain in the same condition as if this act had never been made.

5. THIS act shall commence and be in force, from and after the passing thereof.

(c) 1792, edi. 1794, 1803 and '14, c. 79, § 3, which was compiled of 1743, edi. 1752, c. 10, § 11; and edi. 1769, c. 6, § 12: 1753, edi. 1769, c. 1, § 37; 1789, c. 30, § 15.

C. 187.

*An act prescribing the punishment of those who sell unwholesome Meat or Drink.**

A. D. 1786.
A. R. C. 11.

[Passed November 27, 1786.]

Be it enacted by the General Assembly, That a butcher or other person that selleth the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, or a baker, brewer, distiller, or other person, who selleth unwholesome bread or drink, shall, on conviction by the verdict of a jury, the first time be amerced; the second time, he shall suffer judgment of the pillory; and the third time, he shall be imprisoned and make fine; and every time after, he shall be adjudged to hard labour six months in the public works.

Punishment of those who sell unwholesome meat or drink.

C. 188.

An act to prevent forestalling, regrating, engrossing, and public vendues.†

A. D. 1777.
A. R. C. 2.

[Passed October, 1777.]

1. *Be it enacted by the General Assembly, That, if any person shall buy, or cause to be bought, any goods, wares, merchandise, or victual, which at the time of purchase shall be under carriage or transportation to any market or fair within this Commonwealth, to be sold therein, or to any city or town wherein there is no public market established, or to any port or harbour of this Commonwealth for sale; or shall make any bargain, contract, or promise, for the buying or having such goods, or the pre-emption thereof, before the same shall be in or at the market, fair, city, town, port, or harbour, ready to be there sold; or shall persuade any person coming to this Commonwealth, or any market therein, to forbear bringing any goods, wares, or merchandise thereto; or use any means or device for the enhancing of the price of any such goods in this Commonwealth, or in any market therein; every such person offending in either of the said particulars, is declared a forestaller. But this shall not extend to any person living more*

Who shall be accounted a forestaller.

* 1786, c. 53; 1792, *edi.* 1794, 1803, and 1814, c. 23.—This act took effect July 1, 1787. *Vid.* acts of 1786, c. 115, § 5; *ante.* c. 43. This statute is taken from a British statute of uncertain date, called "*an ordinance for bakers.*"

† This act was omitted at the Revision of 1792, but not repealed. At the late Revision, the revisors reported the titles, 1st of the act to prevent the destroying and murdering of bastard children, passed in 1710, and secondly of this act, as unfit in their opinion to be continued in force, and recommended the repeal of both. See report, p. 430. The legislature repealed the act of 1710, (*Sec post*, c. 164.) but took no notice of the recommendation in respect to this act. It is therefore in full force. There are many ancient British statutes on the subject.

A. D. 1777.

A. R. C. 2.

than four miles from any town within this Commonwealth, and purchasing any victual, goods, or commodities, necessary for the use and consumption of himself and his family, or those in his employ, for one year.

Who a regrater.

2. If any person shall, by any means, buy, obtain, or get into his possession, in any fair or market, any victual that shall have been brought to the said fair or market to be sold, and shall make sale thereof again in the same place, or in any other place, within four miles thereof, he is declared a regrater.

Who an engrosser.

3. If any person shall buy within this Commonwealth to sell again, in this or any of the United States, any goods, wares, merchandise, or victual, which shall have been imported or brought into this State from any other state or place whatsoever, or any victual, commodities, manufactures, or materials for manufacture, raised or wrought within this State, except such purchase be made from the original importer, owner, maker, or manufacturer of such goods, wares, merchandise, victual, commodities, manufactures, or materials for manufacture, respectively, every person so offending is declared an engrosser. But this act shall not extend to any person purchasing such articles from one who purchased from the importer, and retailing the same more than twenty-five miles from any tide water; nor to any agent of this Commonwealth or of the United States, or any of them, purchasing necessities really and *bona fide* for the use of the army or navy, and not dealing in such articles on the account of himself or any other private persons, (such agent for the United States, or any of them, producing, whensoever called on, sufficient proof of his acting under authority from the United States, or some one of them;) nor to the managers of any iron works purchasing necessities for the use of those employed about such iron works, and selling them to such persons; nor to the purchasers of materials for manufacture, which shall be really applied to that use in the family of the purchaser, or some manufactory wherein he is interested; nor to ordinary keepers purchasing victual to be retailed in their ordinaries; or persons keeping private houses for lodging or entertainment who may buy any kind of victual and retail the same in their respective houses after it is prepared and dressed for the table; nor to the owners of any imported goods sold as being damaged for the benefit of the insurers, or condemned in the admiralty and purchased by the said owners.

Foretaller, &c.
how punishable.

4. EVERY person becoming a forestaller, regrater, or engrosser, as before described, shall, on conviction, for the first offence, suffer imprisonment for the space of one month without bail or mainprize, and forfeit the value of the things so by him bought or sold; and for the second offence, shall be imprisoned two months without bail or mainprize, and shall forfeit the double value of the things so by him bought or sold; and for any such offence afterwards committed, shall stand in the pillory for such time as the court shall direct, not exceeding two hours, shall forfeit treble the value of the things by him bought or sold, and be imprisoned at the discretion of the jury

convicting him of the said offence, provided such imprisonment doth not exceed three months.*

A. D. 1777.
A. R. C. 2.

5. ALL the penalties hereby inflicted shall be one half to the use of the Commonwealth and the other to the informer, and, where the sum doth not exceed twenty-five shillings, shall be recoverable with costs before any justice of the peace, and, where it shall exceed that sum, by action of debt or information, in any court of record; and in such action of debt the clerk shall endorse on the writ, that bail is to be required, whereupon the sheriff shall take sufficient bail for the appearance of the defendant, or be answerable himself, as in other like cases; and the court may either rule the defendant to give special bail, or admit an appearance without, as to them shall appear just.

Appropriation of penalties, and mode of recovery.

6. ALL acts of Parliament and of General Assembly, relating to any thing within the purview of this act, are hereby repealed.

Repealing clause.

C. 189.

An act against divulgers of False News.†

A. D. 1792.
A. R. C. 17.

[Passed December 27, 1792.]

1. WHEREAS many idle and busy headed people do forge and divulge false rumors and reports;

2. BE it therefore enacted by the General Assembly, That what person or persons soever shall forge or divulge any such false reports, tending to the trouble of the country, he shall be by the next justice of the peace sent for, and bound over to the next county court; where, if he produce not his author, he shall be fined forty dollars, (or less if the court think fit to lessen it,) and, besides, give bond for his good behaviour, if it appear to the court that he did maliciously publish or invent it.

Divulgers of false news to be fined and bound to good behavior.

3. ALL and every act and acts, clause and clauses of acts, coming within the purview of this act, shall be, and the same are hereby repealed.

Repealing clause.

4. THIS act shall commence and be in force, from and after the passing thereof.

Commencement.

* Here was inserted a section prohibiting public vendues with certain exceptions; but that section, having been repealed by the act of 1792, c. 22, (Edi. 1808, app. ix. c. 26, p. 117,) is omitted here.

† 1 Hen. st. at lar. p. 434; 2 Hen. st. at lar. p. 109; 1661, edi. 1733, and 1752, c. 91; edi. 1769, c. 11; 1792, edi. 1794, 1803, and '14. c. 112. This statute had its origin during the provisional government of this country in Cromwell's time; and was intended, as appears by the act itself, to prevent the circulation of news tending to the disturbance of the peace of the colony under the government then established, (1 Hen. st. at lar. p. 434). It was somewhat altered by the act of 1661, (2 Id. p. 109,) from which this is almost a literal transcript.

C. 140.

A. D. 1786.
A. R. C. 11.

*An act forbidding and punishing Affrays.**

[Passed November 27, 1786.]

Punishment of persons going armed before courts of justice, or the ministers of justice, or in fairs or markets, in terror of the country. St. Northamp. 2 Ed. 3, c. 3.

BE it enacted by the General Assembly, That no man, great nor small, of what condition soever he be, except the ministers of justice in executing the precepts of the courts of justice, or in executing of their office, and such as be in their company assisting them, be so hardy to come before the justices of any court, or other of their ministers of justice, doing their office, with force and arms, on pain to forfeit their armour to the Commonwealth, and their bodies to prison, at the pleasure of a court; nor go nor ride armed by night nor by day, in fairs or markets, or in other places, in terror of the country, upon pain of being arrested and committed to prison by any justice on his own view, or proof by others, there to abide for so long a time as a jury, to be sworn for that purpose by the said justice, shall direct, and in like manner to forfeit his armour to the Commonwealth; but no person shall be imprisoned for such offence by a longer space of time than one month.

C. 141.

A. D. 1792.
A. R. C. 17.

An act for the effectual suppression of vice, and punishing the disturbers of religious worship, and Sabbath Breakers.†

[Passed December 26, 1792.]

Punishment for profane swearing, cursing, or drunkenness.

1. *BE it enacted by the General Assembly, That, if any person or persons shall profanely swear or curse, or shall be drunk, he, she or they so offending, for every such offence, being thereof convicted by the oath of one or more witnesses, (which oath any justice of the peace is hereby empowered and required to administer,) or by confession before one or more justice or justices of the peace in the county or corporation where such offence shall be committed, shall forfeit and pay the sum of eighty-three cents for every such offence; or, if the offence or offences be committed in the presence and hearing of one or more justice or justices of the peace, or in any court of record in this Commonwealth, the same shall be a sufficient conviction without any other evidence, and the said offender shall, upon such conviction, forfeit and pay the sum of eighty-three cents for every such offence; and, if any person or persons shall refuse to make present payment, or give sufficient security for the payment of the same in a reasonable time, not*

* 1786, c. 49; 1792, edi. 1794, 1803, and '14, c. 21; took effect July 1, 1787; *vid.* acts of 1786, c. 115, § 5; *ante.* c. 43.

† Former general law touching these subjects; 1792, edi. 1794, 1803, and 1814, c. 138.

exceeding six months, then the said fines and penalties shall be levied upon the goods of such person or persons by warrant or precept from any justice of the peace, before whom such conviction shall be, which warrant may be directed to the sheriff of the county, or to the constable in his respective precinct, or to the serjeant of a corporation, to be appraised and valued as in other distresses; and, if the offender or offenders be not able to pay the said sum or sums, then he, she or they shall have and receive ten lashes upon his or her bare back, well laid on, for every such offence.(a)

A. D. 1792.

A. R. C. 17.

2. *PROVIDED, always,* That every prosecution by virtue of this act, for swearing, cursing, or for being drunk, shall be made within two months after the offence committed, and not afterwards.(b)

Prosecution in two months.

3. No officer for any civil cause shall arrest any minister of religion licensed according to the rules of his sect, and who shall have taken the oath or affirmation of fidelity to the Commonwealth, while such minister shall be publicly preaching or performing religious worship, in any church, meeting-house, or other place of religious worship, on pain of imprisonment and amercement, at the discretion of a jury, and of making satisfaction to the party so arrested.(c)

No licensed minister to be arrested while performing divine service.

4. And if any person shall, on purpose, maliciously or contemptuously, disquiet or disturb any congregation assembled in any church, meeting-house, or other place of religious worship, or misuse any such minister being there, he may be put under restraint during religious worship by any justice present; which justice being present, or, if none be present, then any justice before whom proof of the offence shall be made, may cause the offender to find two securities to be bound by recognizance in a sufficient penalty for his good behaviour, and, in default thereof, shall commit him to prison, there to remain till the next court to be held for the same county or corporation; and, upon conviction of the said offence before the said court, he shall be further punished by imprisonment and amercement, at the discretion of a jury.(d)

Any person disturbing a congregation, shall be arrested & bound to good behavior.

5. If any person on a sabbath day shall himself be found laboring at his own, or any other trade, or calling, or shall employ his apprentices, servants, or slaves in labor, or other business, except it be in the ordinary household offices of daily necessity, or other work of necessity or charity, he shall forfeit the sum of one dollar and sixty-seven cents for every such offence; deeming every apprentice, servant, or slave, so employed, and every day he shall be so employed, as constituting a distinct offence.(e)

And may be punished by fine and imprisonment.

Penalty for laboring on Sunday.

6. EVERY person, not being a servant or slave, committing adultery, or fornication, and being thereof lawfully convicted by the oaths of two or more credible witnesses, or confession of the party, shall, for every offence of adultery, forfeit and

Punishment for adultery or fornication.

(a) Altered at the revival of 1792, from 1705, edi. 1733, and 1752, c. 30, § 4; edi. 1769, c. 6, § 4; *vid.* 1792, edi. 1794, 1803, and 1814, c. 138, § 1.

(b) 1705, edi. 1733, and 1752, c. 30, § 5; and edi. 1769, c. 6, § 5; 1792, edi. 1794, 1803, and 1814, c. 138, § 2;

(c) 1786, c. 54; 1792, edi. 1794, 1803, and 1814, c. 138, § 3.

(d) *Ibid.*, § 4.

(e) *Ibid.*, § 5; *vid.* 1705, edi. 1733, and 1752, c. 30, § 7; and edi. 1769, c. 6, § 7.

A. D. 1792.
A. R. C. 17.

pay twenty dollars, and for every offence of fornication ten dollars; to be recovered by the suit or prosecution of the overseers of the poor of the county or corporation wherein such offence shall be committed, by bill, plaint or information, in any court of record within this Commonwealth, wherein no essoin, protection or wager of law shall be allowed; which said fines and penalties shall accrue to the overseers of the poor for the use of the poor of the county or corporation wherein the said offence shall be committed. (f)

Repealing clause.

7. ALL and every act and acts, clause and clauses of acts, containing any thing within the purview of this act, (except as is herein-after provided,) shall be, and the same are hereby repealed: *Provided, always*, That nothing in this act contained shall be construed to repeal any act heretofore made, for so much thereof as may relate to any offence committed or done before the commencement of this act.

Proviso.

Commencement.

8. THIS act shall commence and be in force, from and after the passing thereof.

C. 142.

A. D. 1786.
A. R. C. 11.

*An act for the suppression and punishment of Riots, Routs, and unlawful Assemblies.**

[Passed December 4, 1786.]

Duty of justices in suppressing riots, routs, &c. and in punishing offenders;

13 Hen. 4, c. 7,
§ 1.

1. *BE it enacted by the General Assembly*, That, if any riot, assembly, or rout of people, against the law, be made in any part of the Commonwealth, the justices of peace, three, or two of them at the least, and the sheriff, or under sheriff of the county, or serjeant of a corporation, as the case may be, where such riot, assembly, or rout shall be made, shall come with the power of the county, (if need be) to arrest them, and shall arrest them; and the same justices and sheriff, under-sheriff, or serjeant, shall have power to record that which they shall find so done in their presence against the law, by which record such trespassers and offenders shall be convict, and shall be taken and put in the jail of the same county or corporation, there to abide for so long time as shall be limited by a jury, to be sworn by the judges, for that purpose, and further until they shall have paid such amercement as the same jury shall assess.

2. *AND*, if it happen that such trespassers and offenders be departed before the coming of the said justices and sheriff, under sheriff, or serjeant, the same justices, three, or two of them, shall diligently enquire within a month after such riot, assembly, or rout of people so made, and thereof shall hear and determine according to law; and for this purpose the sheriff,

(f) 1705, edi. 1733, and 1752, c. 30, § 8; and edi. 1769, c. 6, § 8; 1792, edi. 1794, 1803, and 1814, c. 138, § 6.

* 1786, c. 48; 1792, edi. 1794, 1803, and 1814, c. 28.

or serjeant, having a precept directed to him, shall return twenty-four fit persons, twelve of whom having been sworn, shall enquire of the said riot, rout, or unlawful assembly, and award against those, whom they shall find guilty thereof, due pains by amercement and imprisonment, as is before directed; and if so many of them should not appear, those who make default shall be fined by the same justices, five pounds each; and if the default be in the sheriff, under sheriff, or serjeant, he shall forfeit to the Commonwealth, twenty pounds.

A. D. 1786.

A. R. C. 11.

19 Hen. 7, c. 13.

3. AND if the said riot, rout, or unlawful assembly, be not found by the said jury, by reason of any maintenance, embrocery, partiality, or other misbehaviour of the said jurors, then the said justices, and the sheriff, under sheriff, or serjeant, shall certify the whole matter and circumstances to the general court, and also the names of the maintainers and embracers in that behalf, if any be, with their misdemeanours that they know, in order that they may be duly prosecuted, upon pain of every of the said justices and sheriff, under sheriff, or serjeant, to forfeit twenty pounds, if they have no reasonable excuse for not certifying the same; which certificate shall be of like force as the presentment of a grand jury; and thereupon the said trespassers and offenders being put to answer, they which shall be found guilty shall be punished by imprisonment and amercement, according to the discretion of a jury, as is before directed; and if the same trespassers do not appear before the general court at the first precept, then shall another precept be directed to the sheriff of the county, to take the said trespassers and offenders, if they may be found, and to bring them at a certain day before the general court; and if they cannot be found, the sheriff, under sheriff, or serjeant, shall make proclamation in his full county, or corporation, next ensuing the delivery of the second precept, that they shall appear before the general court on a day named; and in case the same offenders come not as afore is said, and the proclamation made and returned, they shall be convict and attainted of the riot, assembly, or rout aforesaid.

How prosecuted in general court, if not convicted and punished by justices.

4. AND, moreover the justices of peace in every county or corporation, where such riot, assembly, or rout of people shall be made, in case the same be made in their presence, or, if none be present, then the justices having notice thereof, together with the sheriff, under sheriff, or serjeant, of the same county or corporation, shall do execution of this act, every one upon pain of twenty pounds, to be paid to the Commonwealth, as often as they shall be found in default of the execution of the said act.

Penalty on justices for neglect of duties.

5. AND, on such default of the justices and sheriff, under sheriff, or serjeant, a commission shall go from the general court at the instance of the party grieved, to enquire as well of the truth of the case, and of the original matter for the party complainant, as of the default or defaults of the said justices, sheriff, under sheriff, or serjeant, in this behalf supposed, to be directed to sufficient and indifferent persons at the nomination of the judges; and the said commissioners pre-

Duty of general court in case of such neglect.

A. D. 1786.
A. R. C. 11.

Rioters may be
imprisoned for
one year.

sently shall return into the general court the inquests and matters before them in this behalf taken and found :

6. But no persons convicted of a riot, rout, and unlawful assembly, shall be imprisoned for such offence by a longer space of time than one year. Persons legally convicted of a riot, rout, or unlawful assembly, otherwise than in the manner directed by this act, shall be punished by imprisonment and amercement, at the discretion of a jury, under the like limitation.

C. 148.

*An act against Conspirators.**

[Passed November 27, 1786.]

A. D. 1786.
A. R. C. 11.

Who deemed
conspirators ; and
how punishable ;
33 Ed. 1, st. 2.
7 Hen. 5.

Be it declared and enacted by the General Assembly, That Conspirators be they that do confederate and bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously, to move or cause to be moved any indictment or information against another on the part of the Commonwealth ; and those who are convicted thereof at the suit of the Commonwealth ; shall be punished by imprisonment and amercement, at the discretion of a jury.

C. 144.

An act against Champerty.†

[Passed December 8, 1792.]

A. D. 1792.
A. R. C. 17.

Who are cham-
pertors.
How punishable.
33 Ed. 1, st. 2,
and 3.

1. *Be it enacted and declared by the General Assembly, That* Champertors be they that move pleas and suits, and cause them to be moved, by their own procurement or by others, and sue them at their own proper costs and charges, to have a part of the land in variance, or part of the gains ; and those who are convicted thereof by the verdict of a jury, shall be punished, by imprisonment and amercement, at the discretion of the jury before whom they shall have been found guilty ; and such amercement and imprisonment shall be ascertained at the time of such conviction.

Commencement.

2. *This act shall commence in force, from and after the passing thereof.*

* 1786, c. 50 ; 1792, edi. 1794, 1803 and 1814, c. 23.

† 1792, edi. 1794, 1803 and 1814, c. 97.

C. 145.

An act against buying and selling of Offices.

[Passed October 19, 1792.]

A. D. 1792.
A. R. C. 17.

1. *BE it declared and enacted by the General Assembly, That* Penalty for selling any person or persons shall bargain or sell any office or offices, or deputation of any office or offices, or any part or parcel of any of them, or receive or take any money, fee or reward, or any other profit directly or indirectly, or take any promise, agreement, covenant, bond or any assurance to receive or have any money, fee or reward, or other profit, directly or indirectly, for any office or offices, or for the deputation of any office or offices, or any part of any of them, or for a vote in appointing to any office or offices, or the deputation of any office or offices, to the intent that any person should have, exercise, or enjoy any office or offices, or deputation of any office or offices, or any part or parcel of them, which shall in any wise touch or concern the administration of the Executive Government, or the administration or execution of justice, or the receipt or payment of the public revenue, or which shall concern or touch any clerkship in a court of record, all and every person or persons so offending, shall be incapable of appointing or voting for the appointment to any such office, and shall be adjudged a disabled person in law, to all intents and purposes, to have, occupy, or enjoy the office in virtue of which he holds, or shall hold the right of appointing or voting for the appointment to such office, and shall moreover be amerced and imprisoned at the discretion of a jury; and, if a member of either House of Assembly, he shall moreover be expelled from the same, and for ever after disabled from being elected a member of the General Assembly.^(a)

2. *EVERY person who shall directly or indirectly give or pay any money, fee or reward, or shall make any promise, agreement, bond or assurance to give any money, fee or reward whatsoever, for any vote or appointment to any office, which concerns the administration of the Executive Government, or the administration or execution of justice, or the receipt or payment of the public revenue, or for the clerkship in any court of record, or for the deputation or deputations to any of the said offices, shall be utterly incapable of serving in any such office.*^(b)

3. *EVERY such bargain, sale, promise, bond, covenant, agreement and assurance, as before specified, shall be utterly void and of no effect.*^(c)

4. *PROVIDED always, That nothing in this act contained, shall be so construed as to prohibit the appointment, qualification, and acting of any deputy clerk, or deputy sheriff, who shall be employed to assist their principals in the execution of their respective offices.*^(d)

(a) 1792, edi. 1794, 1803 and 1814, c. 60, § 1.

(b) *Ibid*, § 2.

(c) 1792, edi. 1794, 1803 and 1814, c. 60, § 3.

(d) *Ibid*, § 4.

A. D. 1792.
A. R. C. 17.

Official acts of
persons convicted
under this act,
performed before
removal from of-
fice, valid.

5. *PROVIDED* always, That, if any person or persons shall be convicted of having offended against this act, yet all judgments given, and all other acts executed or done by any such person or persons so offending, by authority or colour of the office or deputation which ought to be forfeited, or not occupied, or not enjoyed, by the person so convicted, after the offence so by such person committed or done, and before such person so offending for the same offence he removed from the exercise, administration, and occupation of the said office or deputation, shall be good and sufficient in law to all intents, constructions, and purposes, in such like manner and form as the same should or ought to have remained and been, if this act had never been made.^(e)

Repealing clause.

Proviso.

6. ALL and every statute and statutes, act and acts, clause or clauses thereof, within the purview of this act, (except as herein-after provided,) shall be, and are hereby repealed: *Provided* always, That nothing in this act contained shall be construed to repeal the said statutes or acts, for so much of them as relates to any offence within the purview thereof, committed or done before the commencement of this act.

Commencement.

7. THIS act shall commence and be in force, from and after the passing thereof.

C. 146.

A. D. 1792.
A. R. C. 17.

*An act to punish Bribery and Extortion.**

[Passed October 19, 1792.]

Penalties on any
officer of govern-
ment taking more
than is allowed by
law.
St. Westm. 3 Ed.
1, c. 26, 27, 30.

1. *BE it enacted by the General Assembly*, That no treasurer, keeper of any public seal, councillor of state, counsel for the Commonwealth, judge, clerk of the peace, sheriff, coroner, escheator, nor any other officer of the Commonwealth, shall, in time to come, take, in any form, any manner of brokerage or reward for doing his office, other than is, or shall be allowed by law. And, he that doth, shall pay unto the party grieved, the treble value of that he hath received, shall be amerced and imprisoned at the discretion of a jury, and shall be discharged from his office forever. And he who will sue in the said matter shall have suit as well for the Commonwealth as for himself, and the third part of the amercement.^(a)

Repealing clause.

Proviso.

2. ALL and every act and acts, clauses and parts of acts, containing any thing within the purview of this act, shall be, and the same are hereby repealed: *Provided*, That any act of

(e) 1792, *edi.* 1794, 1803 and 1814,
c. 60, § 4.

(a) 1786, c. 52, as amended by 1788,
c. 83; 1792, *edi.* 1794, 1803, and '14,
c. 59, § 1.

* The first, fourth and fifth sections, only, of this act, as it passed in 1792, which now form § 1, 2, 3, were directed to be printed: *vid. ante.* c. 1, p. 4; the second and third sections of that act, which were omitted, related to bribery at elections, for members of Congress, and of the General Assembly, and are provided for in the acts appropriated to these subjects: *vid. ante.* c. 50, § 13, and c. 51, § 29.

bribery or extortion committed or done before the commencement of this act, may be prosecuted in the same manner as if this act had never been made.

A. D. 1792.
A. R. C. 17.

3. THIS act shall commence and be in force, from and after the passing thereof.

C. 147.

*An act to reduce into one the several acts and parts of acts to prevent unlawful Gaming.**

A. D. 1819.
A. R. C. 43.

[Passed January 18, 1819.]

1. *Be it enacted by the General Assembly, That all promises, All contracts, agreements, notes, bills, bonds or other contracts, judgments, securities, mortgages or other securities or conveyances whatsoever made, given, granted, drawn or entered into, or executed, by any person or persons whatsoever, before or after passing this act, where the whole or any part of the consideration of such promise, agreement, conveyances or securities, shall be for money or other valuable thing whatsoever, won, laid or betted at cards, dice, tables, tennis, bowls, or any other game or games whatsoever, or at any horse-race, cock-fighting, or any other sport or pastime, or on any wager whatsoever, or for the reimbursing or repaying any money, knowingly lent or advanced at the time and place of such play, horse-racing, cock-fighting, or other sport or pastime, to any person or persons so gaming, betting or wagering, or that shall, at such time and place, so play, bet or wager, shall be utterly void, frustrate and of none effect, to all intents and purposes whatsoever; any law, custom or usage, to the contrary thereof, in any wise notwithstanding.*(a)

Or any wager whatsoever, or lent to persons gaming or wagering, void.
9 Ann. c. 14, § 1.

2. ANY conveyance or lease of lands, tenements or hereditaments, sold, demised or mortgaged, and any sale, mortgage or other transfer of slaves or other personal estate, to any person, or for his use, to satisfy or secure money, or other thing, by him won of, or lent, or advanced to, the seller, lessor or mortgagor, or whereof money or other thing, so won, or lent, or advanced, shall be part or all of the consideration money, shall inure to the use of the heirs of such mortgagor, lessor, bargainor or vendor, and shall vest the whole estate and interest of such person in the lands, tenements or hereditaments, so leased, mortgaged, bargained or sold, and in the slaves or other personal estate, so sold, mortgaged or otherwise transferred, to all intents and purposes, in the heirs of such lessor, bargainor,

Leases, mortgages, or sales for gaming debts, to inure to use of heirs of lessor, mortgagor or vendor, as if he had died intestate.
9 Ann. c. 14, § 1.

(a) 1748, edi. 1752, c. 31, § 1; and edi. 1769, c. 25, § 1; which was from 1727, & *Hen. st. at lar.* p. 214; edi. 1733, acts of 1727, c. 8, § 1; but extending the prohibition to cock-fighting, horse-racing, or any other sport, or pastime, or wager whatsoever, not in the act of 1727; 1792, edi. 1794, 1803 and '14, c. 96, § 1.

* Former general laws touching this subject; 1727, & *Hen. st. at lar.* p. 214; edi. 1733, acts of 1727, c. 8; 1748, edi. 1752, c. 31; and edi. 1769, c. 25; October 1779, c. 42, *Chan. Rev.* p. 119; 1792, edi. 1794, 1803 and 1814, c. 96.

A. D. 1819.
A. R. C. 43.

When and how
loser may recover
from winner money,
&c. lost, and
paid, &c.
9 Ann. c. 14, § 2, 3.
18 Geo. 2, c. 34,
§ 3.

Plaintiff may declare generally,
without setting
forth special matter;
and how.

If loser do not
sue within three
months, any other
person may.

What recoverable
by such person,
and how appropriated.

Winner compellable
to answer on
oath, bill for discovery
of what was won.

But discharged
from penalty, by
discovery and repayment.
9 Ann. c. 14, § 4.

mortgagor or vendor, as if such lessor, bargainor, mortgagor or vendor had died intestate.(b)

3. If any person or persons whatsoever, at any time hereafter, within the space of twenty-four hours, by playing at any game or games whatsoever, or by betting on the sides or hands of such as do play at any game or games, shall lose, to any one or more person or persons so playing or betting, the sum or value of seven dollars, or more, in the whole, and shall pay or deliver the same, or any part thereof, the person or persons so losing and paying, or delivering the same, shall be at liberty, within three months then next following, to sue for and recover the money or goods so lost and paid, or delivered, or any part thereof, from the respective winner or winners thereof, with costs of suit, 'by warrant, before a justice of the peace, where 'the amount or value thereof does not exceed twenty dollars; 'or, where such amount or value does exceed twenty dollars, 'then by action of debt, trover or detinue, as the case may 'require, to be prosecuted in any court of law within this 'Commonwealth, having jurisdiction thereof;*' in which action it shall be sufficient for the plaintiff to allege, that the defendant is indebted to the plaintiff, or received to the plaintiff's use, the money so lost and paid, or converted the goods, won of the plaintiff, to the defendant's use, 'or detains such goods 'from the plaintiff,' whereby the plaintiff's action accrued to him, according to the form of this act, without setting forth the special matter; and, in case the party losing such money or other thing, as aforesaid, shall not, within the time aforesaid, really and *bona fide*, without covin or collusion, sue, and with effect prosecute, for the money or other thing so lost and paid, or delivered, it shall and may be lawful to and for any other person or persons, by any such action or suit, as aforesaid, to sue for and recover the same, and treble the value thereof, with costs of suit, against such winner or winners, as aforesaid, the one moiety thereof to the use of the person or persons suing for the same, and the other moiety 'to the Commonwealth, for 'the benefit of the literary fund; and every person who, by virtue of this present act, shall or may be liable to be sued for monies or other things so won, as aforesaid, shall be obliged and compellable to answer, upon oath, such bill or bills as shall be preferred against him or them, for discovering the money or other things so won at play, as aforesaid.(c)

4. *PROVIDED, always,* That, upon discovery and re-payment of the money, or other thing so to be discovered and repaid, as aforesaid, the person and persons discovering and repaying the same, shall be acquitted, indemnified and discharged from any further or other forfeiture, punishment or penalty, which he or they may have incurred, by the playing for and winning such money or other thing so discovered and repaid.(d)

(b) October, 1779, c. 42, § 1; Chan. Rev. p. 119; 1792, edi. 1794, 1803 and 1814, c. 96, § 2.

(c) 1748, edi. 1752, c. 31, § 3; and edi. 1769, c. 25, § 3; 1792, edi. 1794, 1803 and '14, c. 96, § 3.

(d) *Ibid*, § 4.

* The former law gave an "action of debt," founded on the gaming act: the words here printed within single inverted commas, were introduced, as an amendment, at the late revision.

5. AND, to prevent gaming at ordinaries and other public places, which must be often attended with quarrels, disputes and controversies, the impoverishment of many people and their families, and the ruin of the health, and corruption of the manners of youth, who, upon such occasions, frequently fall in company with lewd, idle and dissolute persons, who have no other way of maintaining themselves but by gaming; *Be it further enacted*, That, if any person or persons shall, at any time, play in an ordinary, race-field, or any other public place, at any game or games whatsoever, except bowls, backgammon, chess or draughts, or shall bet on the sides or hands of such as do game, every such person, upon conviction thereof, before any justice of the peace, in any county 'or corporation' within this Commonwealth, by the oath of one or more credible witness or witnesses, (which oath the said justice is hereby empowered to administer,) or by the view of such justice, or the confession of the party accused, shall forfeit and pay twenty dollars, to be levied by distress, and sale of the offender's goods, by warrant, under the hand of the justice before whom such conviction shall be, which penalty and forfeiture shall accrue to the Commonwealth, for the use and benefit of the literary fund; and, moreover, every person so convicted shall be committed to the county 'or corporation' jail, there to remain, until he, she or they give sufficient security for his, her or their good behavior, for twelve months next after such conviction.(e)

A. D. 1819.
A. R. C. 43.

Penalty for gaming or betting at ordinaries, race-fields, or other public places.
30 Geo. 2, c. 24.

How imposed and appropriated.

Offender imprisoned, till surety given for good behavior.

6. If any person, by playing or betting at any game or wager whatsoever, at any time within the space of twenty-four hours, shall lose or win to or from another, a greater sum, or any thing of greater value than twenty dollars, the loser and winner shall be liable to pay one-half of the entire sum, above the said sum of twenty dollars, which he shall so win or lose; and, upon information thereof, made to any county 'or corporation' court, and due proof thereof had, such county 'or corporation' court shall levy, upon the goods and chattels of the offenders, the full penalty incurred, to accrue to the Commonwealth, for the use and benefit of the literary fund.(f)

Penalty for winning or losing more than twenty dollars in twenty-four hours.

16 Car. 2, c. 7, § 3.

How imposed and appropriated.

7. AND, whereas divers lewd and dissolute persons live at great expenses, having no visible estate, profession or calling to support them, but by gaming only; *Be it therefore enacted*, That it shall be lawful for any two justices of the peace, in any county or corporation, to cause to come or be brought before them, every person, within their respective limits, whom they shall have just cause to suspect to have no visible estate, profession or calling to maintain himself by, but for the most part supporting himself by gaming; and, if such person shall not make it appear to such justices, that the principal part of his expenses is not maintained by gaming, they shall require of him sufficient securities for his good behavior, for the space

Gamesters, having no visible means of support, may be bound to good behavior, or committed.

9 Ann. c. 14, § 6, 7.

(e) 1748, ed. 1752, c. 31, § 5; and ed. 1769, c. 25, § 5; 1792, ed. 1794, 1803 and '14, c. 96, § 5; except that *billiards* are not enumerated as a lawful game, which were prohibited by

act of 1797, c. 2, ed. 1803 and '14, c. 221.

(f) October 1779, c. 42, § 2; 1792, ed. 1794, 1803 and '14, c. 96, § 6.

A. D. 1819.
A. R. C. 43.

of twelve months, and, on refusal thereof, shall commit him to the common jail, there to remain until he shall find such securities; and if such person shall give such securities, and afterwards, within that time, shall play or bet for any money or other valuable thing whatsoever, such playing or betting shall be a breach of the behavior, and a forfeiture of the recognizance given for the same.(g)

Penalty for assaulting or challenging, on account of money, &c. won by gaming or betting.
9 Ann. c. 14, § 8.

8. AND to prevent quarrels happening by gaming, *It is hereby further enacted*, That, if any person or persons shall assault and beat, or shall challenge or provoke to fight, any person or persons whatsoever, upon account of any money or other thing won by gaming or betting, the person or persons so assaulting, beating, challenging or provoking to fight, being thereof convicted, shall forfeit to the party grieved thirty dollars, to be recovered with costs, by action of debt, in any county 'or corporation' court, and moreover shall be liable to the action of the party grieved, at the common law.(h)

Right of action, of party grieved.

Punishment of cheats.
16 Car. 2, c. 7, § 2.
9 Ann. c. 14, § 5.

9. AND, if any person or persons whatsoever, do or shall, at any time or times, by any fraud, shift, cozenage, circumvention, deceit, unlawful device, or evil practice whatsoever, in playing at or with cards, dice or any other game or games, or in or by bearing a share or part in the stakes, wagers or adventures, or in or by betting on the sides or hands of such as do or shall play, win, obtain or acquire to him or themselves, or to any other or others, any sum or sums of money or other valuable thing or things whatsoever, every person so winning by such ill practice, and being thereof convicted, upon indictment or information, shall forfeit five times the value of the money or other thing so won, and shall be deemed infamous, and suffer such corporal punishment as in cases of wilful perjury; and such penalty shall be recoverable with costs, by any person or persons suing for the same, by action of debt in any court of record in this Commonwealth, having cognizance thereof.(i)

Person convicted by judgment of justice of peace, may appeal to next county court; entering into recognizance, with two sufficient sureties.

10. *PROVIDED always*, That any person aggrieved by the judgment of any justice of the peace, upon any conviction for any of the offences in this act, cognizable before him, may appeal to the next court to be held for the county where such person shall be convicted, but shall give reasonable notice of such appeal to the party prosecuting him or her, and shall also enter into recognizances with two sufficient securities, before some justice of the county 'or corporation,' wherein the judgment was given, on condition to try such appeal at the next court held for the same county 'or corporation,' after the entering such appeal, which shall be, by the said court, then heard and finally determined: *Provided, also*, That no such judgment shall be set aside for want of form, wherein it shall appear to the court, that the facts were sufficiently proved at the trial; nor shall any judgment be removed or remova-

Such appeal, when to be heard and determined.
Proviso.

No appeal, &c. to superior court of law.

(g) 1748, edi. 1752, c. 31, § 9; and edi. 1769, c. 25, § 9; 1792, edi. 1794, 1803 and '14, c. 96, § 7.

(h) 1748, edi. 1752, c. 31, § 10; and

edi. 1769, c. 25, § 10; 1792, edi. 1794, 1803, and '14, c. 96, § 8.

(i) 1748, edi. 1752, c. 31, § 8; and edi. 1769, c. 25, § 8; 1792, edi. 1794, 1803, and '14, c. 96, § 9.

ble by appeal, or any writ or process whatsoever, into the superior court of law.^(k)*

A. D. 1819.
A. R. C. 43.

11. ALL monies exhibited for the purpose of alluring persons to bet against, at any game, and all monies actually staked or betted whatsoever, shall be liable to seizure by any magistrate or magistrates, or by any other person or persons under a warrant from a magistrate, wheresoever the same may be found; and all such monies so seized shall be accounted for, by the person or persons making the seizure, to the court of the county or corporation wherein the seizure shall be made, and be paid into the treasury of the Commonwealth, for the use and benefit of the literary fund, deducting thereout fifty *per centum* upon all monies so seized, to be paid to the person or persons making the said seizure.^(l)

Monies exhibited for gaming purposes, liable to seizure; and by whom.

How appropriated.

12. ANY person or persons, who shall oppose the seizure of any such monies as above described, by any person or persons so authorised to make it, shall be liable to a penalty of fifteen hundred dollars, to be recovered in any court of record, in the name of the Commonwealth for the use of the literary fund; and shall be moreover liable to the action of any party grieved by such opposition; and any person or persons who shall take and carry away any part of the said money, after the said seizure shall be declared, shall be guilty of a misdemeanor.^(m)

Penalty for opposing such seizure.

How recoverable, and appropriated.

Right of action of party grieved.

Misdemeanor, to carry away money, after seizure declared.

13. ANY person whatsoever, who shall suffer the game of billiards to be played in his or her house, or in a house of which he or she hath, at the time, the use or possession, shall, for every such offence, forfeit and pay the sum of one hundred and fifty dollars, to be recovered in any court of record, by any person who will sue for the same.⁽ⁿ⁾ And every keeper or exhibitor of any billiard table, shall, in addition to the other penalties, which he may be subjected to under this act, forfeit and pay one hundred dollars, for every offence he may be guilty of, against the true intent and meaning of this act; and shall be compelled to give security for his good behaviour, in the sum of five hundred dollars, or more, in the discretion of the court; and if he shall thereafter be guilty of the same, or the like offence, it shall be deemed a forfeiture of his recognizance, and he shall be imprisoned, without bail or mainprize, until the sum, in which he may be therein bound, shall be paid, or until he shall be discharged under the act for the relief of insolvent debtors.

Penalty on owner suffering billiards in his house.

On keeper or exhibitor of billiard table.

Such keeper, &c. to give surety for good behaviour.

Effect of recognizance.

14. It shall moreover be lawful, for any justice of the peace within this Commonwealth, by warrant under his hand, to order any such billiard table to be seized and publicly burnt or destroyed.^(o)

Billiard tables may be seized and burnt.

(k) 1748, edi. 1752, c. 31, § 7; and 1769, c. 25, § 7; 1792, edi. 1794, 1803, and '14, c. 96, § 10.

(l) 1797, c. 2, § 1; edi. 1803, and 1814, c. 221, § 1.

(m) *Ibid*, § 5.

(n) 1797, c. 2, § 3; edi. 1803, and 1814, c. 221, § 3.

(o) Compiled of 1797, c. 2, § 2, 3; edi. 1803, and '14, c. 221, § 2, 3; and 1802, c. 35, § 7; edi. 1808, c. 15, § 7.

* The 11th section of the act of 1792, edi. 1794, 1803, and '14, c. 96, which declares the exhibitors of A. B. C. or E. O. tables, or of faro banks, shall be deemed and treated as vagrants, was reported by the committee of revisors as § 11, of this act, and so passed the House of Delegates at the late revival; but it was struck out by the Senate.

A. D. 1819.
A. R. C. 43.

Penalty on tavern keeper permitting gaming on his tenement, and not informing against offenders.

What shall be deemed a tavern, within the provisions of this act.

What leases considered as fraudulently intended to evade these provisions.

In such cases, both lessor and lessee liable to penalty for permitting gaming.

Keeper or exhibitor of A. B. C. or E. O. tables, or faro-bank &c., or owner of house suffering exhibi-

15. If guests or others play at any game contrary to law, in a tavern, or any out-house, or under any booth, arbour, or other place, upon the messuage or tenement in possession of any tavern keeper, and the keeper thereof shall not endeavour to hinder them, and, if they persist, to give information of the offence, and to give in the names of the offenders, within one month thereafter, to the court or to two justices of the peace, his license shall be revoked by the court, and he shall pay to the informer twenty dollars, unless, being summoned to shew cause to the contrary, he appear and prove such facts as induce them to believe, not only that he did not know of, but moreover that he had no reason to suspect, such playing. (p)

16. EVERY house of entertainment or public resort, within this Commonwealth, whether the same be a licensed tavern or not, shall be deemed and taken to be a tavern, and the owner, master, keeper or occupier of every such house shall be deemed a tavern keeper, within the true intent and meaning of this act; and the owner, master, keeper or occupier of any tavern, licensed or unlicensed, shall moreover be deemed to be the owner, master, keeper, or occupier of every house, out-house, booth, arbour, garden and other place within the curtilage of the principal house, tavern, messuage, or tenement, or in any wise appurtenant thereto, or at any time held therewith; and every such house, out-house, booth, arbour, garden and other place shall be considered as a part of the tavern, unless the same shall have been *bona fide* leased to some other person by deed, indented and recorded previous to the time of any offence, against any act for preventing unlawful gaming, or for regulating ordinaries and restraint of tippling-houses, committed therein for a term not less than twelve months from the day of the date of such lease, and for a valuable consideration, *bona fide* paid or secured to be paid; unless the lessee and his family, shall *bona fide* dwell and board therein, and not elsewhere; and if any such lease or pretended lease be made or recorded, and the lessee shall not actually dwell and board himself and his family in the house or premises so demised or pretended to be demised, or if the lessee shall directly or indirectly board or diet himself elsewhere, every such lease or demise shall be taken to be fraudulent within this act, and both the lessor and lessee, and his assigns, shall be liable to the same pains, penalties, fines, forfeitures and judgments, as if he or they, or either of them, were tavern keepers and occupiers of the premises so leased or demised; and judgment against the one shall be no bar or impediment to a prosecution, judgment and recovery against the other, for any offence committed within the same, contrary to the true intent and meaning of this act. (q)

17. EVERY keeper or exhibitor of any of the tables commonly called A. B. C. or E. O. tables, or faro-bank, or any other gaming table of the same or like kind, under any denomination whatsoever, or whether the same be played with cards or dice, or in any other manner whatsoever, and every licensed or un-

(p) 1785, c. 74, § 1; 1752, ed. 1794, 1803, and '14, c. 107, § 9.

(q) 1802, c. 35, § 6; ed. 1808, c. 15, § 6.

licensed tavern keeper, or occupier of any private house, booth, arbour, stall, racefield, or any other tenement or tenements whatever, who shall knowingly suffer the exhibition or keeping of any such table or tables, or faro-bank, upon any part of the premises, in his or her occupation, shall be held to be guilty of a high misdemeanor; and such keeper or exhibitor, licensed or unlicensed tavern keeper, occupier of any private house, booth, arbour, stall, racefield, or any other tenement or tenements whatsoever, shall, upon conviction, be sentenced to hard labour and imprisonment, in the public jail and penitentiary house, for any period of time not less than one, nor more than two years, to be ascertained, as in other cases, by the verdict of a jury; and shall, moreover, be fined in any sum not exceeding five hundred dollars, at the discretion of a jury, to be levied upon his or her goods and chattels wheresoever found, and appropriated in the same manner, as other fines of a like nature are directed to be applied by law.^(r)

A. D. 1819.

A. R. C. 43.

tion or keeping of
any such table,
guilty of high
misdemeanor.

How punishable.

18. EVERY person concerned in interest in the keeping or exhibiting of any such gaming table or bank, shall be deemed to all intents and purposes, a keeper or exhibitor of such table or bank, within the meaning of this act, whether such person were present at the exhibition of such table or bank, or not; and such person may be proceeded against, convicted and punished, in the same manner, as if he had been actually present and aiding in the exhibition.^(s)

Keeper or exhibi-
tor, who.

'It shall moreover be lawful for any justice of the peace within this Commonwealth, by warrant under his hand, to order any such gaming table to be seized, and publicly burnt or destroyed.'

Such tables may
be seized and
burnt.

19. EVERY unlicensed tavern keeper, who shall suffer any unlawful gaming, (other than the games of faro-bank, A. B. C. or E. O, or games of the same or like kind,) to be carried on, upon any part of the premises in his or her occupation, shall, in addition to the penalties to which he may be subject under any other clause of this act, forfeit and pay one hundred dollars for every such offence, and shall be compelled to give security for his or her good behaviour in the sum of five hundred dollars, or more, in the discretion of the court; and if he shall thereafter be guilty of the same or the like offence, it shall be deemed a forfeiture of his recognizance, and, he shall be imprisoned without bail or mainprize, until the sum in which he may be therein bound, shall be paid, or until he shall be discharged under the act for the relief of insolvent debtors.^(t)

Additional penalty
on unlicensed
tavern keeper suf-
fering any other
unlawful gaming.

Surety for good
behaviour.

Effect of recogni-
zance.

20. EVERY fine, forfeiture and penalty imposed, declared, inflicted or incurred, or which may be imposed, declared, inflicted or incurred, for the use of the Commonwealth, under this act, shall and may be recovered in any court of record, in this Commonwealth, upon presentment or indictment by a grand jury, or upon information filed by the attorney for the Commonwealth, in any such court, or by action of debt, bill, plaint or any other legal ways or means whatsoever; and in

Penalties, for use
of commonwealth,
how recoverable.

(r) 1815, c. 25, § 1.

(s) *Ibid.*, § 2.

(t) Altered from 1802, c. 35, § 7;
ed. 1808, c. 15, § 7.

A. D. 1819.
A. R. C. 43.

No exception for
any defect or want
of form in prosecu-
tion.

Judgment accord-
ing to very right
of case.

Regulations to
prevent delays in
prosecutions.

Process when is-
suable and return-
able, on present-
ment or indict-
ment found.
By whom to be
executed.

Judgment by de-
fault, when and
what.

Trial when, if de-
fendant appear
and plead not
guilty.

Judgment when,
if defendant do
not appear, &c.
after rule to shew
cause against filing
information.

When and how
judgment by de-
fault may be set
aside.

Trial thereupon,
without delay.
Judgment accord-
ing to very right
of case.

every such case, no exception shall be admitted or sustained, for any defect or want of form in any presentment, indictment, information or other suit or action whatsoever, which may be brought or instituted on behalf of the Commonwealth, or of any person or persons entitled to sue for the same, either on his own behalf, or on the behalf of such person and the Commonwealth; but the court before whom any such presentment, indictment, information, suit or action, shall be brought, shall proceed to give judgment according to the very right of the case, any former law, custom or usage, to the contrary notwithstanding.(v)

21. AND for the prevention of unnecessary delays in the prosecution of offenders, *Be it further enacted*, That, where any presentment or indictment, authorised by this act, shall be made by a grand jury, the court, wherein the same shall be made, shall immediately order the proper process to bring the offender before them, returnable with all convenient expedition; which process may be directed to the sheriff or other officer, of any county or corporation within this Commonwealth where the offender or offenders may be found; and such sheriff or other officer, to whom the same shall be directed, is hereby empowered and required to execute the same, and make return thereof to the court from which it is issued; and, if the defendant, being duly summoned, shall fail to appear, and plead to such presentment or indictment immediately, the court shall forthwith proceed to give judgment against him, in the same manner as if he had appeared and confessed the charge, or, denying it, had been found guilty by the verdict of a jury; and may award execution against him accordingly; but if he shall appear, and plead not guilty to the presentment or indictment, the court shall, without delay, proceed to the trial, and render judgment according to the very right of the case, as herein-before directed. And where, upon any rule to shew cause why an information should not be filed by the attorney for the Commonwealth, the defendant shall fail to appear and shew cause, pursuant to the notice duly given him, or left at his usual place of abode, in every such case, if the information be thereafter filed, the court may, on any day after the day of shewing cause, proceed to give judgment upon such information, in the same manner, as upon a presentment or indictment by a grand jury; *Provided, nevertheless*, That if the offender, against whom any judgment may be rendered for want of his appearing to answer the presentment or indictment, or to shew cause against filing the information, shall, at any time during the same term, appear and surrender himself in custody, or give bail, being ruled so to do by the court, for his appearance when required, and plead not guilty to the presentment, indictment, or information, it shall be lawful for the court, in every such case, to set aside the judgment against him; and thereupon the court shall, without delay, proceed to the trial, in the same manner, as if he had appeared and pleaded there- in the first instance, and shall render judgment thereupon,

(v) 1802, c. 35, § 2; edi. 1808, c. 15, § 2.

according to the very right of the case, without regard to any exception that may be alleged against it.(w)

A. D. 1819.

A. R. C. 43.

22. WHENEVER judgment shall be rendered against any offender, by virtue of this act, if he be not present, the court may award a *capias* for the fine, and also to bring the body of the offender before the court, in order to be dealt with as the law directs, which *capias* may be directed to the sheriff or other officer, of any county or corporation within this Commonwealth where the offender may be found; and such sheriff or other officer, to whom the same shall be directed, is hereby empowered and required, to execute the same, and make return thereof to the court from which it issued; and, upon every such *capias*, the sheriff or other officer shall take good and sufficient bail, in a sum not exceeding five hundred dollars, nor less than two hundred dollars, for the appearance of the defendant, on the first day of the next court; and, if he shall fail to take such bail, he shall forfeit a sum, not exceeding five hundred dollars, to the Commonwealth, 'for the use of the literary fund;' and, if the defendant, being bailed, shall fail to appear accordingly, the bail bond shall be forfeited, and shall immediately be put in suit, and the clerk shall endorse upon the writ that bail is required.(x)

Capias for fine against defendant not present.

How to be directed and executed.

Bail required.

Penalty for not taking bail.

Bail bond, if forfeited, when suitable.

Bail required in suit upon it.

23. THE general court, and superior courts of law, and the judges thereof, shall be, and they are hereby empowered, to execute this and all other laws for the purpose of suppressing gaming, as fully as the county and corporation courts, and the magistrates thereof, are empowered to execute the same.(y)

What courts and judges may execute this and other laws against gaming.

24. THE superior courts shall have the same power of revoking the license of tavern keepers, in any case of delinquency in permitting unlawful gaming in their houses or taverns, as the county and corporation courts now possess.(z)

Superior courts may revoke license of tavern keeper permitting gaming.

25. AND, whereas it has been represented, that door-keepers and guards have been employed to prevent, hinder, or retard and discourage magistrates and others acting under their authority, from entering houses and places where gamblers and other disorderly persons resort, for the purpose of unlawful gaming, or to give notice of the approach of such magistrates, and others acting under their authority, to the persons so unlawfully assembled: *Be it therefore enacted*, That, if any person or persons whatsoever, shall hereafter be convicted of any such offence, or of employing, hiring or procuring any person whatsoever, to commit any such offence, or of counselling, advising, aiding or abetting any person to commit any such offence, every person so offending, his or her aiders, abettors, advisers, counsellors and procurers, shall be fined, at the discretion of the jury by whom he shall be convicted, not exceeding one thousand dollars, nor less than one hundred dollars, according to the degree of his offence, and his estate, or be imprisoned not less than one, nor more than six months.(a)

Punishment of door-keepers or guards, or employers, abettors, &c., hindering magistrates, &c. from entering places where gamblers are assembled.

(w) 1802, c. 35, § 3; edi. 1808, c. 15, § 3.

(z) 1802, c. 35, § 8; edition 1808, c. 15, § 8.

(x) *Ibid*, § 4.

(a) *Ibid*, § 10.

(y) 1797, c. 2, § 7; edi. 1803, and 1814, c. 221, § 7.

A. D. 1819.
A. R. C. 43.

Lawyer's fee in
bill of costs, on
conviction of offend-
er.

Prohibition of lot-
teries or raffles.
Penalty.

How recoverable
and appropriated.

Prohibition of sales
of lottery tickets.

Penalty.
How recoverable
and appropriated.

Person accused by
witness sent to
grand jury, at
their request, &c.,
not permitted to
give evidence, of
previous gaming
committed by such
witness.

Laws against gam-
ing to be interpret-
ed as remedial sta-
tutes.

Charge to grand
juries.

Repealing clause.

Proviso.

26. WHENEVER a judgment shall be obtained for any fine incurred by a breach of any law for preventing gaming, twenty dollars shall be taxed in the bill of costs for the lawyer's fee.(b)

27. No person, in order to raise money for himself or another, shall publicly or privately put up a lottery, to be drawn or adventured for, or any prize or thing to be raffled or played for: and whosoever shall offend herein shall forfeit the whole sum of money proposed to be raised by such lottery, raffling or playing, to be recovered by action of debt, in the name of any person who will sue for the same, or by indictment or information in the name of the Commonwealth, in either case for the use and benefit of the literary fund. 'Nor shall any person or persons buy or sell, within this Commonwealth, any lottery ticket, or part or share of a lottery ticket, except in such lottery or lotteries as may be authorised by the law thereof: and any person or persons offending herein shall forfeit and pay for every such offence, the sum of one hundred dollars, to be recovered and appropriated in the manner last aforesaid.'(c)

28. WHERE any person, without his own contrivance or procurement, shall be sent as a witness to give evidence concerning unlawful gaming, to any grand jury, either at their request, or on the motion of the attorney for the Commonwealth, and shall accordingly give evidence of unlawful gaming against any person or persons, it shall not be lawful for the person or persons against whom such evidence shall have been given, to be thereafter summoned before such grand jury, or any subsequent grand jury, in order to give any evidence against such witness of any unlawful gaming, committed by him previous to the time of his being sent to the grand jury as aforesaid: nor shall any such person or persons so summoned, after evidence given against him or them as aforesaid, be capable in law to give evidence before any grand jury, against such witness, of any gaming so as aforesaid committed by him.(d)*

29. IN every case that may arise, under any laws for the preventing, discouraging or suppressing of gaming, the court shall interpret them as remedial, and not as penal statutes.(e)

30. THIS act shall constantly be given in charge to the grand juries by the judges of the superior courts of law, and of the county and other inferior courts.(f)

31. EVERY act, or clause in any act, concerning any matter within the purview of this act, shall be, and is hereby repealed: *Provided, always, That nothing in this act contained shall be*

(b) 1797, c. 2, § 4; edi. 1803, and 1814, c. 221, § 4.

(c) From 1811, c. 29, § 1; edi. 1812, c. 109, § 1; except that part printed within single inverted commas, which was introduced at the late revision, on the recommendation of the committee.

(d) 1811, c. 28, § 1; edition 1812, c. 108, § 1.

(e) 1802, c. 35, § 9; edition 1808, c. 15, § 9.

(f) Oct. 1779, c. 42, § 5; *Chan. Rev.* p. 119; 1792, edi. 1794, 1803, and 1814, c. 96, § 15; 1797, c. 2, § 8; edi. 1803, and 1814, c. 221, § 8; 1815, c. 25, § 4.

* Between § 28 and 29 of this act, as now printed, the 3rd section of the act of 1815, c. 25, authorising proceedings against gamblers, by publication, was reported by the committee of revisors, as § 30, and passed the House of Delegates, at the late revision, but it was struck out by the Senate.

construed to prevent the prosecution and punishment of any offence committed or done before the commencement of this act; but such offence may be prosecuted and punished, in the same manner as if this act had not been passed.

A. D. 1819.
A. R. C. 43.

32. THIS act shall commence and be in force, from and after Commencement. the first day of January eighteen hundred and twenty.

C. 148.

*An act to reduce into one the several acts and parts of acts, concerning perjury, subornation of perjury, and embracery.**

A. D. 1819.
A. R. C. 43.

[Passed March 8, 1819.]

1. BE it enacted by the General Assembly, That if any person either by the subornation, unlawful procurement, or sinister persuasion, of another, or by his own voluntary act, consent or agreement, shall wilfully, corruptly and falsely, swear, or in solemn manner affirm, to any material matter, before any court within this Commonwealth, or before any justice of the peace, or before any commissioner or commissioners appointed to take any deposition or depositions, or before any person or persons whatsoever, authorised by law to administer an oath; and, at the time, when such false oath or affirmation is taken, the court or justice, or commissioner or commissioners, or other person or persons, before whom it is taken, be acting under the authority of law, upon the subject matter to which such false oath or affirmation relates: such person so offending shall be deemed guilty of perjury; and, on being thereof duly convicted, shall be amerced, at the discretion of a jury, not exceeding one thousand dollars; shall suffer imprisonment, without bail or mainprize, for the space of twelve months; 'shall forfeit 'any office of honor, profit, or trust, which he may then hold, 'under the laws of the Commonwealth; and shall be forever 'afterwards incapable of holding any other office of honor, 'profit, or trust under the laws aforesaid, or of serving as a 'juror, or of giving evidence as a witness in any case whatsoever.^(a)

How punishable.

2. If any person shall unlawfully and corruptly suborn or procure any witness or other person, by letters, rewards, promises, or by any other sinister means, to commit any perjury whatsoever, such person so offending shall be deemed guilty of subornation of perjury; and, being thereof duly convicted, shall be in like manner amerced, and shall suffer the

Subornation.
5 Eliz. c. 9, § 3.

How punishable.

(a) Altered from 1789, c. 26, § 2; 1792, ed. 1794, 1803 and '14, c. 48, § 2.

* The Legislature made several very important amendments of the former laws on this subject, at the late revision; all increasing the punishment of these crimes. The amendments are distinguished, as far as practicable, by being printed within single inverted commas; but the whole of them can be understood only by a comparison of the revised act with the former laws.

A. D. 1819.
A. R. C. 43.

Punishment of a
juror accepting a
bribe.

same pains, penalties, forfeitures and disabilities, as if he had been convicted of perjury.^(b)

3. If any juror, upon any inquest whatsoever, shall 'voluntarily and corruptly,' take any thing, by himself or by another, to give his verdict, and shall be thereof duly convicted; such juror shall be amerced, at the discretion of a jury, not less, however, than ten times the value of the thing taken; 'shall be imprisoned, without bail or mainprize, for the space of six months; and shall, moreover, be subject to the same forfeitures of office, and the same disabilities, as if he had been convicted of perjury.'^(c)

Embracery.

How punishable.
5 Ed. 3. c. 10.
34 Ed. 3. c. 8.
38 Ed. 3. st. 1,
c. 12.

4. EVERY embracer, who shall procure any juror to take gain or profit, and shall be thereof duly convicted, shall be amerced at the discretion of a jury, not less than ten times the value of the thing so taken; shall be imprisoned without bail or mainprize, for the space of twelve months; and shall, moreover, be subject to the same forfeitures of office, and the same disabilities, as if he had been convicted of perjury.^(d)

Repealing clause.

5. ALL acts and parts of acts, coming within the purview of this act, shall be, and the same are hereby repealed: *Provided, however,* That all offences committed or done before the commencement of this act, shall be prosecuted and punished in the same manner, as if this act had never passed.

Proviso.

Commencement

6. THIS act shall commence and be in force, from and after the first day of January, eighteen hundred and twenty.

C. 149.

An act against embezzling of Records.

[Passed February 8, 1819.]

A. D. 1819.
A. R. C. 43.

Punishment for
embezzling re-
cord.

1. *BE it enacted by the General Assembly,* That, if any record or parcel of the same, writ, return, pannel, process or warrant of attorney, in any court within this Commonwealth, be wilfully stolen, taken away, withdrawn, or avoided, by any clerk, or by any other person, because whereof any judgment shall be reversed, such stealer, taker away, withdrawer or avoider, their procurers, counsellors and abettors, being thereof indicted and duly convicted, by their own confession, or by inquest to be taken of lawful men, shall be adjudged for felons;* 'such felon or felons, if he, she or they be a slave or slaves, shall suffer death; but if such felon or felons be free, he, she or they shall be sentenced to imprisonment in the public jail and peni-

(b) Altered from 1789, c. 26, § 1; 1792, edi. 1794, 1803 and '14, c. 48, § 3. *Vid. ante*, c. 75, § 18.

(c) Altered from 1789, c. 26, § 3; 1792, edi. 1794, 1803 and '14, c. 48, § 4.

* In the former law, the words "and shall incur the pain of felony," were added here, and concluded the act: the punishment was elsewhere provided.

'tentiary house, for a term not less than one year, nor more than ten years.'^(a)

A. D. 1819.
A. R. C. 43.

2. THIS act shall commence and be in force from and after the first day of January, eighteen hundred and twenty.

Commencement.

C. 150.

*An act concerning stealing Tobacco on the highways.**

A. D. 1792.
A. R. C. 17.

[Passed December 15, 1792.]

1. BE it enacted by the General Assembly, That all and every person, and persons, that shall, at any time after the commencement of this act, either in the night or day, take, steal and carry away, any hogshead or cask of tobacco, which shall be lying on or near any public highway, or any part of the tobacco contained in the same hogshead or cask, although the said hogshead or cask may not be in the possession of the owner thereof, shall be adjudged a felon, and be punished as in other cases of felony.

2. THIS act shall commence and be in force, from and after the passing thereof.

C. 151.

An act reducing into one the several acts against Hog stealing.†

A. D. 1819.
A. R. C. 43.

[Passed February 2, 1819.]

1. BE it enacted by the General Assembly, That, if any person 'or persons, not being a slave or slaves,' shall steal any hog, shoat or pig, 'of the value of four dollars or upwards,' he, she 'or they' shall be adjudged to be guilty of 'grand'† larceny, and shall have the same trial and punishment as in other cases of 'grand'† larceny. 'If any person or persons, not being a slave or slaves, shall steal any hog, shoat or pig, under the value of four dollars, he, she or they shall be adjudged to be guilty of petit larceny, and shall have the same trial and punishment as in other cases of petit larceny.'^(b)

2. WHEN any slave or slaves shall steal any hog, shoat or

(a) 1789, c. 16; 1792, edi. 1794, 1803 and '14, c. 46; 1799, c. 58, edi. 1808 and '14, c. 264.

(b) Altered, from 1804, c. 5, § 4; edi. 1808, c. 55, § 4.

* 1792, edi. 1794, 1803 and 1814, c. 142.

† Former general laws on this subject; 1705, 3 Hen. st. at lar. p. 276; 1748, edi. 1752, c. 41; and edi. 1769, c. 33; 1792, edi. 1794, 1803 and '14, c. 98.

‡ Petit larceny, by act of 1804, c. 5, § 4. At the late revisal, hog stealing by persons not being slaves, was made grand or petit larceny, according to the value of the property stolen; and § 1, 2, 3, of act of 1792, edi. '94, '03 and '14, c. 98, inflicting infamous punishments, were omitted.

A. D. 1819.
A. R. C. 43.

Punishment for
first,

And second of-
fence.

Third offence
felony.

Persons bringing
home, &c. or re-
ceiving any hog,
without ears, ad-
judged hog-steal-
ers.

Proviso.

Regulation con-
cerning tributary
Indians keeping
swine, and per-
sons buying or
receiving pork of
them.

Repealing clause.

pig, it shall be lawful for any justice of the peace of the county where such offence shall be committed, upon complaint or information thereof to him made, to cause such offender or offenders, and the witness or witnesses, to come before him; and if, upon examination, any slave or slaves appear to be guilty, to commit him, her or them to prison, or bind every such offender, with security, to appear personally before the court, next thereafter to be held for his county, to answer such complaint or information, and to abide the judgment of the said court; and the justices thereof are hereby required to direct the person appointed to prosecute for the Commonwealth in the same court, to exhibit a charge or complaint in writing against such slave or slaves, for such offence; whereupon it shall be lawful for the said court to hear and determine the matter of such charge or complaint, without any jury, and to receive, as evidence against the slave or slaves so charged, the confession of the offender, the oath of one or more credible witnesses, or such testimony of negroes, mulattoes or Indians, bond or free, as to them shall seem convincing; and if, in the opinion of such court, the slave or slaves so charged is or are guilty, every such offender, for the first offence, shall receive thirty-nine lashes, on his or her bare back, well laid on, at the public whipping-post; and, upon a second conviction, shall stand two hours in the pillory, with both ears nailed thereto, and then cut loose from the nails. (b)

3. If any slave or slaves† shall be the third time convicted of hog stealing, every such offender shall be adjudged a felon. (c)

4. If any person shall bring, or cause to be brought, to his or her own house, or any other house, or on board of any ship, sloop or other vessel, any hog, shoat or pig, without ears, or shall receive any such, and not immediately discover the same to a justice of the peace, he or she so offending, shall be adjudged a hog-stealer: *Provided, nevertheless,* That any person may bring, or cause to be brought, to his or her own, or any other house, or on board any ship, sloop or other vessel, his or her own swine, though without ears, he or they proving the same to be his or her property. (d)

5. ALL tributary Indians keeping swine shall give them the same mark, which hath been, or by the next adjacent county court, shall be allowed to the town, to which such Indians respectively belong; and, if any person, not being an Indian, shall buy or receive from any Indian, any pork, and cannot prove such pork to be the proper mark of the town of Indians to which the Indian of whom the same was bought or received, shall belong, he or she so offending shall forfeit and pay twenty-five dollars, one-half to the Commonwealth, and the other half to the informer, to be recovered with costs, by action of debt, in any court of record within this Commonwealth. (e)

(b) 1748, edi. 1752, c. 41, § 4; and
edi. 1769, c. 33, § 4; 1792, edi. 1794,
1803 and '14, c. 98, § 4.

(c) *Ibid.*, § 5.

(d) *Ibid.*, § 6.

(e) 1748, edi. 1752, c. 41, § 6; and
edi. 1769, c. 33, § 6; 1792, edi. 1794,
1803 and '14, c. 98, § 6.

† "Slave or slaves," substituted, at the late revision, for "*person whatsoever*."

this act, shall be and the same are hereby repealed : *Provided, always,* That nothing in this act contained shall be construed to repeal any act heretofore made, for so much thereof as may relate to any offence committed or done before the commencement of this act.

A. D. 1819.

A. R. C. 43.

7. THIS act shall be in force from and after the first day of Commencement. January, eighteen hundred and twenty.

C. 152.

*An act reducing into one act, the several acts declaring the punishment of horse-stealers and their accessories, and to encourage the apprehension of horse-stealers.**

A. D. 1819.

A. R. C. 43.

[Passed January 30, 1819.]

1. *BE it enacted by the General Assembly,* That, if any person do feloniously take or steal any horse, mare or gelding, foal or filly, such person, if a free person, and the accessory or accessories before the fact to the said offence, if free, shall be deemed guilty of felony; and, upon conviction, shall restore the horse, mare or gelding, foal or filly, to the owner or owners thereof, or shall pay to him, her or them, the full value thereof, and shall be sentenced to undergo a confinement in the public jail and penitentiary house, for a period not less than five, nor more than ten years.† And if a slave do feloniously take or steal any horse, mare or gelding, foal or filly, the slave so offending shall not be admitted to have or enjoy the benefit of clergy, but shall be utterly excluded therefrom, and shall suffer death as in case of felony.(a)

Punishment for horse-stealing committed by a free person;
37 Hen. 8, c. 8, § 2.
1 Ed. 6, c. 12, § 10.
2 & 3 Ed. 6, c. 33.

Or by a slave.

2. *BE it enacted,* That, if any person or persons shall receive or buy any horse, 'mare or gelding, foal or filly, mule or 'ass,' that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, or shall harbor or conceal any stealer of a horse, 'mare or gelding, foal or filly, mule 'or ass,' knowing him or them to be so, such person or persons shall be taken and received as accessory or accessories to the

Receivers or buyers of stolen horses, &c., knowing them to be stolen, or harborers of thieves, how punishable, if free persons;

(a) Compiled of 1792, editions 1794, 1803, and '14, c. 101, § 1; 1796, c. 2, § 6; edi. 1803, and '14, c. 200, § 6; 1803, c. 117, § 1; edi. 1808, c. 41, § 1.

* Former laws touching this subject; 1744, 5 Hen. st. at lar. p. 247; 1748, edi. 1752, c. 42; and edi. 1769, c. 34, § 11, 14, 15; 1786, c. 47; 1789, c. 1; 1792, edi. 1794, 1803, and '14, c. 101; 1796, c. 2, § 6; edi. 1803, and '14, c. 200, § 6; 1803, c. 117, § 1; edi. 1808, c. 41, § 1.

† Horse-stealing was punishable as a felony, without the benefit of clergy, by stat. 37, Hen. 8, c. 8, § 2; and 2 and 3 Edw. 6, c. 33; but was not expressly so declared, by our laws, (the British statutes being in force here,) until the revival of 1792, when it was enacted from these statutes. By the act of 1796, c. 2, § 6; edi. 1803, and '14, c. 200, § 6, which took effect, as to the penal part of the law, March 25, 1800, (see proclamation of the Executive of that date,) horse-stealing was punishable by confinement in the penitentiary, not less than two, nor more than seven years; but by act of 1803, c. 117, § 1, edi. 1803, c. 41, § 1, the period of confinement was extended to not less than five, nor more than ten years. The penitentiary system not embracing the case of slaves, horse-stealing is for the first time expressly declared by this section, a felony, without the benefit of clergy, as to them.

A. D. 1819.
A. R. C. 43.

And how, if slaves.

Where such receivers or buyers may be prosecuted as for a misdemeanor;

How punishable.

Effect thereof.

Reward for apprehending horse-stealers, &c.

On what evidence payable.

Compensation to representatives of persons killed in endeavoring to apprehend horse-stealers, &c.
On what evidence payable.

Repealing clause.

Proviso.

said felony; and, being of either of the said offences legally convicted, by the testimony of one or more credible witness or witnesses, such person or persons, if free, shall be sentenced to undergo a confinement in the public jail and penitentiary house for a period not less than six months, nor more than four* years; but, if such person or persons be a slave or slaves, he, she or they shall suffer the pain of death as a felon convict; but shall be entitled to the benefit of clergy.(b)

3. *PROVIDED, always*, That, if any such principal felon cannot be taken, so as to be prosecuted and convicted of any such offence, yet, nevertheless, it shall and may be lawful to prosecute and punish every such person and persons, buying or receiving any horse, 'mare or gelding, foal or filly, mule or ass,' stolen by any such principal felon, knowing the same to be stolen, as for a misdemeanor, to be punished by fine and imprisonment, or other such corporal punishment, as the court shall think fit to inflict, although the principal felon be not before convict of the said felony; which shall exempt the offender from being punished as accessory, if such principal felon shall be afterwards taken and convicted.(c)

4. *WHOSOEVER* shall apprehend one charged with stealing any horse, 'mare or gelding, foal or filly, mule or ass,' if the prisoner be convicted of that crime, shall be entitled to a reward of twenty dollars from the treasury, upon a certificate, from any of the superior courts of law of this State, that the claimant was the apprehender, and either that he was not examined as a witness at the trial, or that the other evidence then given was sufficient, without his testimony, to convict the prisoner.(d)

5. *THE* legal representative of any person killed in endeavoring to apprehend any stealer of a horse, 'mare or gelding, foal or filly, mule or ass,' shall receive the sum of one hundred and seventy dollars, to be paid by the treasurer, upon the order of the auditor, which he is hereby directed to issue, upon a certificate under the hands and seals of two justices of the peace of the county where the fact was committed, that such person was so killed; which certificate the said justices, upon sufficient proof before them made, are required immediately to give.(e)

6. *ALL* and every act or acts, statute or statutes, clause or clauses of acts, coming within the purview of this act, (except as herein-after provided,) shall be, and the same are hereby repealed: *Provided, nevertheless*, That nothing herein contain-

(b) Compiled of 1792, editions 1794, 1803, and '14, c. 101, § 2; which was from 1748, edition 1769, c. 34, § 14; 1796, c. 2, § 13; edi. 1803, and 1814, c. 200, § 13.

(c) 1748, edi. 1752, c. 42, § 15; and edi. 1769, c. 34, § 15; 1792, edi. 1794, 1803, and '14, c. 101, § 3.

(d) From 1748, edition 1752, c. 42, § 11; and edi. 1769, c. 34, § 11; 1786, c. 47; 1789, c. 1; 1792, edi. 1794, 1803, and '14, c. 101, § 4.

(e) 1748, edi. 1752, c. 42, § 11; and edi. 1769, c. 34, § 11; 1792, edi. 1794, 1803, and '14, c. 101, § 5.

* By the act of 1796, establishing the penitentiary system, c. 2, § 13; editions 1803, and 1814, c. 200, § 13, offences *clergyable* before that act, were declared to be punishable by confinement, not less than six months, nor more than two years. This, being an offence of that description, was reported to be so punishable, by the Committee of Revisors; but the Legislature, at the late revision, substituted four for two years.

ed, shall be construed to repeal any such statute or acts, for so much of any of them, as may relate to any offence within the purview thereof, committed or done before the commencement of this act.

A. D. 1819.

A. R. C. 49.

7. THIS act shall commence and be in force, from and after Commencement. the first day of January, eighteen hundred and twenty.

C. 153.

*An act against those who counterfeit letters or privy tokens to receive money or goods in other men's names.**

A. D. 1789.

A. R. C. 14.

[Passed November 18, 1789.]

1. WHEREAS many evil disposed persons have falsely and deceitfully contrived, devised and imagined privy tokens and counterfeit letters in other men's names, unto divers persons, their special friends and acquaintances, for the obtaining of money, goods and chattels of the same persons, their friends and acquaintances, by colour whereof the said evil disposed persons have deceitfully and unlawfully obtained and gotten great substance of money, goods and chattels into their hands and possession, contrary to right and conscience: Preamble.
33 Hen. 8, c. 1:

2. BE it enacted by the General Assembly, That, if any person or persons shall falsely and deceitfully obtain or get into his or their hands or possession, any money, goods or chattels of any other person or persons, by colour and means of any such false token, or counterfeit letter, made in any other man's name as is aforesaid, every such person and persons so offending, and being thereof lawfully convicted in the court of the district in which such offence shall have been committed, shall have and suffer such correction and punishment, by imprisonment of his body, without bail or mainprize, for any space, not exceeding one year, and setting upon the pillory, as shall be unto him, or them, limited, adjudged or appointed by the said court. Any person obtaining another's money or goods by false tokens, to be imprisoned and set upon pillory.

3. SAVING to the party grieved by such deceit, such remedy by way of action or otherwise, of and for the same money, goods and chattels so obtained, as he might have had if this act had never been made; any thing in the same contained to the contrary, in any wise notwithstanding. Person injured, not to lose his remedy by action.

* 1789, c. 15; 1792, edi. 1794, 1803, and '14, c. 45.

C. 154.

A. D. 1819.
A. R. C. 43.

*An act, reducing into one, the several acts for punishing persons guilty of certain thefts and forgeries, and the destruction or concealment of wills.**

[Passed February 23, 1819.]

Forgery by a free person, of current coin.

or bank notes,

or aiding in such forgery,

with intent to injure or defraud;

Or passing, or offering to pass, counterfeit money or bank notes, knowing the same to be counterfeit; how punishable.

1. *BE it enacted by the General Assembly, That, if any free person shall falsely 'make,' forge, counterfeit 'or alter, or 'cause or procure to be made, forged, counterfeited or altered, 'or willingly act or assist in falsely making, forging, counterfeiting or altering,' any coin, current within this Commonwealth, 'whether made current by law or by usage;' or any note or bill of the bank of Virginia, or the Farmers' Bank of Virginia, 'or any other bank which now is, or hereafter may 'be chartered in Virginia;' or any note or bill of the bank of the United States, 'or any other bank which now is or hereafter may be chartered by the government of the United States, or by the government of any state, territory or district 'thereof;' or shall falsely make or cause or procure to be made, or willingly act or assist in falsely making, any base coin; 'or 'any note purporting to be the note of a banking company, 'when there is no such banking company in existence;' with intention to injure or defraud any person or persons, body politic or corporate; or shall, with the like intent, pass or tender, or offer to pass or exchange, or cause or procure to be offered to be passed or exchanged, any such false, forged, counterfeit, base or altered coin, bill, or note, knowing the same to be false, forged, counterfeit, base or altered: every such person shall be deemed guilty of felony; and, on being thereof lawfully convicted, shall be punished by confinement in the public jail and penitentiary, for not less than ten nor more than twenty years.(a)*

(a) From 1792, edi. 1794, 1803, and '14, c. 133, § 1; 1796, c. 2, edi. 1806, and '14, c. 200 § 1, 9; 1804, c. 5, § 5; edi. 1808, c. 55, § 5; 1814, c. 21, § 1. amended at the late Revision.

* Former laws touching these subjects; May 1776, c. 10; Chan. Rev. p. 38; May 1779, c. 13, § 6, Chan. Rev. p. 98; May 1782, c. 52, § 6, Chan. Rev. p. 170; May 1783, c. 10, Chan. Rev. p. 198; Oct. 1784, c. 69; 1789, c. 19; 1792, edi. 1794, 1803, and '14, c. 171; 1796, c. 2; edi. 1803, and '14, c. 200; 1799, c. 58, edi. 1803, and '14, c. 264; 1804, c. 5, § 5, 6, edi. 1808, c. 55, § 5, 6; 1806, c. 10, edi. 1808, c. 91; 1808, c. 23, § 1; edi. 1812, c. 24, § 1; 1811, c. 31; edi. 1812, c. 111; 1813, c. 27, § 4; 1814, c. 17, § 9; 1814, c. 21. The amendments of the statutes relating to these subjects, which were made at the late revision, are so numerous, that it would require annotation almost as long as the act itself to explain. Therefore they must be left to be ascertained by comparison. Yet it is believed no very material alterations are made; Those that are versed in the pleas of the Commonwealth, will remark that many provisions are *expressly enacted* by this act, which were deduced from the former statutes by *construction*. The whole act, as compiled by the revisors and passed by the House of Delegates, (excepting one single section) was amalgamated and new modelled by the senate. The former acts were for the most part taken from English statutes *in pari materia*; but the language of this act is so different from our own former acts, and from the English statutes from which they were taken, that it is deemed unnecessary to refer to the English statutes. The amendments made at the late Revision, (as far as it is practicable to distinguish them in that manner,) are distinguished by being printed within single inverted commas.

2. If any free person shall 'falsely make,' forge or counterfeit, 'or procure to be falsely made, forged or counterfeited, or 'willingly act' or assist in 'falsely making,' forging or counterfeiting, or keep or conceal, or aid in keeping or concealing, any instrument, for the purpose of 'falsely making,' forging or counterfeiting, the seal of the president, directors and company of the Bank of Virginia, or Farmers' Bank of Virginia, or of any other chartered banking company, which now is or hereafter may be in Virginia; or the official seal of the register of the land-office; 'or the seal of any other public office, 'or body politic or corporate, in this Commonwealth;' such person shall be deemed guilty of felony; and, on being lawfully convicted of any such offence, in relation to the seal of any banking company aforesaid, shall be punished by confinement in the public jail and penitentiary, for not less than five nor more than fifteen years; and, on being lawfully convicted of any such offence, in relation to any other seal aforesaid, shall be punished by confinement in the public jail and penitentiary, for not less than one nor more than ten years.(b)

A. D. 1819.
A. R. C. 43.

Forging &c. or keeping or concealing any instrument for purpose of forging &c., the seal of any chartered banking company; or any public official seal, &c.,

how punishable, When committed in relation to the seal of such banking company; and how, when in relation to any other public seal.

3. If any free person shall falsely make, forge or counterfeit, alter or erase, or cause or procure to be falsely made, forged, or counterfeited, altered or erased, or shall willingly act or assist in falsely making, forging, counterfeiting, altering or erasing, any post note, check, or order on the bank of Virginia, or Farmers' bank of Virginia, or any of their offices of discount and deposit; or on any other chartered bank, which now is or hereafter may be in Virginia, or on any office or branch of any such bank; or on any office or branch of the bank of the United States, which now is, or hereafter may be in Virginia; or shall fraudulently obtain, or aid or assist in obtaining any bank or post note or money from any such bank, office or branch, as is aforesaid, by means of any such false, forged, counterfeit, altered, or erased post note, check or order, knowing the same to be false, forged, counterfeit, altered or erased; or shall utter or publish as true, or use or employ as true, for his own benefit, or for the benefit of another, any such false, forged, counterfeit, altered or erased post note, check or order, knowing the same to be false, forged, counterfeit, altered or erased; such person shall be deemed guilty of felony; and, on being lawfully convicted thereof, shall be punished by confinement in the public jail and penitentiary, for not less than two nor more than ten years.(c)

Forgery of any chartered bank, post note, check or order;

Or fraudulently obtaining, or aiding in obtaining any bank or post note, &c., from any such bank, &c., by means of such counterfeit post note, check or order;

Or uttering or publishing same as true, knowing it to be counterfeit; How punishable.

4. If any free person shall falsely make, forge, or counterfeit, alter or erase, or cause or procure to be falsely made, forged or counterfeited, altered or erased, or willingly act or assist in falsely making, forging, counterfeiting, altering or erasing, any land warrant or other warrant, issued under the authority of this State, or of the United States; any paper bill of credit, issued under the authority of the United States; any certificate, manifest or receipt of any public inspector of

Forgery, &c. of any land warrant;

Or other warrant, issued by the State, or United States; or any paper bill of cre-

(b) From 1806, c. 10, § 2; ed. 1808, c. 91, § 2; 1792, ed. 1794, 1803 and '14, c. 133, § 6, amended at the late revision.

(c) From 1806, c. 10, § 1; ed. 1808, c. 91, § 1; 1814, c. 21, § 2, amended at the late revision.

A. D. 1819:
A. R. C. 43.

dit issued by U. States ;
Or any certificate, manifest or receipt of inspector of flour, hemp, tobacco, &c ;
Or any loan office certificate, certificate of public, or bank stock ;
Or any other certificate of State, or U. States ; or any public record, &c., will, deed, bond, note, bill of exchange, &c ;
Or any defeasance, receipt, letter of credit or other writing to prejudice of another's right ; with intent to injure or defraud ;
Or uttering or publishing as true, &c., knowing the same to be counterfeit ;
How punishable.
Forging, or aiding in forging, stamp, brand or mark of any inspector of tobacco ;
Or exporting tobacco, with such counterfeit stamp, &c. knowing it to be counterfeit,

With intent to injure or defraud,
How punishable.

Voluntarily destroying, or concealing, a will or codicil, or aiding in doing so,
With intent to prevent the probat, or to defraud any devisee or legatee,
How punishable.

flour, hemp, tobacco, or other thing ; any loan office certificate ; certificate of the stock of this State, or of the United States, or of any bank, or chartered company, or any other certificate, issued under the authority of this State, or the United States ; or any record of any court, or public office, or of any body politic or corporate ; or any will, testament or codicil ; any deed, bond, writing or note ; any bill of exchange, draft or order ; any acceptance of a bill of exchange, draft or order ; any assignment, transfer or endorsement ; any defeasance, acquittance or receipt ; or any letter of credit, or other writing, to the prejudice of another's right ; (except the bank notes, and bills, post notes, checks and orders on banks, their branches and offices, in this act before mentioned ;) with intention to injure or defraud any person or persons, body politic or corporate ; or shall, with the like intent, utter or publish as true, or attempt, in any manner, to use or employ as true, for his own benefit, or for the benefit of another, any false, forged, counterfeit, altered or erased paper or writing, as is aforesaid, knowing the same to be false, forged, counterfeit, altered or erased ; such person shall be deemed guilty of felony ; and, on being lawfully convicted thereof, shall be punished by confinement in the public jail and penitentiary, for not less than one nor more than ten years.(d)

5. If any free person shall falsely make, forge or counterfeit, alter or erase, or procure to be falsely made, forged or counterfeited, altered or erased, or shall willingly act or assist in falsely making, forging, counterfeiting, altering or erasing, the stamp, brand or mark, of any inspector of tobacco, upon any cask or hogshead of tobacco ; or shall export from this Commonwealth, or remove from any inspection, or sell, or cause, or procure to be so exported, removed or sold, or shall willingly act or assist in so exporting, removing or selling, any hogshead or cask of tobacco, having thereon any such false, forged, counterfeited, altered or erased stamp, brand or mark, knowing the same to be false, forged, counterfeit, altered or erased ; with intention to injure or defraud any person or persons, body politic or corporate ; such person shall be deemed guilty of felony ; and, on being lawfully convicted thereof, shall be punished by confinement in the public jail and penitentiary, not less than one, nor more than ten years.(d)

6. If any free person shall voluntarily, wilfully and of purpose, destroy or conceal the last will and testament of any decedent, or any codicil to such last will and testament ; or shall wilfully aid or assist in the destroying or concealing any such last will and testament, or any codicil thereto, with intent to prevent the probat thereof, or to defraud any devisee or legatee under such last will and testament, or codicil thereto : he or she so offending, being legally convicted thereof, shall be deemed guilty of felony ; and shall be sentenced to undergo a confinement in the jail and penitentiary-house, for a period not less than one, nor more than ten years.(e)

(d) From 1792, edi. 1794, 1803 and 1814, c. 133, § 6, 3, 4, 5 ; 1813, c. 27, § 4 ; 1814, c. 17, § 9 ; 1794, c. 18, edi 1794, 1803 and '14, c. 171, with

considerable additions, at the late revisional.

(e) 1808, c. 23, § 1 ; edi. 1812, c. 24, § 1.

7. ANY slave who shall be guilty of any of the offences in this act before mentioned shall be deemed a felon, and be punished accordingly; and if convicted of any of the offences of falsely making, forging, counterfeiting, or altering, in the first section of this act enumerated, or of acting or assisting therein, he shall suffer death without benefit of clergy.*

8. If any person, 'bond or free,' shall steal, or take by robbery, from the possession of any other person, any bank note or bill, post note, check, or any warrant or certificate, bond, note or other writing or paper in this act mentioned, or any other writing or paper of value; the person so offending shall be deemed guilty of felony; and shall be punished in the same manner as for stealing or taking by robbery goods and chattels. (f)

9. 'In any prosecution under this act, or for any forging or counterfeiting whatsoever, the testimony of no person shall be rejected on account of his interest in the subject, unless he be a party defendant to the prosecution.'

10. ALL and every statute and statutes, act and acts, clause or clauses thereof, within the purview of this act, except as herein-after provided, shall be and are hereby repealed: *Provided*, That nothing in this act contained shall be construed to repeal the said statutes or acts, for so much of them as relates to any offence within the purview thereof, committed or done before the commencement of this act.

11. THIS act shall commence and be in force from and after the first day of January, eighteen hundred and twenty.

A. D. 1819.
A. R. C. 43.

Punishment of a slave, for such offences.

Particularly for any forgery mentioned in 1st section.

Theft or robbery, by persons bond or free, of bank notes, post notes, checks, warrants, certificates, bonds, notes, &c. or any other paper of value, how punishable.

Evidence admissible in prosecutions under this act.

Repealing clause.

Proviso.

Commencement.

C. 155.

An act declaring at what time restitution shall be made of goods stolen.†

A. D. 1792.
A. R. C. 17.

[Passed October 22, 1792.]

1. *BE it declared and enacted by the General Assembly*, That, Courts before whom felons are convicted, may award restitution of goods stolen by them. If any felon or felons do rob or take away any money, goods, or chattels, from any person within this Commonwealth, whether from their person or otherwise, and thereof the said felon or felons be afterwards convicted or attainted, that then the party so robbed, shall be restored to his said money, goods, or chattels; and the court before whom such felon shall be convicted or attainted, shall have power to award, from time to time, writs of restitution accordingly.

2. ALL and every act and acts, clause and clauses of acts, coming within the purview of this act shall be, and the same are hereby repealed. Repealing clause.

3. THIS act shall commence and be in force, from and after the passing thereof. Commencement.

(f) From 1808, c. 10, § 3; edi. 1808, c. 91, § 3; 1811, c. 31; edi. 1812, c. 111. The offences in this act enumerated, are for the first time expressly made punishable, when committed by slaves; except so much of the 8th section, as is taken from the act of 1811, c. 31, edi. 1812, c. 111.
† 1792; edi. 1794, 1803, and '14, p. 75.

C. 156.

A. D. 1819.
A. R. C. 43.

*An act to reduce into one act, the several acts against malicious or unlawful shooting, stabbing, maiming and disfiguring.**

[Passed February 9, 1819.]

Punishment of
free persons for
unlawfully maim-
ing or disfiguring,
shooting or stab-
bing.

1. *Be it enacted by the General Assembly,* That whosoever shall unlawfully cut off the tongue, or disable the tongue by clipping, biting or wounding, put out an eye, slit, cut off, or bite off the nose, ear or lip, 'or disable or disfigure the nose, ear 'or lip, by cutting or biting,' or cut off, or disable by cutting, biting or wounding any limb or member of another, or shoot or stab another, with intention in committing any of the said acts to maim, disfigure, disable or kill, every such offender 'being 'free,' his or her counsellors, aiders and abettors 'being free, 'are hereby declared to be felons, and' shall be punished with confinement in the jail and penitentiary for a term not less than one, nor more than seven years,(a) 'and be liable to the action 'of the party grieved.'

Right of action by
party grieved.

Punishment for
voluntary and ma-
licious maiming or
disfiguring, shoot-
ing or stabbing.

2. *Be it further enacted,* That whosoever shall, voluntarily, maliciously, and of purpose commit any of the aforesaid acts, with intention in so doing, to maim, disfigure, disable or kill, every such offender 'being free, and' his or her aiders, counsellors and abettors 'being free, are hereby declared to be felons, and' shall be punished with confinement in the penitentiary, for a time not less than two, nor more than ten years; and shall moreover pay a fine not exceeding one thousand dollars, and be liable to the action of the party grieved, as in case of trespass; and the party grieved shall be a competent witness to prove any of the said offences, in any criminal prosecution for any such offence.(b)

Right of action by
party grieved.

Such party com-
petent witness in
criminal prosecu-
tion.

Punishment of a
slave in such case.

3. If any slave shall commit any of the offences in this act mentioned, every such offender, his or her counsellors, aiders and abettors, knowing of, and privy to the offence, shall be, and are hereby declared to be felons and shall suffer as in case of felony.†

Repealing clause.
Proviso.

4. ALL acts and parts of acts, coming within the purview of this act, shall be and are hereby repealed: *Provided, always,* That nothing in this act contained shall be construed to repeal any act heretofore made, for so much thereof as may relate to any offence committed or done before the commencement of this act.

Commencement.

5. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty.

(a) 1816, c. 15, § 1.

(b) *Ibid*, § 2.

* Former laws relating to this subject; 1752, 6 *Hen. st. at lar.* p. 250; 1752, *edi.* 1769, c. 6; 1792, *edi.* 1794, 1803, and '14, c. 99; 1796, c. 2, § 10; *edi.* 1803, and '14, c. 200, § 10; 1802, c. 4, § 2, 3; *edi.* 1808, c. 16, § 2, 3; 1816, c. 15.

† *Expressly* extended to the case of slaves, at the late revision.

C. 157.

*An act to suppress Duelling.**

[Passed January 26, 1810.]

A. D. 1810.
A. R. C. 34.

WHEREAS, experience has evinced, that the existing Preamble.
remedy for the suppression of the barbarous custom of duelling is inadequate to the purpose ; and the progress and consequences of the evil have become so destructive as to require an effort on the part of the legislature, to arrest a vice, the result of ignorance and barbarism, justified neither by the precepts of morality, nor by the dictates of reason: For remedy whereof,

1. *BE it enacted by the General Assembly,* That any person who shall hereafter wilfully and maliciously, or by previous agreement, fight a duel or single combat, with any engine, instrument or weapon, the probable consequence of which might be the death of either party, and, in so doing, shall kill his antagonist, or any other person or persons, or inflict such wound as that the person injured shall die thereof within three months thereafter, such offender, his aiders, abettors and counsellors, being thereof duly convicted, shall be guilty of murder, and suffer death, by being hanged by the neck ; any law, custom or usage of this Commonwealth, to the contrary notwithstanding.

Person killing another in a duel, guilty of murder.

2. *AND be it further enacted,* That, if any person whatsoever shall challenge another to fight a duel with any weapon or in any manner whatsoever, the probable issue of which may or might result in the death of the challenger or challenged ; or if any person shall accept a challenge or fight a duel, with any weapon, or in any way whatsoever, the probable issue of which may or might terminate in the death of the challenger or challenged ; such person shall be incapable of holding or being elected to any post of profit, trust or emolument, civil or military, under the government of this Commonwealth.

Person challenging or accepting challenge, incapacitated for office.

3. *AND be it further enacted,* That, from and after the passing of this act, every person who shall be appointed to any office or place, civil or military, under this Commonwealth, shall, in addition to the oath now prescribed by law, take the following oath : *I do solemnly swear or affirm (as the case may be,) that I have not been engaged in a duel, by sending or accepting a challenge to fight a duel, or by fighting a duel, or in any other manner, in violation of the act, entitled, An act to suppress duelling, since the passage of that act, nor will I be so concerned, directly or indirectly, in such duel, during my continuance in office. So help me God.*

Oath to be taken by person appointed to any office.

4. *AND be it further enacted,* That it shall be the duty of the judges of the circuit courts, and the county courts, at their quarterly sessions, to give in charge expressly to the jury, all the laws in force to suppress duelling, also to charge the jury to present all persons concerned in carrying, sending or

This act to be given in charge to grand juries, together with all other laws to suppress duelling.

* 1809, c. 10 ; edi. 1812, c. 40.

A. D. 1810.
A. R. C. 34.

Duty of judges and magistrates who suspect a duel is about to take place.

Proceedings to be had where persons leave the state.

Duty of Commonwealth's attorneys.

Certain words to be actionable.

accepting a challenge; and if any person shall be presented in such courts, the said courts shall, if they have jurisdiction of said offences, proceed to trial of the same, in the ordinary way, and if not, that the presentment shall be either certified by order of the court, to such court as has jurisdiction, or shall be considered in law a sufficient authority for a magistrate to issue his warrant against the accused where an examining court is necessary.

5. *And be it further enacted*, That, when any judge or magistrate of this Commonwealth has good cause to suspect any person or persons are about to be engaged in a duel, he may issue his warrant to bring the parties before him; and if he shall think proper to take of them a recognizance to keep the peace, he shall insert in the condition, that the party or parties shall not, during the time for which they were bound, directly or indirectly, be concerned in a duel, either with the person suspected, or any other person, within the time limited by the recognizance.

6. *And be it further enacted*, That if any person or persons shall, for the purpose of eluding the operation of the provisions of this law, leave the state, the person or persons so offending shall be deemed as guilty, and be subject to the like penalties as if the offence had been committed within this Commonwealth. If any person shall leave this state with the intention of giving or receiving a challenge to fight a duel, or of aiding or abetting in giving or receiving such challenge, and a duel shall actually be fought, whereby the death of any person shall happen, and the person so leaving the state shall remain there-out, so as to prevent his apprehension for the purpose of a trial; or if any person shall fight a duel in this state, or aid or abet therein, whereby any person shall be killed, and then flee into another state to avoid his trial; in either case it shall be the duty of the Executive, and they are hereby directed, to adopt and pursue all legal steps to cause any such offender to be apprehended and brought to trial in the county where the offence was committed, when the duel shall have been fought within the state, and, when it shall have been fought without the state, then in that county where, in the opinion of the Executive, the evidence against the offender can be best obtained and produced upon his trial.

7. *Be it further enacted*, That it shall be the duty of the attorneys of the Commonwealth for the county courts, to give information to the Executive whenever a case shall arise, in their counties respectively, which will render the interposition of the Executive authority, under this act, necessary. And the said attorneys, either at the first quarterly court of their respective counties after the commencement of this act, or at the time of their acceptance of their offices, where they shall hereafter be appointed, shall take the following oath: *I do solemnly swear or affirm, (as the case may be) that I will, to the best of my judgment, execute the duty imposed on me by the act for suppressing duelling. So help me God.*

8. *And be it further enacted*, That all words which, from their usual construction and common acceptance, are considered as insults, and lead to violence and breach of the peace,

shall hereafter be actionable, and no plea, exception or demurrer shall be sustained in any court within this Commonwealth, to preclude a jury from passing thereon, who are hereby declared to be the sole judges of the damages sustained: *Provided*, That nothing herein contained shall be construed to deprive the several courts of this Commonwealth from granting new trials as heretofore.

A. D. 1810.
A. R. C. 34.

Proviso.

9. This act shall be in force from the first day of April next.

C. 158.

An act for reducing into one act, the several acts declaring the punishment in case of Rape.

A. D. 1819.
A. R. C. 43.

[Passed February 8, 1819.]

1. *Be it enacted by the General Assembly*, That, if any man do ravish a woman, married, maid or other, where she did not consent before nor after, or shall ravish a woman married, maid, or other, with force, although she consent after, the person so offending shall be adjudged a felon; and if the said person be free, shall be sentenced to undergo a confinement in the jail and penitentiary house, for a period not less than ten, nor more than twenty-one years; but, if the said person be a slave, shall suffer death, as in case of felony, without the benefit of clergy.(a)

Punishment for rape, committed by a free person; 13 Ed. 1, c. 34. 18 Eliz. c. 7.

Or by a slave.

2. *AND*, if any free person shall be accessory to either of the said offences before the fact, the person so offending, being thereof convicted, shall be sentenced to undergo a confinement in the jail and penitentiary house, for a period not less than ten, nor more than twenty-one years.(b)

Punishment of a free person, accessory before the fact.

3. *IF* any person shall unlawfully and carnally know and abuse any woman child under the age of ten years, every such unlawful and carnal knowledge shall be felony, and the offender being duly convicted thereof, if a free person, shall undergo a confinement in the jail and penitentiary house, for a period not less than one, nor more than ten years, and, if a slave, shall suffer death as a felon, without the benefit of clergy.(c)

Of a free person guilty of carnally knowing a woman child under ten years of age. 18 Eliz. c. 7, § 4.

Of a slave for same offence.

4. *IF* any slave shall attempt to ravish a white woman, and be thereof lawfully convicted, he shall be adjudged a felon, and may be punished with castration. If any slave sentenced to such punishment, shall die through the negligence of any surgeon, or other person undertaking his dismemberment or cure, the owner of such slave shall have the same remedy

Of a slave attempting to ravish a white woman. Owner's remedy, if the slave should die by negligence of the surgeon, &c.

(a) 1792, edi. 1794, 1803 and '14, c. 130, § 1; 1796, c. 2, § 4; edi. 1803 and '14, c. 200, § 4.

(b) 1796, c. 2, § 4; edi. 1803 and '14, c. 200, § 4.

(c) 1792, edi. 1794, 1803 and '14, c. 130, § 2; 1796, c. 58, § 1; edi. 1803 and '14, c. 204, § 1.

A. D. 1819.
A. R. C. 43.

Repealing clause.

Proviso.

Commencement.

against such surgeon, or other person, for the loss so sustained, as if this act had never passed.(d)

5. ALL and every statute and statutes, within the purview of this act, shall be and the same are hereby repealed: *Provided always*, That nothing in this act contained shall be construed to repeal any such statute or statutes, for so much thereof as relates to any offence within the purview thereof, committed or done before the commencement of this act.

6. THIS act shall commence and be in force from and after the first day of January, eighteen hundred and twenty.

C. 159.

A. D. 1819.
A. R. C. 43.

An act declaring the punishment of the crime of Buggery.

[Passed February 6, 1819.]

Punishment of a
free person.
25 Hen. 8, c. 6.
Perpetuated
5 Eliz. c. 17.

Of a slave.

Repealing clause.
Proviso.

Commencement.

1. *BE it enacted and declared by the General Assembly*, That if any do commit the detestable and abominable vice of buggery with man or beast, he or she, so offending, if he or she be a free person, shall be adjudged a felon, and shall be sentenced to undergo a confinement in the public jail and penitentiary house, for a period not less than one, nor more than ten years. And, if the person so offending be a slave, he or she shall be adjudged a felon, and shall suffer death without the benefit of clergy.(a)

2. ALL acts coming within the purview of this act, are hereby repealed: *Provided, however*, That nothing herein contained, shall be construed to repeal any act heretofore made, for so much thereof as may relate to any offence committed or done before the commencement of this act.

3. THIS act shall commence and be in force, from and after the first day of January, eighteen hundred and twenty.

(d) From 1769, c. 19, § 1; Chan. Rev. p. 9; 1804, c. 5, § 11; edi. 1808, c. 55, § 11; 1748, edi. 1752, c. 38, § 25; and edi. 1769, c. 31, § 25.

(a) 1792, edi. 1794, 1803 and '14, c. 100; 1799, c. 58, § 1; edi. 1803 and '14, c. 264, § 1.

C. 160.

*An act to punish arson, the burning or setting fire to houses in towns, the malicious burning any house or houses or stacks, and certain house-breakers, and accessories to felonies, and receivers of stolen goods.**

A. D. 1819.

A. R. C. 43.

[Passed February 6, 1819.]

1. *BE it, enacted by the General Assembly, That, if any per-* Punishment of
son shall commit arson,† being thereof lawfully convicted, such arson ;
person shall be deemed guilty of felony, and shall suffer death,
without benefit of clergy. If any free person shall be accessory Of accessory
thereto, he shall suffer a confinement in the penitentiary, not thereto, if a free
less than ten, nor more than twenty-one years; and, if any person ;
such accessory be a slave, he shall be adjudged a felon, and Or, if a slave.
suffer death without benefit of clergy.(a)

2. *ALL and every person and persons, who shall, at any time,* Of any person wil-
either in the night or the day, maliciously, unlawfully and wil- fully burning, or
lingly, burn or set fire to any house or houses whatsoever, in a setting fire to, any
town, or shall aid, abet, assist, counsel, hire or command any house in a town ;
person or persons to commit any of the said offences, being
thereof lawfully convicted, and either of the said offences
shall actually have been committed, shall be deemed guilty of
felony, and shall suffer death as a felon, 'without benefit of
clergy.'(b)

3. *EVERY free person or persons, who shall, at any time,* Of a free person so
either in the night or the day, maliciously, unlawfully and wil- burning any barn,
lingly, burn or set fire to any barn, stable, corn house, tobacco stable, corn-house,
house, stack of wheat, barley, oats,‡ corn, or other grain, or any tobacco house,
stack of fodder, straw or hay; or shall aid, abet, assist, coun- stack of wheat,
sel, hire or command any person or persons to commit any of &c.
the said offences, being thereof lawfully convicted, and either
of the said offences shall actually have been committed, shall
be deemed guilty of felony,|| and shall be sentenced to undergo
a confinement in the jail or penitentiary-house, for any time
not less than two, nor more than five years, and shall, moreover,
pay the full value of the property burnt or destroyed, to the
owner or owners thereof.(c)

4. *ALL and every free person and persons, that shall, at any* Or any house, not
herein-before
mentioned.

(a) Compiled of 1804, c. 5, § 8 ;
edi. 1808, c. 55, § 8 ; 1803, c. 117, § 1 ;
edi. 1808, c. 41, § 1 ; 1792, edi. 1794,
1803, and '14, c. 130, § 1.

(b) 1804, c. 5, § 7 ; edition 1808,
c. 55, § 7.
(c) *Ibid*, § 9.

* Former general laws touching these subjects ; 1730, 4 *Hen. st. at lar.* p. 271 ; edi. 1752, acts of 1730, c. 4 ; and edi. 1769, c. 3 ; 1792, edi. 1794, 1803, and '14, c. 109 ; 1804, c. 5 ; edi. 1808, c. 55 ; 1807, c. 24 ; edi. 1808, c. 232.

† By the penitentiary law, 1796, c. 2, § 4, edi. 1803, and 1814, c. 200, § 4, arson, in principal and accessory, was punishable by confinement, for a period not less than five, nor more than twelve years ; by act of 1803, c. 117, § 1, edi. 1808, c. 41, § 1, the term was increased, for the same offence, to not less than ten, nor more than twenty-one years ; and, by act of 1804, c. 5, § 8, edi. 1808, c. 55, § 8, it was declared to be punishable with death, in the principals.

‡ The word "and," which was inserted between "oats" and "corn," in the former law, struck out at the late revival.

§ "a misdemeanor" in former act.

A. D. 1819.

A. R. C. 43.

time, either in the night or the day, maliciously, unlawfully and willingly, burn any house or houses whatsoever, other than those enumerated in the three first sections of this act, or shall comfort, aid, abet, assist, counsel, hire or command any person or persons to commit any of said offences, being thereof convicted or attainted, and either of the said offences shall actually have been committed, shall be adjudged guilty of felony, and shall undergo a confinement in the public jail and penitentiary-house, for a period not less than one, nor more than ten years.(d)

Of slave wilfully
burning or setting
fire to any barn,
stable, corn-house,
or other house ;

5. If any slave or slaves, at any time, shall wilfully and maliciously burn or set fire to any barn, stable, corn-house, or other house, or shall advise, counsel, aid, abet or assist any slave or slaves, free negro or mulatto, or any other person or persons to commit either of the said offences, 'and either of the said offences shall actually be committed,' such slave or slaves being thereof lawfully convicted, he, she or they shall be deemed guilty of felony, and shall suffer death,* without benefit of clergy.(e)

Of stack of wheat,
&c.

6. If any slave or slaves, shall wilfully and maliciously burn or set fire to any stack or cock of wheat, barley, oats, corn, or other grain, or to any stack or cock of hay, straw or fodder, or shall advise, counsel, aid, abet or assist any slave or slaves, free negro or mulatto, 'or any other person or persons, to commit either of the said offences, and either of the said offences shall actually be committed,' such slave or slaves being thereof lawfully convicted, he, she or they shall be deemed guilty of felony, and shall be punished as felons, within the benefit of clergy.(f)

Of free persons
feloniously break-
ing any warehouse
or store-house, and
taking money or
goods to the value
of four dollars or
more.

7. ALL and every free person and persons, that shall, at any time, either in the night or the day, feloniously break any warehouse or store-house, and shall take therefrom any money, goods or chattels, wares or merchandizes, of the value of four dollars or more, although the owner of such goods, or any other person or persons, be, or be not, in such ware-house or store-house, or shall aid, assist, counsel, hire or command any person or persons so to break and rob any such ware-house or store-house, and either of the said offences shall actually be committed, such person or persons, being thereof lawfully convicted or attainted, shall be deemed guilty of felony, and shall be punished by confinement in the public jail and penitentiary-house, for a period not less than one, nor more than ten years. And, if a slave or slaves do commit the said offence or offences, and shall be thereof convicted or attainted, such slave or slaves shall be deemed guilty of felony, and shall suffer death without benefit of clergy.(g)

Of slaves for same
offence.

(d) Compiled of 1792, editions 1794, 1803, and '14, c. 109, § 1; 1799, c. 58, § 1; edi. 1803, and '14, c. 264, § 1; and amended at the late revision.

(e) Compiled of 1807, c. 24, § 1; edi. 1808, c. 132, § 1; 1792, edi. 1794, 1803, and '14, c. 109, § 1; amended at the late revision.

(f) Altered at the late revision, from 1807, c. 24, § 2; edi. 1808, c. 132, § 2.

(g) Compiled of 1792, editions 1794, 1803, and '14, c. 109, § 2; which was from 1730, edi. 1752, c. 4, § 4; and edi. 1769, c. 3, § 4; 1799, c. 58; edi. 1803, and '14, c. 264; and amended at the late revision.

* The words "without benefit of clergy," substituted at the late revision, for "as is provided in other cases of felony," in the former law.

8. If any principal offender shall be convicted of any felony, or shall stand mute on his arraignment, or persist, after being admonished by the court, in not answering directly to the indictment, or shall be outlawed, it shall and may be lawful to proceed against any accessory, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon shall be admitted to the benefit of his clergy, pardoned or otherwise delivered, before attainder; and every such accessory shall suffer the same punishment, if he or she be convicted or attainted, as he or she should have suffered if the principal had been attainted.^(h)

A. D. 1819.
A. R. C. 43.

When accessory may be proceeded against, though principal be not attainted.

1 Ann. st. 2, c. 9.

9. It shall and may be lawful to prosecute and punish every person and persons, buying or receiving any stolen goods, 'or any stolen bank or post note, obligation, bond, bill obligatory, bill of exchange, promissory note for the payment of money, lottery ticket, or paper bill of credit, granted by or under the authority of the United States, or any other written or printed paper evidencing any right, title or claim, or otherwise of value,' knowing the same to be stolen, as for a misdemeanor, to be punished by fine and imprisonment, although the principal felon be not before convicted of the said felony; which shall exempt the offender from being punished as accessory, if the principal shall be afterwards convicted.⁽ⁱ⁾

Receivers of stolen goods, bank notes, bonds, bills of exchange, &c., or any paper of value, may be prosecuted as for misdemeanor, before conviction of principal felon.

5 Ann. c. 31, § 5, 6.

Effect of such prosecution.

10. ALL and every act and acts, clause and clauses of acts, containing any thing within the purview of this act, (except as herein-after provided,) shall be, and the same are hereby repealed: *Provided, always,* That nothing in this act contained shall be construed to prevent the prosecution and punishment of any offence committed or done before the commencement of this act; but every such offence may be prosecuted and punished in the same manner as if this act had never passed.

Repealing clause.

Proviso.

11. THIS act shall commence and be in force, from and after the first day of January eighteen hundred and twenty.

Commencement.

C. 161.

*An act in addition to the act, intituled an act, to amend the penal laws of this Commonwealth.**

A. D. 1801.
A. R. C. 25.

[Passed January 21, 1801.]

1. *BE it enacted by the General Assembly,* That any person who shall hereafter, of his own free will and accord, or by the persuasion of, or combination with any foreign agent, or any other person being an alien, or a citizen of this Commonwealth, or of any other of the United States, deliver up or surrender, or

Felony to deliver or surrender citizens or other persons to be transported, &c. and how punishable.

^(h) 1730, edi. 1752, c. 4, § 6; and edi. 1769, c. 3, § 6; 1792, edi. 1794, 1803, and '14, c. 109, § 3; amended at the late revision.

⁽ⁱ⁾ 1730, edi. 1752, c. 4, § 8; and edi. 1769, c. 3, § 8; 1792, edi. 1794, 1803, and '14, c. 109, § 4; amended at the late revision.

* 1800, c. 71; edi. 1803, and '14, c. 234, *vid. post*, c. 218.

A. D. 1801.
A. R. C. 25.

cause to be delivered up or surrendered, either by his own authority, or under colour of any office whatsoever, held, or claimed to be held, under the authority of this Commonwealth, any citizen of this Commonwealth, or of any other of the United States, or any other free person whomsoever, being within the limits of this Commonwealth, and entitled to the protection of the laws thereof during his residence therein, to be transported beyond sea, or elsewhere, without the United States, shall, on conviction of every such offence, be adjudged a felon, and sentenced by the court before whom such conviction shall be had, to undergo a confinement in the jail and penitentiary house, for a term not exceeding ten years, nor less than one year, and, during such term, be compelled to perform such labour, and be subjected to such rules and regulations, in other respects, as is prescribed by law in the case of other felons condemned to serve in said house.

Felony to deliver
or surrender an-
other who shall be
executed; how
punishable.

2. *AND be it further enacted*, That, in case any person, so delivered up or surrendered as aforesaid, shall be transported by sea or land, to any place without the jurisdiction of the courts of this Commonwealth, or of any other of the United States, and at such place shall be tried and condemned by any court, either civil or military, for any criminal offence pretended to have been committed by such person at any place whatsoever, and, in consequence of such condemnation, shall be actually executed under the authority of the court passing sentence upon him, then all and every person or persons concerned in such delivery and surrender shall, on conviction thereof, and due proof made of such condemnation and execution as aforesaid, be adjudged a felon, and suffer death in like manner as aiders, abettors and counsellors of murder in the first degree are directed to be punished in and by the fourteenth section of the act, intituled, *An act to amend the penal laws of this Commonwealth*.*

Commencement.

4. This act shall commence and be in force from the passing thereof.

C. 162.

A. D. 1819.
A. R. C. 43.

An act, reducing into one, the several acts, declaring what shall be treason; for punishing certain offences injurious to the tranquillity of the Commonwealth; concerning felonies and offences, committed out of the jurisdiction of the same; and taking from the Executive the power of granting pardon to traitors.†

[Passed January 28, 1819.]

Preamble.

WHEREAS divers opinions may be, what case shall be adjudged treason, and what not:

Treason consist-
ing in levying war

1. *BE it enacted by the General Assembly*, That if a man do

* The third section is directed to be omitted ante, c. 1, p. 4.

† Former general law on this subject; 1792, edi. 1794, 1803 and 1814, c. 156. The amendments made at the late revival, are distinguished by being printed within single inverted commas.

levy war against the Commonwealth in the same, or be adherent to the enemies of the Commonwealth within the same, giving to them aid and comfort in the Commonwealth, or elsewhere, and thereof be legally convicted of open deed, by the evidence of two sufficient and lawful witnesses, or his own voluntary confession, the cases above rehearsed shall be judged treason which extendeth to the Commonwealth; and the person so convicted, and his or her aiders, abettors and counsellors, being thereof convicted, shall suffer death, by hanging by the neck, without benefit of clergy.^(a)*

A. D. 1819.

A. R. C. 43.

against the Commonwealth, &c.

25 Ed. 3, st. 5, c. 2.

How proved,

1 Ed. 6, c. 12,

§ 22.

5 and 5 Ed. 6.

c. 11, § 13.

7 Will. 3, c. 3,

§ 2.

How punished.

Treason in estab-

lishing usurped

government with-

in the state, or

holding any office

in, or swearing al-

legiance to such

government, &c.

2. Also, every person or persons, who shall erect or establish, or cause or procure to be erected or established, any government separate from, or independent of, the government of Virginia, within the limits thereof, unless by act of the Legislature of this Commonwealth for that purpose first obtained, or who shall, in any such usurped government, hold or execute any office, legislative, executive, judiciary or ministerial, by whatever name such office may be distinguished or called; or who shall swear, or otherwise solemnly profess allegiance or fidelity to the same; or who shall, under pretext of authority derived from, or protection afforded by, such usurped government, resist or oppose the due execution of the laws of this Commonwealth, shall be adjudged guilty of high treason, and shall be proceeded against, and punished in the same manner as other traitors may be proceeded against and punished.^(b)

3. Every person, who shall attempt to establish such government, by any other means than with the assent of the Legislature of this Commonwealth, and, in pursuance of such attempts, shall join with any other person or persons, in any overt act for promoting such attempts; or who shall, by writing or advised speaking, endeavour to instigate the people of this Commonwealth, to erect or establish such government, without such assent as aforesaid; shall be adjudged guilty of a high crime and misdemeanor; and, on conviction, shall be subject to such pains and penalties, not extending to life or member, as the court, before whom the conviction shall be, shall adjudge.^(c)

4. If any citizen or inhabitant of this Commonwealth, shall go beyond the limits of the United States, within the acknowledged jurisdiction of any civilized nation, in amity with the United States, and shall, within the same, commit any crime, for which, in the judgment of the United States in congress assembled, the law of nations or any treaty between the United States and a foreign nation, require him to be surrendered to the offended nation, and shall, thereafter, flee within the limits of this Commonwealth, and the sovereign of the offended na-

How proceeded against, and punished.

Attempt to establish such government and joining in overt act to

promote it, or en-

deavouring to in-

stigate the people

to establish it, a

high crime and

misdemeanor :

How punished.

(a) October, 1776, c. 3, § 1; Chan. Rev. p. 40; 1792, edi. 1794, 1803 and 1814, c. 136, § 1; 1816, c. 15, § 3.

(b) 1785, c. 10, § 2; 1792, edi. 1794, 1803 and 1814, c. 136, § 2.

(c) *Ibid*, § 3.

* Treason, by the act of October, 1776, c. 3, § 1, was punishable with death, without benefit of clergy. By the penitentiary law of 1796, c. 2, § 4, edi. 1803 and 1814, c. 200, § 4, it was punishable by confinement, for a period not less than six, nor more than twelve years; but, by act of 1802, c. 4, § 5, edi. 1808, c. 16, § 5, repeated almost *verbatim* in the act of 1816, c. 15, § 3, the crime of high treason is punishable with death, by hanging by the neck.

A. D. 1819,
A. R. C. 43.

Demand of such
offenders by
whom and how.

Executive empow-
ered to surrender.

How criminals flee-
ing hither, from
other state or ter-
ritory of United
States, may be de-
manded and sur-
rendered.

Affidavit, or copy
of indictment to
be produced.

Executive to cause
such fugitive to be
arrested, &c.

Agent making de-
mand, to receive
within 6 months,
pay expenses, &c.,
or fugitive dis-
charged.

Provision where
prisoner is charged
before court of re-
cord, with a crime
committed in an-
other state, &c.
of U. States.

Affidavit, copy of
indictment, &c.,
required.

Court to order
surrender, to
agent appointed to
receive.

To detain prisoner
in custody, if no
such agent.

Proceedings to be
transmitted to
executive of such
state, &c.

Surrender to
agent, appearing
within six months,
and paying expen-
ses, &c.

tion shall exhibit to the government of the United States, due and satisfactory evidence of the crime, with a demand of the offender, to be tried and punished where the same was committed; and the said government, pursuant to the laws and constitution of the United States, shall thereupon notify such demand to the Executive of this State, and call for the surrender of such offender, the Governor with the advice of the Council of State, is hereby authorised to cause him to be apprehended, conveyed and delivered to such person or persons, as the government of the United States shall prescribe.(d)

5. 'WHENEVER the executive authority of any state in the union, or of any territory of the United States, shall demand of the Executive of this Commonwealth, any person who shall have fled hither, from any such state or territory, and shall moreover produce the copy of an indictment, or an affidavit, charging the person so demanded with having committed treason, felony or other crime, (such copy of the indictment, or such affidavit, being certified as authentic, by the Governor or chief magistrate of the state or territory from whence the person so charged fled,) it shall be the duty of the Executive of this Commonwealth to cause such person to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive; and to cause such fugitive to be delivered to such agent, if he shall appear within six months from the time of such arrest, and pay all costs and expenses, incurred in apprehending and securing the fugitive; otherwise the said fugitive may be discharged.'(e)

6. 'WHENEVER any person in custody of the officer of any court of record, within this Commonwealth, shall be charged before such court, with any treason, felony, or other crime, committed in any other of the United States, or in any territory thereof, and such charge shall be verified, by credible affidavit, by the copy of an indictment found in such state or territory, or by other satisfactory evidence, it shall be the duty of such court, if they have probable cause to believe that such person hath committed the offence, wherewith he is charged, and that he ought to be tried therefor in such other state or territory, to cause such person forthwith to be delivered to the agent appointed to receive him, by the executive authority of such state or territory, if any there be; or if there be none, then to order such prisoner to be detained in custody; to cause a copy of the proceedings to be transmitted, by the clerk, to the executive authority of such state or territory, and published in some fit newspaper; and to cause such prisoner to be delivered to any agent of such executive authority, who may be appointed to receive him: *Provided, however,* That in every such order for detaining the prisoner in custody, a time certain shall be appointed, not exceeding six months from the date of the order, within which, if such

(d) October, 1784, c. 63, § 2; edi. 1794, 1803 and '14, c. 136, § 4, altered in the phraseology at the late revision.

(e) At the late revision § 5 and 6 of

the act of 1792, edi. 1794, 1803 and 1814, c. 136, were stricken out, and § 5, 6, 7, of this act substituted in their place.

' executive agent do not appear, pay all costs attending such
' commitment and confinement, and receive the prisoner, he
' shall be discharged, if detained for no other cause.'(e)

A. D. 1792.

A. R. C. 17.

7. ' No person, however, under prosecution, for any treason,
' felony or other crime, alleged to be committed within this
' Commonwealth, shall be delivered to the Executive authority
' of such state or territory, until he shall have been acquit-
' ted or discharged from such prosecution, or condemned and
' punished thereupon; nor shall any person, who, before he
' shall have been arrested or committed, under the charge of
' an offence committed in another state or territory as aforesaid,
' shall be in custody upon any execution for debt or damages,
' or upon any writ or process in any suit, be so delivered,
' without the consent of the plaintiff in such execution or suit,
' until such debt or damages shall have been paid, or until such
' person shall otherwise have been entitled to a discharge from
' such execution, writ or process.'(e)

Person under pro-
secution for crime
committed here,
not to be so sur-
rendered, until
acquitted, or pun-
ished.

Prisoners in exe-
cution, or in cus-
tody upon writ or
process, not to be
surrendered, with-
out plaintiff's con-
sent, till payment
of debt &c. or le-
gal discharge.

8. ALL high treasons, misprisions, and concealments of high
treasons, and other offences against 'the laws of' this Com-
monwealth, (except piracies and felonies on the high seas,)
' committed at any place in this Commonwealth, not within
' the jurisdiction of the superior court of law for any county,'*
shall be enquired into, heard, determined and judged in the
general court, in the same manner as offences committed with-
in the body of a county are triable in a superior court of law;
and such as shall be convicted of any such offence shall suffer
such pains, penalties, judgment and execution, as if they had
been attainted and convicted of such offence, done within the
body of a county.(f)†

Certain treasons
and other crimes,
triable in general
court only.

(e) At the late revision § 5 and 6 of
the act of 1792, edi. 1794, 1803 and
1814, c. 136, were struck out, and
§ 5, 6, 7, of this act substituted in
their place.

(f) Altered, at the late Revision,
from 1786, c. 46; 1792, edi. 1794,
1803, and '14, c. 136, § 7.

* In the act of 1786, c. 46, and of 1792, edi. '94, 1803, and '14, c. 136, § 7, the
provision, for which the words here printed within single inverted commas were
substituted at the late Revision, ran thus—"committed by any citizen of this
Commonwealth, in any place out of the jurisdiction of the courts of common law
of this Commonwealth, and all felonies committed by citizen against citizen in any
such place," shall be enquired into" &c. Was this amendment made at the
late Revision, intended as declaratory of the meaning of the former law?

† See the English statutes, 27 Hen. '8, c. 4; 28 Hen. 8, c. 15, 11, and 12.
Will. 3, c. 7; 4 Geo. 1, c. 11; 6 Geo. 1, c. 19; 8 Geo. 1, c. 24; 18 Geo. 1, c.
30. These statutes recognize and establish the jurisdiction of the admiralty
over offences committed not only upon the high seas, but in havens, rivers or
creeks; and their provisions are, by express words, extended to the American
plantations: and this jurisdiction of the admiralty is considered as being distinctly
recognized by the act of the Colonial Assembly of Virginia, concerning seamen,
1748, edi. 1769, c. 12, § 8, p. 216. Offences, therefore, committed in the havens,
rivers, or creeks of Virginia, were not within the jurisdiction of the general
court before the revolution, but appertained to the admiralty; and yet these,
and indeed all criminal cases, were expressly excepted out of the jurisdiction of
our court of admiralty established after the revolution; see acts May 1779, c.
26. Without presuming to determine the construction of the provision of the act
of 1786, c. 46, and of 1792, edi. '94, 1803, and '14, c. 136, § 7, (which has been
a subject of much doubt,) it may perhaps be safely stated, that "the other offen-
ces against the laws of this Commonwealth," of which the jurisdiction is, by
this section of the revised act, vested in the general court, are such offences as
shall be committed in havens, rivers, or creeks, not within the body of any par-
ticular county, and therefore not within the jurisdiction of any superior court of
law, but still within the territorial jurisdiction of the Commonwealth.

A. D. 1792.

A. R. C. 17.

Executive not to
pardon traitors ;
but may suspend
execution 'till next
General Assem-
bly.

Who shall grant
or refuse the par-
don.

Repealing clause.

Proviso.

Commencement.

9. THE Governor, or, in case of his absence, inability or death, the councillor who acts as president, shall in no wise have or exercise a right of granting pardon to any person or persons convicted of treason against the Commonwealth ; but, with the advice of the council, may suspend the execution until the meeting of the General Assembly, who shall determine whether such person or persons are proper objects of mercy, or not.(g)

10. ALL and every statute and statutes, act and acts, clause or clauses thereof, within the purview of this act, (except as herein-after provided,) shall be, and are hereby repealed : *Provided, always,* That nothing in this act contained shall be construed to repeal the said statutes or acts, for so much thereof as relates to any offence within the purview thereof, committed or done before the commencement of this act.

11. THIS act shall commence and be in force, from and after the first day of January eighteen hundred and twenty.

C. 163.

A. D. 1789.

A. R. C. 14.

*An act concerning Homicide by Misfortune.**

[Passed November 18, 1789.]

Any person killing
another without
felony, to be ac-
quitted.

BE it enacted by the General Assembly, That, in case it be found by the country, that any man by misfortune, or in his own defence, or in other manner without felony, did kill another, he shall be acquitted.

C. 164.

A. D. 1819.

A. R. C. 43.

*An act to repeal the act, entitled, an act to prevent the destroy-
ing and murdering of bastard children.†*

[Passed March 8, 1819.]

Act of 1710 re-
pealed.

1. *BE it enacted by the General Assembly,* That the act entitled, *an act to prevent the destroying and murdering of bastard children*, passed in the year one thousand seven hundred and ten, shall be and the same is hereby repealed.

Commencement.

2. THIS act shall commence and be in force from and after the passage thereof.

(g) From Oct. 1776, c. 3, § 3; Chan. Rev. p. 40; 1794, c. 5; edi. 1794, 1803, and '14, c. 168.

* 1789, c. 10; 1792, edi. 1794, 1803, and '14, c. 43.

† 1818, c. 18; see edi. 1733, and 1752, c. 12; edi. 1769, c. 2, of acts of 1710; which act, having been merely omitted, in the several revisions subsequent to 1769, and doubts existing whether it was in force or not, it was expressly repealed at the late revision, on the recommendation of the revisors.

C. 165.

*An act concerning Prison Breakers.**

A. D. 1794.
A. R. C. 19.

[Passed December 13, 1794.]

1. WHEREAS it hath been held that by the common law the Preamble. offence of breaking a jail or prison is in all cases felony;

2. *BE it therefore enacted by the General Assembly,* That In what cases breaking prison shall be felony. none from henceforth who, being in actual jail, breaketh prison, shall have judgment of life or member for breaking of prison only, except the cause for which he was taken and imprisoned did require such judgment, if he had been convict thereupon, according to the law of the land.

3. THIS act shall commence and be in force from the pass-Commencement. ing thereof.

C. 166.

An act declaring that none shall be condemned without trial, and that justice shall not be sold or deferred.†

A. D. 1785.
A. R. C. 10.

[Passed December 5, 1785.]

1. *BE it enacted by the General Assembly,* That no freeman Trial by jury, and shall be taken or imprisoned, or be disseised of his freehold, equal and speedy justice, secured. or liberties or free customs, or be outlawed or exiled, or any *Magna charta,* otherwise destroyed, nor shall the Commonwealth pass upon 9 Hen. 3, c. 39. him, nor condemn him, but by lawful judgment of his peers, or by the laws of the land. Justice or right shall not be sold, denied, or deferred to any man.

2. THIS act shall commence and be in force from and after Commencement. the first day of January, one thousand seven hundred and eighty-seven.

C. 167.

An act, reducing into one, the several acts, directing what prisoners shall be let to bail.‡

A. D. 1819.
A. R. C. 43.

[Passed February 8, 1819.]

1. *BE it enacted by the General Assembly,* That those shall Persons accused of crimes, when bail-able. be let to bail, who are apprehended for any crime not punisha-

* 1794, c. 7; 1792, edi. 1794, 1803, and '14, c. 173.

† 1785, c. 31; 1792, edi. 1794, 1803, and '14, c. 15.

‡ Former general law touching this subject; 1792, edi. 1794, 1803 and '14, c. 14. The amendments made at the late revision, are distinguished by being printed within single inverted commas.

A. D. 1819.
A. R. C. 43.

When not, except
by general court,
or circuit court, or
judge in vacation.

ble with death, or confinement in the jail and penitentiary. And, if the crime be so punishable, but only a light suspicion of guilt fall on the party, he shall in like manner be bailable. But if the crime be punishable with death, or confinement in the jail and penitentiary, and there be good cause to believe the party guilty thereof, he shall not be admitted to bail,^(a) ' by any ' justice or justices of the peace, either in court or out of ' court; but, for good cause shewn, the general court, or any ' superior court of law, or any judge of the general court, in ' vacation, within his circuit, may admit to bail any person before conviction.'

No bail after conviction.

2. No person shall be bailed after conviction of any felony.^(b)

Penalty for illegally admitting or refusing, or requiring excessive bail.

3. If any justice let any go at large on bail, who is not bailable, or refuse to admit to bail any who have right to be so admitted, after they have offered sufficient bail, or require excessive bail, he shall be amerced at the discretion of a jury.^(c)

Repealing clause.

4. ALL and every act and acts, part and parts of acts, coming within the purview of this act, shall be and the same are hereby repealed.

Commencement.

5. THIS act shall commence and be in force from and after the first day of January eighteen hundred and twenty.

C. 168.

A. D. 1818.
A. R. C. 42.

An act reducing into one the several acts directing the manner of proceeding in cases of impeachment.[†]

[Passed January 27, 1818.]

Process in impeachment.

1. *BE it enacted by the General Assembly*, That the process against any person impeached by resolution of the House of Delegates, shall be summons, attachment and distress, bearing *teste*, the first of them the day of emanation, and the others the return day of the process preceding, and shall be issued and signed by the clerk of that court where such impeachment is by the constitution directed to be tried, as soon as such impeachment shall be notified to him by the attorney general, or any other person or persons appointed by the House of Delegates to prosecute the same.^(d)

Copy of articles delivered to accused.

2. A COPY of the articles of impeachment shall be delivered to the party accused, whensoever he shall require it; and the court shall, from time to time, make such rules for compelling him to answer and bring the matter to issue speedily, as to them shall seem reasonable.^(e)

(a) 1804, c. 5, § 12; *edi.* 1808, c. 55, § 12.

(b) 1785, c. 80, § 2; 1792, *edi.* 1794, 1803, and '14, c. 14, § 2.

(c) *Ibid.*, § 3.

(d) Const. V. art. 16, 17; 1789, c. 40; 1792, *edi.* 1794, 1803 and '14, c. 72, § 1.

(e) 1789, c. 40; 1792, *edi.* 1794, 1803 and '14, c. 72, § 2.

[†] Former general law, relating to this subject; 1792, *edi.* 1794, 1803 and '14, c. 72. This act was further suspended till January 1, 1820, *vid. ante.* c. 45.

3. No person shall be found guilty on an impeachment, but by a jury: for which purpose, as soon as any matter of fact shall be put in issue, the clerk of such court shall issue a *venire facias* to the sheriffs of the senatorial district, wherein the person accused resides, commanding them to summon, in their counties, to the first day of the next succeeding court, in proportions as nearly equal as possible, twenty-four jurors, qualified according to law for the trial of other criminal cases; which process may be repeated, by order of the court, as often as it shall be necessary. The prosecutor for the Commonwealth, and the person accused, shall, in open court, alternately strike one, until the number shall be reduced to twelve; which remaining twelve shall be a jury, and shall try the impeachment, render a verdict, and proceed in the same manner as is prescribed in the case of an indictment in the superior courts of law. If twenty-four jurors should not appear, bystanders may be summoned to make up the deficiency.(c)
4. THE jurors so summoned and attending, shall be paid by the Commonwealth four cents per mile, for travelling to the place of attendance, and the same for returning, besides ferriages, and one dollar and four cents per day for the attendance of each juror; and shall be subject to the like penalties as in the case of venire-men in the superior courts of law.(d)
5. THE party accused may have one or more counsel, without petitioning the said court.(e)
6. A PERSON impeached may, for good cause, challenge a juror, either before or after their names shall be struck.(f)
7. No impeachment shall be tried during the session of the general assembly, unless the party accused shall request it.(g)
8. A PERSON found guilty on impeachment, shall be either forever disabled to hold any office under government, or removed from such office pro tempore, or subjected to such pains or penalties as any act of the General Assembly may direct.(h)
9. ALL and every act or acts, within the purview of this act, shall be and the same are hereby repealed; *Provided*, That nothing herein contained shall be construed as repealing any act heretofore made, so far as the same relates to any offence committed or done before the commencement of this act.
10. THIS act shall commence and be in force from and after the first day of January, one thousand eight hundred and nineteen.

A. D. 1818.
A. R. C. 42.

Trial by jury.
Jury how to be summoned.

Allowance to jurors for attending.

Accused may have counsel.

May challenge jurors for cause.

No impeachment to be tried during session of assembly.

Persons found guilty, how punishable.

Repealing clause.

Commencement.

(c) 1788, c. 67, § 128; and 1788, c. 68, § 5; 1792, edi. 1794, 1803 and '14, c. 72, § 3.

(d) *Ibid*; amended at the late revision, by specifying the allowance to the jurors.

(e) 1788, c. 67, § 128; and 1788, c. 68, § 6; 1792, edi. 1794, 1803 and '14, c. 72, § 4.

(f) 1788, c. 67, § 130; and 1788, c. 68, § 6; 1792, edi. 1794, 1803 and '14, c. 72, § 5.

(g) 1788, c. 67, § 129; and 1788, c. 68, § 7; 1792, edi. 1794, 1803 and '14, c. 72, § 6.

(h) Const. V. art. 16; 1792, edition 1794, 1803 and '14, c. 72, § 7.

C. 169.

A. D. 1819.
A. R. C. 43.

*An act to reduce into one act the several acts concerning the method of proceeding against free persons, charged with certain crimes; declaring the mode of proceeding on indictments, informations and prosecutions on penal statutes; and for preventing vexatious and malicious prosecutions, and moderating amercements.**

[Passed February 26, 1819.]

Duty of magistrate before whom a free person is charged with criminal offence;

To take recognizance of witnesses; to commit accused; And to issue warrant for summoning examining court.

When such court shall meet, and how constituted.

How prisoner shall be removed to jail of superior court.

1. *BE it enacted by the General Assembly*, That, when any person, not being a slave, shall be charged before a justice of the peace with any treason, murder, felony or other crime or offence whatsoever, against this Commonwealth, if, in the opinion of such justice, such offence ought to be enquired into, in the courts of this Commonwealth, such justice shall take the recognizance of all material witnesses, to appear before the court of his county or corporation, to give evidence against the offender, and immediately, by his warrant, commit the person so charged, to the county or corporation jail; and moreover, shall issue his warrant to the sheriff of the county, or serjeant of the corporation, requiring him to summon at least eight, if so many there be, of the justices of the county or corporation, to meet at their court-house on a certain day, not less than five nor more than ten days after the date thereof, to hold a court for the examination of the fact; which court, consisting of five members at least, shall consider whether, as the case may appear to them, the prisoner may be discharged from farther prosecution, or may be tried in the county or corporation, or in the superior court of law. If they shall be of opinion that the fact may be tried in the county or corporation court, the prisoner shall be bound over to the next grand jury to be held for that county or corporation, then to be tried, or, upon refusing to give sufficient bail, shall be remanded to the county or corporation jail, there to remain until such court, or until he or she shall be bailed. If they shall be of opinion that the prisoner ought to be tried in the superior court of law, they shall take the depositions of witnesses, and bind such as they shall think proper, by recognizance, to appear and give evidence against such criminal at his or her trial, and shall remand the prisoner to jail. If the jail of the superior court is not situated at the same place as the jail of the examining court, then any two of the justices, by warrant, under their hands and seals, shall direct the sheriff or his deputy, or serjeant, to remove the prisoner, and commit him or her to the jail of the superior court of law, there to be safely kept, until he or she shall be discharged by due course of law; by virtue of which warrant, the sheriff, or his deputy, or serjeant, as soon as may be, shall remove the prisoner, and deliver him or

* Former general law touching this subject; 1792, *edi.* 1794, 1803 and '14, c. 74. The amendments made at the late revision, are distinguished, as far as practicable, by being printed within single inverted commas.

her, with the warrant, to the keeper of the jail of the superior court of law, who shall receive and keep him accordingly. And, for enabling the sheriff, or his deputy, or serjeant, safely to convey and deliver such prisoner, the said two justices, by their warrant, shall empower him, as well within his county as without, to impress such and so many men, horses and boats as shall be necessary, for the guard and safe conveyance of the prisoner, proceeding therein as the law may direct, in cases of impressing on other occasions; and all persons are to pay due obedience to such warrant. If any justice, before whom any person is charged with any such crime or offence, shall commit any such person to jail, and neglect or refuse to issue his warrant immediately, for summoning the justices of his county or corporation, to hold a court for the examination of the fact; or, if any sheriff or serjeant shall neglect or refuse to obey such warrant, or neglect or refuse to return the warrant to the court so summoned, endorsing thereon the manner in which he hath executed the same, every person, so neglecting or refusing hereafter, shall, in either case, forfeit and pay the sum of one hundred dollars, to the use of the literary fund, to be recovered by action of debt or information, in any court of record; and, moreover, shall be subject to the action of the party aggrieved, in which, if he or she recover, he or she, besides damages, shall receive double costs.(a)

A. D. 1819.
A. R. C. 43.

Men, horses, &c. may be impressed for his safe conveyance.

Penalty on committing magistrate neglecting to issue warrant for examining court; and On sheriff failing to execute such warrant.

2. If such prisoner shall, in the opinion of the court, be bailable by law, 'the said court may bind him and his bail, by recognizance, to appear and stand his trial at the said superior court of law;' or they shall enter their opinion in the proceedings, and also the sums of money in which he and his bail ought to be bound; and the said prisoner shall thereafter be admitted to bail, by any justice of the county or corporation, or by a judge of the general court. When any prisoner shall be thus admitted to bail, by any judge of the general court, 'or justice of the peace,' the judge 'or justice,' shall transmit the recognizance to the clerk of the superior court of law, and give a warrant for the deliverance of the prisoner; and the warrant being put into the hands of the officer, in whose custody the prisoner shall be, he shall thereupon be delivered, if he be detained for no other cause.(b)

Prisoner how bailable.

3. Any judge* of the general court, when it is not sitting, may admit to bail a prisoner, when he shall think him or her entitled thereto, and grant a warrant, for his deliverance, notwithstanding the justices, before whom the examination was, shall have been of a different opinion.(c)

Any judge of the general court may bail, in opposition to opinion of examining court.

4. When any person shall be sent, by a county or corporation court, to the superior court, to be tried for treason or felony, 'or other offence,' the clerk of the court of the county or corporation shall transmit and certify, immediately, to the clerk of the superior court, a copy or copies of the recognizance or recognizances, of each and all the witnesses, recognized to appear at

Clerk of county or corporation court to certify copies of recognizances of witnesses against prisoner.

(a) Compiled of 1788, c. 67, § 95; 1792, edi. 1794, 1803 and '14, c. 74, § 1; 1803, c. 95, § 1; edition 1808, c. 34, § 1.

(b) From 1786, c. 57; 1792, edi. 1794, 1803, and '14, c. 74, § 2, amended at the late Revision.

(c) Altered from 1786, c. 57; 1792, edi. 1794, 1803, and '14, c. 74, § 3.

* By the former law, two judges were necessary.

A. D. 1819.
A. R. C. 43.

Mode of proceeding against such witnesses, failing to attend accordingly.

Recognizance of prisoner let to bail to be certified in like manner.

How prisoner and bail shall be proceeded against, if such recognizance be forfeited.

Copies of recognizances to be received as evidence.

Penalty on clerks failing to perform such duties.

Where examining court fails to meet, recognizance to stand obligatory to next court in course.

Examining court may adjourn to next court, or to an earlier day.

the superior court, to give evidence against the prisoner; and, if the witness or witnesses, so bound to appear, shall fail to appear, pursuant to his, her or their recognizance, the said superior court shall immediately cause his, her or their default to be recorded; and it shall be lawful for the superior court to issue a writ or writs of *scire facias*, upon which, the like proceedings shall be had, as if the recognizance of the witness or witnesses had been taken in the superior court: *Provided*, That the witness or witnesses shall first be summoned to shew cause, if any he, she or they can, why such *scire facias* should not to be issued. In like manner, the clerk of the court of any county or corporation shall certify, and transmit to the clerk of the superior court, a copy or copies of the recognizance of any prisoner let to bail, who is to be tried in the superior court, and also a copy or copies of the recognizance or recognizances of his or her bail; and if any prisoner let to bail shall fail to appear in the superior court, pursuant to his or her recognizance, the superior court of law shall immediately cause his or her default to be recorded, and shall issue a writ or writs of *scire facias* against the prisoner and his or her bail, upon which the like proceedings shall be had, as if the prisoner had been let to bail by the superior court. The copy or copies of all recognizances, so certified and transmitted to the clerks of the superior courts by virtue of this act, shall be admitted and received as evidence in the said courts, in like manner as the original or originals might have been, had they been entered into in the superior courts. Any clerk, failing to perform the duties herein above required of him, shall forfeit and pay, for each failure, to the use of the Commonwealth, the sum of one hundred dollars, to be recovered by action of debt or information in any court of record.(d)

5. *HEREAFTER*, when any free person charged with a criminal offence shall be committed by any justice of the peace of any county or corporation for examination, and the court summoned by the sheriff for the examination of such free person shall fail to meet, either on the day first appointed for their meeting, or on any day to which they may have legally adjourned, all the recognizances, entered into by any person or persons to appear at such called court, shall stand obligatory to the next court of such county or corporation, and every such person or persons shall be obliged to appear accordingly. Such examination shall then be had before the court of the county or corporation, consisting of five members at least, and shall be at the first term thereof, unless continued as hereinafter provided.(e)

6. Any court, summoned for the examination of a free person, charged with any criminal offence, shall have power, for good cause shewn, to adjourn to any subsequent time: *Provided*, That, such adjournment be either to the next court of the county or corporation, as the case may be, whether a quarterly or monthly term, or to some earlier day. Upon such adjournment to the next court of the county or corpora-

(d) 1808, c. 95, § 2; ed. 1808, c. 34, § 2.

(e) 1811, c. 30, § 1; ed. 1812, c. 110, § 1.

tion, the examination shall be had, in the same manner as if the called court had altogether failed to meet. The county or corporation court shall have power, for good cause shewn, to continue such examination from term to term: *Provided*, That such continuance, unless on the application of the prisoner, shall not be beyond the third term after he or she shall have been committed for examination. (f)

A. D. 1819.

A. R. C. 43.

Examination may be continued from term to term. *Provido.*

7. If any person, charged with any crime or offence against the Commonwealth, shall be acquitted or discharged from further prosecution, by the court of the county or corporation in which the offence is or may by law be examinable, he or she shall not thereafter be examined, questioned, or tried for the same crime or offence, but may plead such acquittal or discharge in bar of any other or further examination or trial for the same crime or offence; any law, custom, usage or opinion, to the contrary in any wise notwithstanding. (g)

Person acquitted by an examining court, may plead such acquittal in bar.

8. BEFORE any person, charged with treason or felony, shall be tried before a superior court of law, he or she shall be examined in the manner prescribed by law, by the court of the county or corporation wherein the offence was committed; unless such examination be dispensed with by the assent of the prisoner entered of record in such superior court. (h)

No person to be tried before superior court, without previous examining court; unless by his own consent.

9. WHEN the justices shall have determined that a prisoner ought to be tried, for an offence, in the superior court of law, the clerk of the court where such examination shall be had, shall issue a *venire facias*, to be directed to the sheriff or serjeant, commanding him to cause twelve good and lawful men, freeholders of his county or corporation, of the neighborhood

Venire facias.

of the place where the fact shall have been committed, to come before the judge of the superior court, at the time the witnesses shall be bound to appear there; which writ shall be executed by the said sheriff or serjeant; and the freeholders summoned by virtue thereof, or such of them as appear and be not challenged, together with so many other good and lawful men of the by-standers, being freeholders within this Commonwealth, as will make the number twelve; or, if the whole array be challenged, twelve of such by-standers shall be a lawful jury for the trial of the prisoner. 'The judge of any superior

Jury.

court of law, before whom any prisoner may be arraigned on a charge of treason or felony, shall have power, on the application of the said prisoner, and for good cause shewn, to order the venue to be changed to the most convenient superior court of law in the same, or an adjoining circuit, where, in his opinion, the Commonwealth and the prisoner can have a fair and impartial trial; and, in all cases, where, from the number of challenges made, either for cause or peremptorily, it shall appear, to the satisfaction of the judge, before whom such prisoner shall be arraigned, that an impartial and legally qualified jury cannot be had from the county or corporation where the offence may have been committed, for the trial of such prisoner, the said judge shall, in like manner, have the

Judge of superior court empowered to change the venue on application of the prisoner, and for good cause shewn;

Or where, from number of challenges, jury cannot be had from county or corporation;

(f) 1811, c. 30, § 3; cdi. 1812, c. 110, § 3.

(g) 1803, c. 95, § 3; edition 1808, c. 34, § 3.

(h) *Ibid*, § 5.

A. D. 1819.

A. R. C. 43.

His duty in such
case.

And of clerk of
court.

How such trial
shall be held
thereupon.

Proviso, as to in-
dictments found,
and pleas filed in
court from which
trial is removed.

Warrant to be is-
sued for removal
of prisoner.

Sheriff authorised
to impress men,
horses, &c. for
that purpose.

How claims for
conveyance of pris-
oner shall be cer-
tified to auditor.

No justice who
committed pris-
oner, or was member
of examining
court, to be on ju-
stice for his trial.

power, whether the said prisoner may consent or not, to change the venue to the most convenient superior court of law, in the same, or an adjoining circuit, where, in the opinion of the court, the Commonwealth and the prisoner can have a fair and impartial trial. And, wherever, in either case, the venue in a criminal case may be changed as aforesaid, it shall be the duty of the judge to recognize the witnesses to appear before the superior court of the county to which such case may be removed, on some certain day of such court, as soon as may be; and also, to recognize the prisoner in like manner, to appear at the said court, at the same time, if the offence, with which he is charged, shall, in the opinion of the said judge thus directing the venue to be changed, be bailable; and, if not bailable, or he shall have failed to give such bail as may be required by the court, then to remand him to jail, there to remain until his removal to the jail of that court, to which his trial may have been changed as aforesaid; and the said judge is hereby directed to certify such recognizances taken as aforesaid, together with a copy of the record of the case, and of the order changing the venue, and all other papers which he may deem necessary to the trial in such other court to which the case may be removed, to the clerk of such court, whose duty it shall be, on the receipt thereof, to issue a *venire facias* directed to the sheriff of such county; and the judge of the said superior court is directed to try the said prisoner in the same manner, as if the offence had been committed within such county, and the prisoner had been sent on by an examining court of the same county: *Provided*, That any indictment found, or plea filed, in the court from which such trial shall have been removed, shall be as valid and effectual, as if the same indictment had been found, or the same plea had been filed, in the court in which the prosecution is pending; and duly certified copies thereof shall be sufficient for such court to proceed to trial on: It shall moreover be the duty of the judge of the superior court of law, directing the venue to be changed as aforesaid, in case he shall have remanded the said prisoner to jail, to issue his warrant, directed to the sheriff of such county, commanding him to have the body of such prisoner before the judge of the superior court of law of the county to which such case may have been removed, on the day on which the said witnesses may have been recognized to attend the said court. And the said sheriff, to whom such warrant may be directed, shall legally execute the same, and for that purpose is hereby authorised to impress so many men, horses and boats, as may be necessary for the safeguard and conveyance of said prisoner; and the court to which such prisoner may be removed, is hereby directed to certify to the auditor of public accounts all claims attending the conveyance of said prisoner; which claims shall be paid in the manner now prescribed by law for the payment of like claims attending the removal of convicts to the penitentiary.

No justice of the peace, or member of a corporation court, who shall have committed any person for examination by the court of his county or corporation, or shall have been a member of

the examining court, shall be sworn on the petit jury impanelled for the trial of such person.⁽ⁱ⁾

A. D. 1819.

A. R. C. 43.

10. THE offence of petit larceny may be tried in the court of the county or corporation, in which such offence was committed. And to this end, it shall be the duty of the examining court, before whom any offender shall be brought, if they think that he ought to be further prosecuted for the offence of petit larceny, and that such offence is cognizable before the court of their county or corporation, to remand such offender to jail to take his trial accordingly, or to take his or her recognizance, with sufficient security, for his or her appearance on the first day of the next quarterly term for such county or corporation, and to take the recognizances of all material witnesses to appear at the same time.^(k)

Petit larceny may be tried in the county or corporation court.

11. THE mode of trial shall be by indictment, found by the grand jury of such county or corporation court, according to the rules adopted in the superior courts of law. The sheriff shall, immediately thereupon, summon twelve good and lawful men, not members of the grand jury, and in every respect qualified as venire-men in the said superior courts, who shall constitute a jury for the trial of such person. The right of challenge shall be the same as on other trials for felony.^(l)

Mode of trial in such case.

Jury to be summoned by sheriff.

12. THE superior courts of law, in each county, shall have concurrent jurisdiction with the county and corporation courts in the trial of free persons charged with petit larceny. And where any such person, charged, at a quarterly term of the county or corporation court, with petit larceny, shall, by the grand jury or petit jury, be deemed guilty of grand larceny, they shall so state the fact; and it shall be the duty of the court to send the person, so deemed guilty, to the superior court of law of the county, for further prosecution; and to do all other acts, which are required by law to be done by an examining court who send a person to be tried in a superior court of law. And such superior court shall proceed against such person, in the same manner, as if he had been sent for trial by an examining court.^(m)

Superior courts to have concurrent jurisdiction with inferior courts in trials for petit larceny.

Proviso: where grand jury or petit jury shall deem the person charged guilty of grand larceny.

The trial in that case to be in superior court.

13. IF any person, summoned as a venire-man to attend any court, shall fail to attend accordingly, not having a reasonable excuse, he shall be fined by such court eight dollars,* to go to the Commonwealth, for the use of the literary fund.⁽ⁿ⁾

Penalty on venire-men failing to attend.

14. VENIRE-MEN summoned and attending court for the trial of any person charged with a criminal offence, shall not be entitled to any compensation for their services; but, whenever, in the trial of any criminal cause, it shall be necessary to keep together the jury beyond the day on which they were impanelled, it shall be the duty of the court, before whom such trial shall be depending, to direct the sheriff or other proper officer to furnish such jury with convenient board and lodging during

Venire-men not to be allowed compensation.

Proviso, as to cases where they are kept together beyond day on which they are impanelled.

(i) From 1786, c. 57; 1792, editions 1794, 1803, and 1814, c. 74, § 4; amended at the late revision.

(k) From 1803, c. 16, § 3; edition 1808, c. 21, § 3; 1803, c. 117, § 4; edi. 1808, c. 41, § 4.

(l) 1802, c. 16, § 4; edition 1808, c. 21, § 4.

(m) 1811, c. 30, § 4; edi. 1812, c. 110, § 4.

(n) From 1788, c. 67, § 104; 1792, edi. 1794, 1803 and '14, c. 73, § 18.

* Not exceeding six dollars by former law.

A. D. 1819.
A. R. C. 43.

the period of their confinement. For all reasonable expenses incurred under such order, the court shall make an allowance to the sheriff or other officer, and certify the same to the auditor of public accounts, to be paid out of the public treasury; provided that such allowance shall in no case exceed the amount of one dollar and twenty-five cents, per diem, for each juror so confined.^(o)

Venue may be changed in misdemeanors.

15. 'In all prosecutions, for misdemeanors, before any superior court of law, such court shall have the same power to change the venue as is herein given them, in prosecutions for treason and felony.'

Capias to be issued after indictment, if person indicted be not already in custody. Farther process, if not found.

16. AFTER any person shall be indicted of treason, felony, or other crime to which by law an infamous punishment is affixed, if he or she be not already in custody, the sheriff shall be commanded to attach his or her body, by writ, or by precept which is called a *capias*; and if he return that the body is not found, another writ or precept of *capias* shall be immediately made returnable forthwith, in which the sheriff shall also be commanded to seize his or her chattels, and safely to keep them; and, if he return that the body is not found, and the indictee cometh not, an exigent shall be awarded, and the chattels shall be sequestered; but, if he or she come, and yield himself or herself, or if he or she be taken before the return of the fourth *capias*, the goods and chattels shall be saved to him or her; otherwise, they shall go and be vested as by law is herein-after directed.^(p)

Process may be directed to sheriff, &c. of any county or corporation.

17. UPON any presentment, indictment or information in any court of record in this Commonwealth, the court, wherein the same shall be, may direct all proper process thereon, whether before or after judgment, to the sheriff, or other officer of any county or corporation within the Commonwealth where the offender may be found. And the sheriff or other officer, to whom such process shall be directed, is hereby empowered and required to execute the same, and make due return thereof to the court from which it issued. In any case of treason or felony, or other crime to which an infamous punishment is affixed, where a *capias* shall be directed to a sheriff or other officer of one county, to bring the body of the offender before any court of law in another county, it shall be the duty of such sheriff, or other officer, upon the arrest of such offender, forthwith to deliver his body to such court, if sitting, or to the sheriff or jailor of such court, during the recess of the court. The said sheriff or jailor shall receive and imprison the person so delivered to him, in the same manner as if such person had been committed by a warrant from a justice of the peace, or by the order of the court awarding such *capias*. The sheriff or other officer, in executing this law, may impress as many men, horses and boats, as may be necessary for the safeguard and conveyance of the offender. And the said sheriff or other officer, together with the men so impressed by him, shall have the same compensation for their services and expenses, in remov-

Duty and power of sheriff, or other officer, receiving such process.

Impressments to convey prisoner.

Compensation, for such service, what;

^(o) Compiled of 1807, c. 4, § 2; ed. 1808, c. 121, § 2; and 1812, c. 21, § 2.

^(p) Compiled of 1786, c. 57; 1792, ed. 1794, 1803 and '14, c. 74, § 5; 1814, c. 31, § 12.

ing such offender from one county to another, as is provided for the sheriff and guard attending a criminal to the penitentiary, by the act entitled, "an act to reduce into one act the several acts and parts of acts for establishing a penitentiary house and for the punishment of crimes." The auditor of public accounts is hereby authorised and required to issue a warrant on the treasury, for the payment of the compensation hereby provided, on the production of a certificate, from the court awarding such *capias*, ascertaining the *quantum* of such service rendered, and the amount of such expenses incurred. (g)

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How to be certified, and paid.

18. 'WHEN, during the session of a court of law, process of arrest shall be awarded, in any criminal prosecution, against the body, either of the accused, or of any witness in contempt, it shall be lawful for any sheriff, or other proper officer, to whom such process shall be directed, to execute it in any part of the Commonwealth, whether within, or without, his county or corporation. In the performance of this duty, such sheriff or other officer shall have all the powers given to the sheriff, or other officer, in the next preceding section of this act; and he, and the men impressed by him, shall, in like manner, be paid for their services; except only, that the said sheriff, or other officer, for the trouble and expense of travelling out of his county or corporation to execute the process, and for doing any other act necessary and proper, in the service thereof, and for which no other compensation is provided by law, shall receive a reasonable compensation, to be allowed and certified, by the court, from which the process issued, and paid out of the public treasury.'

Process of arrest awarded during session of court, may be executed in any part of Commonwealth.

Powers and compensation of sheriff, &c., in such case.

19. 'WHEN any person accused of any treason, felony or other criminal offence, shall be committed to any jail; and the sheriff or jailor shall have good cause to suspect that such person will attempt to escape; such sheriff or jailor is hereby empowered and required to impress a sufficient guard, for securing such prisoner, so long as it may be necessary. For such guard so summoned, the court shall make and certify an allowance, not exceeding seventy-five cents, per diem, for each man; to be paid out of the public treasury: *Provided*, however, That, if any sheriff or jailor shall summon any such guard, when, in the opinion of the court, he had not reasonable cause therefor, or shall summon any greater number of persons to be of such guard, than shall be thought reasonable by the court, such sheriff or jailor shall be fined in a sum double the amount of the allowance made for such unnecessary guard; and it shall be the duty of the court, making such allowance, to assess such fine; the sheriff or jailor having been first served with a rule to shew cause to the contrary.'

Power of sheriff or jailor to impress guards to secure prisoners in jail.

Allowance for such guards.

But if sheriff or jailor summon any guard unnecessarily, he may be fined by court.

20. WHEN a presentment shall be made by a grand jury of this Commonwealth, in any of the superior courts thereof, having criminal jurisdiction, of a felony committed by any person, and the person so presented would be entitled to a trial before an examining court of his or her county, it shall be the duty of the judge, who presides when such presentment is made, to issue his warrant directed to any sheriff or constable for apprehending such offender from one county to another, as is provided for the sheriff and guard attending a criminal to the penitentiary, by the act entitled, "an act to reduce into one act the several acts and parts of acts for establishing a penitentiary house and for the punishment of crimes." The auditor of public accounts is hereby authorised and required to issue a warrant on the treasury, for the payment of the compensation hereby provided, on the production of a certificate, from the court awarding such *capias*, ascertaining the *quantum* of such service rendered, and the amount of such expenses incurred. (g)

Proceeding upon presentment, in a superior court, of felony committed by a person entitled to trial before examining court.

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Person accused to
be apprehended,
and committed.

Examining court
to be summoned.

Duty of sheriff to
summon witness-
es.

List of their names
to be endorsed
upon warrant by
judge.

What prisoners
may be let to bail
by sheriff, or other
officer, arresting.

Penalty on such
officer failing to
make return, to
court, of recogni-
zance of bail; or
returning insuffi-
cient bail.

Proviso, as to at-
tachments to com-
pel performance
of decrees, or pay-
ment of money.

Such recognizance
how to be proceed-
ed on, if forfeited.

hending the person so charged, and commit him, her or them to the jail of the county, where the presentment shall charge the said offence to have been committed; and, upon the person so charged being apprehended and committed to jail, the jailor shall immediately notify some justice of the peace, in and for his county, thereof; which justice shall issue his warrant to the sheriff of his county, commanding him to summon the justices thereof, for the purpose of holding an examining court upon the person committed, in like manner as herein-before directed in other cases. And it shall be the duty of the said sheriff to summon the witnesses, who gave the evidence before the grand jury when the presentment was made, (as well as any others,) to attend the said examining court. A list of the names of the witnesses, who gave evidence before the grand jury, shall be endorsed upon the warrant by the judge, at the time of issuing the same.(r)

21. EVERY person, who may have been, or shall hereafter be, arrested under the following process, that is to say, under any *capias* issuing from the general court, or any court of law, to compel the appearance of such person to answer any presentment, indictment or information for a misdemeanor, not punishable by confinement in the public jail and penitentiary house, or to hear judgment on such presentment, indictment or information, or under any attachment issuing from the general court, the court of appeals or any other court of law or of equity, to bring the body of such person before such court, may be admitted to bail, by the sheriff or other officer, arresting him. It shall be the duty of the officer, so admitting such person to bail, to take from him, and his bail, a recognizance in a sufficient sum, regarding the nature of the case, and the estate of the offender, 'not less however than two hundred dollars,' conditioned for the personal appearance of such person, before the court from which the process shall have issued, at such time as may be required by such process; and the recognizance so taken shall be returned to the court from which the said process issued. If such sheriff or other officer shall fail to return the said recognizance, to the court, from which the said process issued, on or before the return day of such process, he shall be subject to the same penalties as if he had failed to return the process itself; 'and, if such sheriff or other officer shall return insufficient bail, he shall be amerced at the discretion of a jury.(s)

22. PROVIDED, That nothing herein contained shall be construed to extend to any attachment issued to compel the performance of any decree in chancery, or the payment of any money due to witnesses, or others, by any order, judgment or decree.(t)

23. If any such recognizance shall be forfeited, it shall be lawful for the court, into which the same is properly returnable, to proceed thereon in the same manner as if it had been entered into in such court.(v)

(r) 1808, c. 23, § 2; edi. 1812, c. 24, § 2.

(s) Altered at the late revision from 1810, c. 10, § 1; edi. 1812, c. 64, § 1.

(t) 1810, c. 10, § 2; edi. 1812, c. 64, § 2.

(v) *Ibid.*, § 3.

24. IN all trials for treason or felony, the prisoner shall have a copy of the indictment, and of the pannel of the jurors, who are to try him or her, whensoever he or she shall require it, before trial or sentence. ^(w)

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Prisoner entitled to copies of indictment, and pannel of jurors.

25. WHENSOEVER an inquest be about to be taken in any court, in which inquest the Commonwealth is a party, if he who appears and sues in behalf of the Commonwealth will challenge any of the jurors, he shall assign a cause certain for his challenge; and the truth of such challenge shall be judged of by the court; and, if such challenge be sufficient, the juror shall be rejected, or, if insufficient, he shall be admitted; and, in either case, the inquest shall be proceeded in. ^(x)

Challenges of jurors in behalf of Commonwealth.

26. No person arraigned for treason shall be admitted to a peremptory challenge above the number of twenty-four, nor shall any person arraigned for murder, or any offence punishable by confinement in the public jail and penitentiary house, be admitted to a peremptory challenge, above the number of twenty: 'and every person, so arraigned for any of the offences aforesaid, shall be admitted to the number of peremptory challenges as aforesaid. And if any person so arraigned shall challenge, without cause, any above the number hereby allowed, such challenge shall be wholly disregarded, and the juror so challenged shall be impannelled and sworn as if he had been accepted.' ^(y)

And by person accused of treason, murder, &c.

How many jurors may be peremptorily challenged.

27. WHEN the grand jury shall have presented to the superior court of law a bill of indictment, against any person charged with treason or felony, the court shall cause the offender to be arraigned and tried the same term, if he be in the custody of the jailor, or if he be bailed and forthcoming agreeably to his recognizance; unless they see good cause to adjourn the trial to the next term; and shall allow him counsel to assist him at his trial, if he desire it. ^(z)

Person indicted for treason or felony may be tried same term;

And allowed counsel.

28. WHEN any prisoner committed for treason or felony shall apply to the court the first day of the term, by petition or motion, and shall desire to be brought to his trial before the end of the term, and shall not be indicted in that term, unless it appear by affidavit that the witnesses against him cannot be produced in time, the court shall set him at liberty, upon his giving bail, in such penalty as they shall think reasonable, to appear before them at a day to be appointed, of the succeeding term. Every person charged with such crime, who shall not be indicted before, or at, the second term after he shall have been committed, unless the attendance of the witnesses against him appears to have been prevented by himself, shall be discharged from his imprisonment, if he be detained for that cause only; and if he be not tried at or before the third term after his examination before the justices, he shall be forever discharged of the crime; 'unless such failure proceed from any continuance, granted on the motion of the prisoner, or from the inability of the jury to agree on their verdict.' ^(a)

Person committed may petition court to be tried before end of the term, and shall be let to bail if not indicted same term.

Provision in case he be not indicted before third term after commitment.

(w) 1786, c. 57; 1792, ed. 1794, 1803, and '14, c. 74, § 6.

(x) 1789, c. 30, § 3; 1792, ed. 1794, 1803, and '14, c. 74, § 7.

(y) 1792, ed. 1794, 1803, and 1814, c. 74, § 8, amended at the late Revision.

(z) 1786, c. 57; 1792, ed. 1794, 1803, and '14, c. 74, § 9.

(a) *Ibid*, § 10.

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Subpoenas to be issued for witnesses in behalf of prisoner.

Their allowance for travelling and attendance.

Sentence of death when to be executed.

Charges of prosecution to be paid out of convict's estate.

Auditor's duty in relation thereto.

When and how claims for expenses of examinations and trials of criminals, in inferior courts, shall be certified and paid.

Clerks of superior and inferior courts, to certify to auditor claims of witnesses in behalf of Commonwealth, or of prisoner.

Allowances to be made by superior courts to jailors.

29. If a prisoner shall desire any witnesses to be summoned for him or her, to appear either at the examining court, or on the trial at the superior court of law, the clerk of the said court, or of the county or corporation court, (as the case may be,) shall issue *subpoenas* for such witnesses, who, being summoned, and attending, shall have the like allowance for travelling and attendance, and be subject to the same penalty for failing to attend, as is provided for witnesses in civil cases.(b)

30. EXECUTION of a sentence of death shall not be done in less than thirty days after judgment shall have been given against the prisoner.(c)

31. WHERE the prisoner shall be convicted, and hath estate sufficient to pay the charges of prosecution, the whole shall be paid out of such estate, and the public only made chargeable where there is no estate, or not sufficient, to be found; and the auditor is hereby directed to transmit to the sheriff of the county, where the estate of the said prisoner shall be, an account of the said expenses, and the sheriff shall distrain and be accountable for the same as for public taxes.(d)

32. To the end that a certain and adequate mode may be fixed by law, for the regular payment of the expenses attending the examination and trial of criminals in the county and other inferior courts, in all cases where such expenses ought to be paid by the public; *Be it enacted*, That the several county and corporation courts within this Commonwealth, having jurisdiction in such examinations and trials, shall, annually, in the month of September or October, cause to be certified to the auditor of public accounts, all claims for expenses, accruing during the preceding year, from the examination and trial of criminals, for guards, and maintenance of criminals in their respective counties and corporations, for conveying them to the jails of the superior courts of law for further trial, and for imprisonments for misdemeanor or breach of the peace, and all other charges properly chargeable to the public, together with the vouchers on which such claims have been allowed; and the auditor is hereby authorised and required to liquidate and adjust the said claims, and to grant warrants on the treasury, to the respective claimants, for the amount of their claims.(e)

33. THE clerks of the superior 'and inferior' courts of law shall enter, in books to be kept for that purpose, the names of witnesses appearing on behalf of the Commonwealth, or the prisoner, with accounts of the days they shall have attended, the ferries they shall have crossed, and the distances they shall have travelled on that occasion, and certify such entries to the auditor of public accounts.(f)

34. THE superior courts of law, at each session, shall order such allowance to be made to the jailor, for keeping, dieting and furnishing the prisoners confined in his jail, with whose support the Commonwealth is by law chargeable, as to such

(b) 1788, c. 67, § 101; 1792, edi. 1794, 1803, and '14, c. 74, § 11.

(c) 1786, c. 57; 1792, editions 1794, 1803, and '14, c. 74, § 12.

(d) 1788, c. 67, § 112; 1792, edi. 1794, 1803, and '14, c. 74, § 13.

(e) 1787, c. 44, § 1; 1792, edi. 1794, 1803, and '14, c. 74, § 14.

(f) From 1786, c. 57; 1792, edi. 1794, 1803, and '14, c. 74, § 15.

court shall seem reasonable, not exceeding forty cents* *per diem*, for each prisoner. 'The said court shall have power to appoint physicians to attend all such prisoners, and to make such allowance for their services, as may seem reasonable.' The allowance so made shall be certified to the auditor, and paid out of the public treasury. If such court shall fail to make such allowance, at any one term, they shall have the same power to make it at any subsequent term.(g)

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Physicians may be appointed to attend prisoners.

When such allowance may be made.

35. THE keepers of county and corporation jails shall be allowed for keeping, dieting and furnishing each prisoner, with whose support the Commonwealth is by law chargeable, so much *per diem* as the courts of their respective counties and corporations shall judge reasonable: *Provided*, the allowance so made shall not exceed that made by the superior court of law within whose jurisdiction such county or corporation is. 'And the said courts shall have power to appoint physicians to attend all such prisoners, and to make such allowance for their services as may seem reasonable.' The allowance shall be made after each session of the superior court of law, as soon as conveniently may be, and shall be certified to the auditor, and paid out of the public treasury.(h)

Similar provisions as to jailors of inferior courts.

And prisoners in their jails.

36. WHERE any person shall be feloniously stricken or poisoned in one county or corporation, and shall die of the same stroke or poisoning in another county or corporation, the offender shall be examined according to law by the court of the county or corporation where such stroke was given, or poison administered; and he shall be tried by the superior court of the same county.(i)

Where trial for murder shall take place, deceased being stricken or poisoned in one county, &c. and dying in another.

37. IN like manner, an accessory to a murder or felony committed shall be examined by the court of that county or corporation, and tried by the superior court of that county, in which he became accessory; and shall answer upon his arraignment, and receive such judgment, order, execution, pains and penalties, as are used in other cases of murder or felony.(k)

In what courts, accessories to murder or felony shall be examined and tried.

38. WHENSOEVER, in treason or felony, 'or other offence punishable by confinement in the public jail and penitentiary-house,' any person shall stand mute on his arraignment, or persists, after being admonished by the court, in not answering directly to the indictment, or shall be outlawed, he shall be considered as convicted, and the same judgment, execution, and disabilities, shall take place and be awarded, as if he had been convicted by verdict, or confession of the crime.(l)

Persons arraigned and standing mute, &c., to be considered as convicted.

39. IF treason or felony, 'or other offence punishable by confinement in the public jail or penitentiary-house,' be committed in any county or corporation, different from that in which the culprit shall be arrested, any justice of that county or corporation, in which he or she is arrested, may, by his warrant,

Proceeding where treason or felony, &c., is committed in different county, &c. from that in which culprit is arrested.

(g) From 1796, c. 20, § 1; editions 1803, and '14, c. 213, § 1; amended at the late revision.

(h) From 1796, c. 20, § 2; edi. 1803, and '14, c. 213, § 2; amended at the late revision.

* Thirty-four cents by former law.

(i) 1789, c. 30, § 6; 1792, edi. 1794, 1803, and '14, c. 74, § 16.

(k) 1789, c. 30, § 7; 1792, edi. 1794, 1803, and '14, c. 74, § 17.

(l) 1789, c. 30, § 10; 1792, editions 1794, 1803, and '14, c. 74, § 18.

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Allowance to sheriff, &c., for removing criminal from one county, &c. to another.

Duty of clerk of the county or corporation court, from which prisoner is sent for trial, to send copies to attorney prosecuting in superior court.

Penalty for neglect of this duty.

How defendants shall be described in indictments, on which exigent is awarded.

If this be not done, out-lawry to be void, and indictment liable to be abated.

The words "force and arms," &c. not necessary in inquisitions or indictments.

Indictments not to be quashed, nor judgment arrested for omission of the name of any parish, town, &c.

cause the offender to be put into the custody of the sheriff or serjeant, to be by him conveyed to the county or corporation where the offence was committed, (and every sheriff or serjeant, while he shall officiate in execution of this act, may impress so many men, horses, and boats, as may be necessary for the safe-guard and conveyance of the offender into such other county or corporation,) and there brought before some justice thereof, who shall proceed, in like manner, as if the offender had been brought before him in the first instance; and the sheriff or serjeant, for removing a criminal from one county or corporation to another, shall be allowed the same compensation for such service, as is allowed to sheriffs for removing criminals from the jails of the superior courts of law to the penitentiary-house, to be paid in like manner as other expenses for criminal prosecutions.(m)

40. WHEN any person shall be remanded to be tried for treason or felony in the superior court of law, the clerk of the court for the county or corporation, from whence the prisoner is remanded, shall, immediately after the court holden for his or her examination, transmit to the attorney for the Commonwealth in the superior court, a copy of the warrant for his or her commitment, and of the depositions taken on the examination. Any clerk failing to perform the duties hereby required of him shall forfeit, and pay to the use of the literary fund, the sum of fifty dollars, to be recovered in any court of record, by action of debt or information.(n)

41. IN indictments in which the exigent shall be awarded, in the names of the defendants in such indictments, additions shall be made of their estate or degree, or mystery, and of the counties of which they were or be, or in which they be or were conversant; and if, on the process upon the said indictments, in which the said additions be omitted, any out-lawries be pronounced, they shall be void, frustrate, and holden for none; and before the out-lawries be pronounced, the said indictments shall be abated by the exception of the party, wherein the said additions be omitted.(o)

42. IN any inquisition or indictment, the words *force and arms*, or any particular words descriptive of any particular kind of force and arms, shall not, of necessity, be put or comprised.(p)

43. No indictment for high treason, misprision of treason, murder, or other felony or offence, whatsoever, shall be quashed for the omission of the name of any parish, town, ville or hamlet, within any county of this Commonwealth; nor shall such omission, after conviction on such indictment, be any cause to stay or arrest judgment; nor shall any judgment on such indictment be liable to be reversed on a writ of error, by reason of such omission.(q)

(m) From 1786, c. 57; 1792, edi. 1794, 1803, and '14, c. 74, § 19, with an amendment at the late revision, as to the compensation to the sheriff.

(n) Compiled of 1788, c. 67, § 102; 1792, edi. 1794, 1803, and '14, c. 74, § 20; 1803, c. 95, § 2; edition 1803, c. 34, § 2.

(o) 1789, c. 30, § 1; 1792, edi. 1794, 1803 and '14, c. 74, § 21.

(p) 1789, c. 30, § 5; 1792, edi. 1794, 1803 and '14, c. 74, § 22.

(q) 1786, c. 16, § 3; 1792, edi. 1794, 1803 and '14, c. 74, § 23.

44. AFTER the verdict of twelve men, no judgment on any indictment or information, for felony, or any other offence whatsoever, shall be stayed or reversed, for any supposed defect or imperfection in any such indictment or information, so as the felony or offence therein charged to have been committed or done, be plainly and in substance set forth with convenient certainty, so as to enable the court to give judgment thereupon, according to the very right of the cause; any former law, custom or usage to the contrary notwithstanding.(r)

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What defects in the indictment or information, cured by verdict.

45. No information for a trespass or misdemeanor shall be filed in any court, but by express order of the court, entered on record; nor unless the party, supposed to be culpable, shall have failed to appear and shew good cause to the contrary, having been required to do so by a summons, appointing a convenient time for that purpose, served upon him, or left at his usual place of abode; and the name and surname of the prosecutor, and the town or county in which he shall reside, with his title or profession, shall be written at the foot of the information, before it be filed, and of every bill of indictment, for any trespass or misdemeanor, before it be presented to the grand jury; *except as herein-after excepted.*(s)

Rules concerning filing of informations for trespasses or misdemeanors.

Prosecutor's name, residence and profession to be written at foot of every information or indictment.

46. If the grand jury, to whom such a bill of indictment last mentioned is preferred, shall not find the bill; or if the defendant shall appear to shew cause against the filing of such information, or to answer such information or indictment, and the prosecutor shall not proceed further; or if the defendant shall be found not guilty by the petit jury, or a judgment shall be given for him, he shall recover his costs against the prosecutor, (*except as hereafter excepted,*) with an attorney's fee if one be employed, and the allowances to witnesses, to be taxed, in the bill of costs, and may have execution for them, as the manner is in civil cases.(t)

When defendant shall recover his costs against the prosecutor.

47. *PROVIDED, however,* That, when a presentment shall be made of any offence by the grand jury, upon the knowledge of two of their own body, or when a presentment shall be made, on the testimony of a witness, called on, either by the court, or by the grand jury, to give testimony concerning the same; then, neither the informing grand jurors, nor the witness so called on, shall be liable to costs. *And, provided, also,* That, where an information shall be filed by the attorney for the Commonwealth, on the testimony of a witness called on by the court, or where an information shall be filed, or a bill of indictment sent to a grand jury, in consequence of a previous presentment by a grand jury, made on the information of any two of their own body, or the testimony of a witness called on either by the court or the grand jury; in such cases, it shall not be necessary to write the name of the informing grand jurors, nor of the witness, at the foot of the information or indictment; nor shall they, or either of them, be considered as prosecutors nor as liable to costs.(v)

proviso, in favor of grand jurors giving information, or witnesses called upon by court or grand jury.

In what cases prosecutor's name, &c. need not be written at foot of information or indictment.

(r) 1803, c. 95, § 6; edition 1808, c. 34, § 6.

(s) 1786, c. 64; 1792, ed. 1794, 1803 and '14, c. 74, § 24.

(t) From 1752, ed. 1769, c. 5, § 2; 1792, ed. 1794, 1803 and '14, c. 74, § 25.

(v) Compiled of 1795, c. 10, § 2; ed. 1803 and '14, c. 183, § 2; 1801, c. 18, § 2; ed. 1803 and '14, c. 303, § 2.

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How and by whom
fines and amerce-
ments shall be as-
sessed.

Who shall not, and
who may, amerce
for default of com-
mon summons.

Duty of sheriff,
&c. where persons
summoned as ju-
rors to take any
inquest, fail to at-
tend.

Penalty for such
failure.

Regulations rela-
tive to imposing of
fines on jurors,
witnesses, &c.

Process to be is-
sued upon pre-
sentments for of-
fences not punish-
able by confine-
ment in peniten-
tiary.

Process in crimi-
nal cases how to be
issued, and when
returnable.

48. IN every such information or indictment, the fine or amercement, which ought to be according to the degree of the fault and the estate of the defendant, shall be assessed by twelve honest and lawful men, either those by whom the offender shall have been convicted, in case of a verdict, or those who shall be impannelled for that special purpose, where judgment shall be given against him upon the argument of a demurrer, or by his confession or default.(w)

49. No escheator, sheriff, coroner or other inquisitor, shall hereafter have power of amercement for default of common summons; save only, the judges of the general court and the superior courts of law, or the respective county or corporation courts.(x)

50. WHEN, by law, the sheriff or other officer is directed to summon a jury to take any inquest, if the person or persons so summoned fail to attend, it shall be the duty of the sheriff or other officer to return the name or names of the person or persons so failing, to the next court of his county or corporation; or, where the process directing such jury to be summoned, issued from any other court, then to the next term of such other court; whereupon, it shall be lawful for the court to fine such person or persons, in a sum not exceeding eight dollars.(y)

51. It shall not be lawful for any court, either of law or of equity, to impose any fine upon a juror, witness or any other person, for disobedience of its process, or for any other contempt, unless the person on whom such fine shall be imposed, shall either be present in court at the time, or shall have been duly served with a rule of the court, returnable to some certain day, requiring him to shew cause why such fine should not be imposed upon him, and shall have failed to appear and shew such cause. When any such fine shall so have been imposed, either in the presence of the party offending, or after he shall have been served with a rule to shew cause against it, and shall have failed to do so, the order imposing the fine shall be final, and the party offending shall not again be heard, in the same court, to shew cause against it; any former law to the contrary notwithstanding.(z)

52. UPON presentment made by the grand jury of an offence not capital or punishable by confinement in the public jail and penitentiary-house, the court shall order the clerk to issue a summons, or other proper process, against the person or persons so presented, to appear and answer such presentment at the next court, and thereupon hear and determine the same, according to law.(a)

53. ALL original process to bring any person or persons to answer in any indictment, information or other criminal prosecution in any court in this Commonwealth, and all subsequent process therein, shall be issued and bear *teste* by the clerk of such court, and be made returnable either to the first day of

(w) 1786, c. 64; 1792, edi. 1794,
1803 and '14, c. 74, § 26.
(x) *Ibid.*, § 27.
(y) 1805, c. 67; edi. 1808, c. 71.

(z) 1812, c. 20, § 1.
(a) 1788, c. 67, § 109; 1792, edi.
1794, 1803 and '14, c. 74, § 28.

the next term, or to such other time as may be prescribed by law, or directed by the court. All subpoenas for witnesses in criminal cases, shall be issued and bear *teste* in the same manner, and be made returnable, as occasion may require, to some certain day, either of the next term, or of the court then sitting.

A. D. 1819.

A. R. C. 43.

Also subpoenas for witnesses.

54. If any private person having any prisoner in his keep-Private person ing, arrested for suspicion of felony, treason or murder, and having custody of the person that is so arrested, escape by negligent keeping, prisoner, and permitting escape, before that he be brought to the jail, then the person from may be fined. whom such prisoner so escaped shall be liable to a fine, on being found guilty, on an indictment, in the superior court of that county in which such escape was made.(b)

55. No sheriff, under-sheriff, nor escheator, nor any other Person, shall take or seize the goods of any person accused, &c. for illegally or indicted of or for treason, murder or other felony, except seizing the goods of any person indicted for felony. only in such cases where he shall be commanded, by the precept of *capias* herein-before directed, to seize the chattels of a person, not in custody, against whom an indictment for any such offence shall have been previously found; upon pain to forfeit double the value of the goods so taken, to him that is so hurt in that behalf, by action of debt to be pursued in any court of record.(c)

56. WHENSOEVER any person shall happen to be attainted, No forfeiture of convicted, or outlawed, of any treason, misprision of treason, lands, or goods, to murder or felony whatsoever, there shall, in no case, be a forfeiture to the Commonwealth of dower, or of lands, slaves, or be incurred by attainer, &c. for treason, murder, personal estate; but, if such person be sentenced to death, or other felony. the same shall descend and pass in like manner as is by law How estate of person sentenced to death or confinement directed in case of persons dying intestate; 'and if such person be sentenced to confinement in the public jail and penitentiary-house, his or her estate shall be disposed of in the manner prescribed by the "act, to reduce into one the several penitentiary-house, acts and parts of acts for establishing a penitentiary-house, 'and for the punishment of crimes;" nor shall any attainer Attainer not to work a corruption of blood; any law or usage to the contrary, work corruption of blood. in any wise, notwithstanding.(d)

57. SAVING to all and every other person and persons, Saving of rights of bodies politic and corporate, their heirs and successors, and to other persons. every of them, (other than to such offender as shall be attainted, convicted, or out-lawed,) all such right, title, interest, entry, leases, possession, condition, profit, commodity, and hereditaments, as they, or any of them had, or should, or of right ought to have, before, or at the time of the said attainer, conviction or out-lawry.(e)

58. No forfeiture whatever shall accrue to the Common-Suicide not to occasion any forfeiture. wealth, in consequence of any suicide; and the estate, whether real or personal, of every person who shall hereafter destroy his or her own life, or who may, heretofore, have destroyed his or her own life, shall pass to the heirs, devisees, legatees or distributees of such person, in the same manner, as if he or she

(b) 1789, c. 30, § 15; 1792, edi. 1794, 1803, and '14, c. 74, § 29.

(c) 1789, c. 30, § 12; 1792, edi. 1794, 1803, and '14, c. 74, § 30.

(d) 1789, c. 30, § 13; 1792, edi. 1794, 1803, and '14, c. 74, § 31.

(e) 1789, c. 30, § 14; 1792, edi. 1794, 1803, and '14, c. 74, § 32.

A. D. 1819.

A. R. C. 43.

Proviso.

Approvers not admissible.

Limitation of time, within which prosecutions on penal statutes must be instituted.

Also as to indictments &c. for perjury, subornation of perjury, and forgeries not punishable by confinement in the penitentiary.

Special bail where required, in suits on penal laws.

Joint actions for fines may be brought against justices.

How penalties not exceeding 20 dollars &c. may be sued for and recovered.

Mode of proceeding on presentments for offences where the penalties are small.

had died from any other cause: *Provided*, That nothing herein contained shall be so construed as to affect any estate whatever, on which an office may have been found, in favor of the Commonwealth, before the twentieth day of February, one thousand eight hundred and twelve.(f)

59. APPROVERS shall never be admitted in any case whatsoever.(g)

60. ALL actions, suits, bills, indictments or informations, which shall be had, brought, sued, or exhibited upon any penal law, where the punishment to be inflicted upon the offender, on conviction, shall neither be death, nor imprisonment in the jail and penitentiary-house, shall be had, brought, sued, exhibited, or moved, within one year next after the offence committed, and not after; except where a longer or shorter time, for the commencement of such suit or prosecution, is, or shall be fixed by law.(h)

61. EVERY indictment or information for perjury, subornation of perjury, or such forgeries or publications thereof, as may not be punishable by death, or imprisonment in the jail or penitentiary-house, shall be exhibited or moved within three years next after the time of committing the offence, and not after.(i)

62. No special bail shall be requirable in any suit brought upon a penal law; unless, by such law, bail shall be expressly directed.(k)

63. IN all cases, where a fine is laid upon the justices of any county, one action may be brought against them all jointly.(l)

64. WHERE the penalty incurred by the breach of any penal law, shall not exceed twenty dollars, or four hundred pounds of tobacco, the same may be sued for and recovered in the manner directed by law for debts of like amount.(m)

65. IN a presentment to a county or corporation court, if the penalty of the offence exceed not five dollars, or to the superior court, if the penalty exceed not twenty dollars, no information thereupon shall be filed; but a summons shall be issued against the defendant to answer the presentment; and such summons having been served upon him, or a copy thereof having been left at his usual place of abode, at least ten days before the return day, if he do not appear, judgment shall be rendered against him for the penalty; and if he do appear, the court shall, in a summary way, without a jury, hear and determine the matter of the presentment, in the form in which it shall have been made, and give judgment thereupon according to law, and the very right of the case; disregarding any exception that may or might be taken to the form of the presentment: *Provided, however*, That any person, against whom

(f) 1811, c. 32; edi. 1812, c. 112.

(g) 1789, c. 30, § 8; 1792, edi. 1794, 1803, and '14, c. 74, § 33.

(h) 1804, c. 5, § 2; edi. 1808, c. 55, § 2.

(i) *Ibid*, § 3.

(k) 1748, edi. 1752, c. 6, § 20, and c. 7, § 17; and edi. 1769, c. 4, § 17; 1792, edi. 1794, 1803, and '14, c. 74, § 35.

(l) 1748, edi. 1752, c. 6, § 23; 1755, edi. 1769, c. 1, § 24; 1792, edi. 1794, 1803, and '14, c. 74, § 36.

(m) Altered from 1786, c. 62; 1792, edi. 1794, 1803, and '14, c. 74, § 37. *Vi'd*. 1800, c. 38; edi. 1803, and '14, c. 271; 1806, c. 7, § 1; edi. 1808, c. 88, § 1.

judgment shall so have been rendered, by default, without actual service of the process, may, at any time before he shall have paid the fine, have the judgment aforesaid set aside, and a new trial granted him, if he appear in court, and, by his own oath, or other satisfactory evidence, prove, to the satisfaction of the court, that he had no notice of such presentment, in time to have appeared and made his defence thereto, at the term at which judgment was rendered against him.(n)

A. D. 1819.

A. R. C. 43.

66. IN all indictments for assaults and batteries, and other offences, not capital, now depending, or hereafter to be prosecuted, it shall be lawful for the court, before whom the same shall be depending, upon good cause to them shewn, to compel the prosecutor to find security for payment of the costs; and if such prosecutor shall fail to give security accordingly, the indictment shall be dismissed, with costs.(o)

In what cases prosecutors may be compelled to give security for costs.

67. ALL and every act and acts, clause and clauses of acts, containing any thing within the purview of this act, (except as herein-after provided,) shall be, and the same are hereby repealed; *Provided, always*, That nothing in this act contained shall be construed to repeal any act heretofore made, for so much thereof as may relate to any offence committed or done, or claim which may have accrued, before the commencement of this act. Repealing clause. Proviso.

68. THIS act shall commence and be in force from and after the first day of March, eighteen hundred and nineteen. Commencement.

C. 170.

*An act providing that actions popular prosecuted by collusion, shall be no bar to those which be pursued with good faith.**

A. D. 1786.

A. R. C. 11.

[Passed November 28, 1786.]

1. BE it enacted by the General Assembly, That, if any person hereafter sue with good faith any action popular, and any defendant in the same action, plead any manner of recovery by action popular, in bar of the said action, or that he before that time barred any plaintiff in any such action popular, then the plaintiff in the action taken with good faith, may aver that the said recovery, in the said action popular, was had by covin, or else may aver that the said plaintiff was barred in the said action popular by covin: then if after, the said collusion or covin so averred be lawfully found, the plaintiff in that action sued with good faith, shall have recovery according to the nature of the action, and execution upon the same, in like wise and effect as though no such afore had been had. *Provided always*, That no plaintiff be in any wise received to aver any covin, in any

In actions popular, plaintiff, to a plea of recovery, may reply covin. Hen. 7, c. 20.

(n) From 1786, c. 57; 1792, edi. (o) 1792, edi. 1794, 1803, and '14, 1794, 1803, and '14, c. 73, § 6. c. 74, § 38.

* 1786, c. 63; 1792, edi. 1794, 1803 and '14, c. 25.

A. D. 1786.
A. R. C. 11.

Penalty for com-
pounding or dis-
continuing actions
for certain penal-
ties.

18 Eliz. c. 5, § 3, 4.

action popular, where the point of the same action, or else the covin or collusion, shall have been once tried, or lawfully found with the plaintiff, or against him, by trial of twelve men, and not otherwise.

2. If the prosecutor of an action or information, for the recovery of any penalty not wholly appropriated to the use of such proprietor, shall compound with the offender, or direct such suit or information to be discontinued, unless it be by leave of the court wherein the said suit or information shall be depending, such prosecutor shall be liable for so much of the penalty to the Commonwealth, or any other, as they would have been entitled to, if the defendant had been convicted.

C. 174.

A. D. 1819.
A. R. C. 43.

*An act to reduce into one act, the several acts and parts of acts, for establishing a Penitentiary-house, and for the punishment of crimes.**

[Passed March 6, 1819.]

Punishment of
death abolished.

1. *BE it enacted by the General Assembly*, That no crime whatsoever committed by any free person against this Commonwealth, shall be punished with death within the same, except such crimes as now are, or hereafter shall be, directed by act of Assembly to be so punished. (a)

Exceptions.

2. AND whereas the several offences, which are included under the general denomination of murder, differ so greatly from each other in the degree of their atrociousness, that it is unjust to involve them in the same punishment; (b)

Definition of mur-
der in first degree:

BE it enacted by the General Assembly, That all murder, which shall be perpetrated by means of poison, or by lying in wait, or by duress of imprisonment or confinement, or by starving, or by wilful, malicious and excessive whipping, beating or other cruel treatment or torture, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery or burglary, shall henceforth be deemed murder in the first degree. And all other kinds of murder shall be deemed murder of the second degree. And the jury, before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, ascertain in their verdict

Of murder in se-
cond degree.

(a) From 1796, c. 2, § 1; edi. 1803 and '14, c. 200, § 1.

(b) *Ibid*, § 2.

* The penitentiary system was adopted at the session of 1796, by the act to amend the penal laws of this Commonwealth, and went into operation March 25th, 1800. Former laws in relation to the penitentiary, 1796, c. 2; 1799, c. 58; 1800, c. 58, 71; (edi. 1803 and 14, c. 200, 264, 279, 284;) 1802, c. 4, 16; 1803, c. 117; 1804, c. 5; 1806, c. 13; 1807, c. 24; (edi. 1808, c. 16, 21, 41, 53, 111, 132;) 1808, c. 4, 23; 1810, c. 30, § 8; 1811, c. 30, 31; (edi. 1812, c. 4, 24, 110, 111;) 1812, c. 22, § 2, 3; 1814, c. 17, § 9; 1814, c. 21, 29; 1815, c. 25; 1816, c. 13, 14, 15; 1817, c. 25. The amendments made at the late revision, are distinguished, as far as practicable, by being printed within single inverted commas.

whether it be murder in the first or second degree; but, if such person shall be convicted by confession, the court shall proceed, by examination of witnesses, to determine the degree of the crime, and to give sentence accordingly.(c)

A. D. 1819.
A. R. C. 49.

Where conviction is by confession, court to examine witnesses and determine degree.

3. EVERY person, liable to be prosecuted for petit treason, shall in future be indicted, proceeded against, and punished, as is directed in other kinds of murder.(d)

Petit treason, prosecuted and punished as other kinds of murder. Punishment for murder in first degree. Murder in second degree.

4. EVERY person duly convicted of murder in the first degree, his or her aiders, abettors and counsellors, shall suffer death, by hanging by the neck.(e) Every person duly convicted of the crime of murder in the second degree, shall be sentenced to undergo a similar confinement,† for a period not less than five years, nor more than eighteen years, under the same conditions as are herein-after directed.(f)

5. EVERY person convicted of robbery* or burglary,* or Robbery or burglary accessory thereto before the fact, shall restore the thing robbed or taken, to the owner or owners thereof, or shall pay to him, her or them, the full value thereof, and be sentenced to undergo a similar confinement, for a period not less than five nor more than ten years, under the same conditions as are herein-after directed.(g)

6. EVERY person convicted of simple larceny to the value of four dollars and upwards, or as accessory thereto before the fact, shall restore the goods or chattels so stolen, to the right owner or owners thereof, or shall pay to him, her or them, the full value thereof, or so much thereof as shall not be restored; and, moreover, shall undergo a similar confinement, for a period not less than one, nor more than three years, under the same conditions as are herein-after directed.(h)

Grand larceny.

7. If any person shall feloniously take, steal and carry away any goods or chattels, under the value of four dollars, he, she or they, being thereof legally convicted, shall be deemed guilty of petit larceny, and shall restore the goods and chattels so stolen, or pay the full value thereof, to the owner or owners thereof, and be farther sentenced to be punished by stripes, on his or her bare back, not less than ten nor more than forty, for any one offence, or by confinement in the jail and penitentiary-house, for a term not less 'than six nor more' than eighteen months, at the discretion of the jury by whom such person shall be tried. And, if any person, 'having been 'punished by stripes, for such offence,' shall be convicted of a like offence, a second time, he or she shall be sentenced to

First offence of petit larceny.

Second offence.

(c) 1802, c. 4, § 1; edi. 1808, c. 16, § 1.

(d) 1796, c. 2, § 3; edi. 1803 and '14, c. 200, § 3.

(e) From 1796, c. 2, § 1; edi. 1803 and 1814, c. 200, § 1.

(f) 1796, c. 2, § 4; edi. 1803 and '14, c. 200, § 4.

(g) Compiled of 1796, c. 2, § 5; edi. 1803 and '14, c. 200, § 5; and 1803, c. 117, § 1; edi. 1808, c. 41, § 1.

(h) 1796, c. 2, § 6; edi. 1803 and 1814, c. 200, § 6.

† So in the roll.

* Robbery and burglary, by the act of 1796, was punishable by confinement in the penitentiary, for a period not less than three, nor more than ten years; but by the act of 1803, it was altered to not less than five nor more than ten years.

A. D. 1819.
A. R. C. 43.

Voluntary man-
slaughter.

Involuntary man-
slaughter, how
prosecuted and
punished.

Benefit of clergy
in behalf of free
persons, abolished.
Punishment of
free persons con-
victed of felonies,
clergyable, De-
cember 15, 1796.

Exceptions.

Of felonies, &c.
not provided for
by this act, and
not clergyable De-
cember 15, 1796.

undergo a confinement in the jail and penitentiary-house, for a term not less than five* nor more than ten* years.(i)

8. WHOSOEVER shall be convicted of any voluntary man-slaughter, shall be sentenced to undergo an imprisonment, at hard labor and solitary confinement in the said jail and penitentiary-house, for any time not less than two nor more than ten years, and to give security for his or her good behaviour, during life; or for any less time, according to the nature and enormity of the offence.(k)

9. WHENSOEVER any person shall be charged with involuntary man-slaughter, happening in consequence of an unlawful act, it shall and may be lawful for the attorney-general, or other person prosecuting the pleas of the Commonwealth, with the leave of the court, to waive the felony, and to proceed against and charge such person with a misdemeanor, and to give in evidence any act or acts of man-slaughter; and such person or persons, on conviction, shall be fined or imprisoned, as in cases of misdemeanor; or the said attorney general, or other person prosecuting the pleas of the Commonwealth, may charge both offences in the same indictment; in which case, the jury may acquit the party of one, and find him or her guilty of the other charge.(l)

10. ALL claims to dispensation from punishment, by benefit of clergy, 'in behalf of any free person,' shall be and are hereby forever abolished; and every 'such' person, convicted of any felony, which by the laws in force on the fifteenth day of December, one thousand seven hundred and ninety-six,† was deemed clergyable, shall undergo an imprisonment, at hard labor and solitary confinement, in the said jail and penitentiary-house, for any time not less than six months, and not more than two years, and shall be treated and dealt with as is directed hereafter; except in those cases where some other specific penalty is prescribed by this act, or by some other act of assembly.(m)

11. If any free person shall be convicted, either as principal or accessory, of any felony, or other offence, not otherwise provided for by this act, or some other act of assembly, which, by the laws in force on the said fifteenth day of December, one thousand seven hundred and ninety-six,‡ was punishable by death, without benefit of clergy, every such person shall be

(i) Compiled of 1796, c. 2, § 7; edi. 1803 and '14, c. 200, § 7; 1803, c. 117, § 4; edi. 1808, c. 41, § 4; 1802, c. 16, § 5; edi. 1808, c. 21, § 5.

(k) 1796, c. 2, § 11; edi. 1803 and '14, c. 200, § 11: the remainder of this section, as it stood in the acts here referred to, prescribing the punish-

ment for a second offence of man-slaughter, was struck out at the late revision.

(l) 1796, c. 2, § 12; edi. 1803 and 1814, c. 200, § 12.

(m) 1796, c. 2, § 13; edi. 1803 and '14, c. 200, § 13.

* Not less than one, nor more than two years, by the act of 1802, c. 16, § 5; edition 1808, c. 21, § 5.

† The date of the passage of the original penitentiary law; which was substituted, at the late revision, for the word "heretofore," after the word "felony," in the original act.

‡ The act of 1799, c. 58, § 1; edi. 1803 and '14, c. 264, § 1, from which this section was taken, referred to the time when the penitentiary system went into operation, to wit, the 25th of March, 1800: this section refers to the date of the passage of the act, establishing that system.

sentenced to undergo a confinement in the public jail and penitentiary-house, for a period not less than one nor more than ten years.(n)

A. D. 1819.
A. R. C. 43.

12. THE jury, before whom any offender may be tried, shall decide upon, and in their verdict ascertain the time, within the respective periods prescribed, during which such offenders shall undergo confinement in the jail and penitentiary-house, according to the directions of this act; and the court shall ascertain, in their sentence, the time of confinement in the solitary cells, so that the same be not more than one-half, nor less than one-twelfth of the time, so ascertained by the jury.(o)

Jury to ascertain time of confinement in penitentiary within prescribed limits.
Court, the time of confinement in solitary cells.
Restriction.

13. If any person, guilty of any offence against the laws of this Commonwealth, punishable by confinement in the public jail and penitentiary-house, shall have been convicted thereof, and sentenced to such confinement, and shall afterwards, having escaped or been pardoned, or otherwise discharged from confinement, commit any other offence, which, by the laws of this Commonwealth, if there had been no such previous conviction, would have been punishable with confinement, in the said jail and penitentiary-house, for a period not less than five years; every such offender, being thereof lawfully convicted, shall be punished by confinement in the said jail and penitentiary-house, for life.(p)

Second offence, where punishable by imprisonment for life.

14. If any person, after such first conviction and sentence, and after such escape, pardon or discharge, shall commit any offence, which, by the laws of this Commonwealth, if there had been no such previous conviction, might have been punished by confinement, in the said jail and penitentiary-house, for a period less than five years; every such offender, being thereof lawfully convicted, shall be punished by confinement in the said jail and penitentiary-house, for a period not less than ten nor more than twenty years; and, in addition thereto, if such offender, when he committed the second offence, had escaped from confinement under the first sentence, he shall be punished for such escape in the manner in this act provided.(q)

And where by imprisonment for not less than ten nor more than twenty years.

15. If any person having been twice convicted, and sentenced to confinement in the said jail and penitentiary, shall afterwards, having escaped or been pardoned, or discharged, commit any other offence, which, by the laws of this Commonwealth, if there had been no such previous conviction, would have been punishable by confinement in the said jail and penitentiary-house; every such offender, being thereof lawfully convicted, shall be deemed guilty of felony, and shall be punished by confinement in the said public jail and penitentiary-house, during life.(r)

Additional punishment for escape.

Third offence, punishable by imprisonment for life.

16. WHENEVER any person shall be received into the said jail and penitentiary-house, having been a second or third time convicted and sentenced to confinement therein, and it shall appear upon the face of the record of the last trial and conviction

Keeper's duty, where convict has been a second or third time sent to penitentiary, and

(n) 1799, c. 58, § 1; edi. 1803 and '14, c. 264, § 1.

(o) Compiled of 1796, c. 2, § 15, 22; edi. 1808 and '14, c. 200, § 15, 22.

(p) Altered from 1796, c. 2, § 24, 42; edi. 1803 and '14, c. 200, § 24, 42.

(q) Altered from 1796, c. 2, § 24; edi. 1803 and '14, c. 200, § 24.

(r) *Ibid.*

A. D. 1819.
A. R. C. 43.

is not sentenced as
for second or third
offence.

Proceedings to
identify such con-
vict, in circuit
court of Henrico
county.
Warrant of judge.
Information.
Convict to plead.

Effect of failure.

Trial.

Verdict.

Sentence.

Continuance gran-
table.

Duty of clerks to
send copies of re-
cords to directors
of penitentiary.

Penalty for failure.

How recoverable
and appropriated.

Court to make re-
port to directors,
of circumstances
of offence, charac-
ter of convict, &c.

tion, that such person hath not been sentenced to the punishment above prescribed for such second or third conviction, and that the question of such former conviction or convictions, hath not been made and decided, on such last trial; it shall be the duty of the keeper of such jail and penitentiary-house, to give information, without delay, to the superior court of law for Henrico county, that such person so convicted hath been received. It shall thereupon be the duty of such court, at the same term, by warrant directed to the said keeper, to cause such convict to be brought before the court; and, upon an information filed, setting forth the several records of conviction, and alledging such convict to be the same identical person mentioned in each, such convict shall be required to say, whether he is the same person so mentioned in each of the said records or not; if he plead that he is not, or remain silent, and will not plead at all, his plea, or his silence shall be entered of record; and, thereupon, a jury of bye-standers shall be impanelled and sworn, to enquire and say, whether such convict be or be not the same identical person, mentioned in each of the said records of conviction. If, upon such enquiry, the jury find, that such convict is not the same person mentioned in the records as aforesaid, he shall be remanded to the said jail and penitentiary-house, to be confined as if he had not been removed as aforesaid: but if the said jury shall find, that the said convict is the same person mentioned in the said records of conviction, or if the said convict, in open court, shall acknowledge, after being duly cautioned, that he is the same person mentioned as aforesaid, then the said superior court of law shall pronounce sentence upon the said convict, of confinement in the said jail and penitentiary-house as is herein provided; and such sentence shall be executed, as all other like sentences of the said court. Nothing herein contained, shall be construed to inhibit the said superior court of law from granting continuances of any case so brought before them. When any person shall be convicted and sentenced to confinement in the said jail and penitentiary-house, by any court of law, within this Commonwealth, it shall be the duty of the clerk, wherein such conviction may be, to make out and transmit to the board of directors of the said jail and penitentiary-house, a full and complete copy of the record of the trial and conviction; and every clerk, who shall fail to make out such copy, and transmit the same to the said directors, at the time when the convict is sent to the said jail and penitentiary-house, shall forfeit and pay, for every such failure, the sum of one hundred dollars, to be recovered by motion in the general court, on reasonable notice thereof, and paid to the Commonwealth for the use of the literary fund.^(s)

17. It shall also be the duty of the court, before whom such conviction shall be, during the same term, to make and cause to be transmitted to the said directors, a short report of the circumstances attending the offence committed by such convict, particularly such as tend to aggravate or extenuate the same; and also to report what character the said convict sustained

upon the trial, and whether the court hath reason to believe, that at any time before, he had been convicted of any felony or other infamous offence.(t)

A. D. 1819.
A. R. C. 43.

18. THE reports made as aforesaid, the said directors shall cause to be entered in books or registers provided for that purpose; 'and the records transmitted as aforesaid, they shall carefully file and preserve.'(v)

Duty of directors as to such reports and records.

19. THE jail and penitentiary-house, which has been erected near the city of Richmond, in pursuance of the directions contained in the seventeenth, eighteenth and nineteenth sections of the act, passed on the fifteenth day of December, one thousand seven hundred and ninety-six, entitled, *An act to amend the penal laws of this Commonwealth*, and the buildings connected therewith, which have been subsequently erected, together with the solitary cells thereof, shall be appropriated to the purpose of confining such males and females, as have been or may be convicted of offences punishable with imprisonment and labour in the said jail and penitentiary-house; but the males and females are hereby required to be kept separate and apart from each other; and all the prisoners shall be subject to the visitation and superintendence of the directors heretofore appointed, or hereafter to be appointed in pursuance of this act.(w)

Jail and penitentiary-house, for confinement of offenders.

Males and females to be kept separate and apart. Prisoners subject to visitation &c. of directors.

20. EVERY person convicted in any court of this state of any crime or offence, punishable by imprisonment in the jail and penitentiary-house, shall, as soon as possible after conviction, be safely removed and conveyed by the sheriff of the county, or the serjeant of the corporation, in which the crime or offence shall have been committed, and at the expense of the Commonwealth, to the said jail and penitentiary-house, and therein be kept, during the term of his or her confinement, in the manner, and on the terms herein-after mentioned. And every sheriff or serjeant who shall neglect to remove and safely deliver, at the jail aforesaid, such convict, shall forfeit and pay the sum of one hundred dollars, to be recovered in any court of record, and applied one-half to the Commonwealth, for the use and benefit of the literary fund, and the other to such person as shall sue for the same.(x)

Duty of sheriffs or serjeants to convey convicts to penitentiary.

Penalty for neglect.

How recoverable and appropriated.

21. WHENSOEVER any person or persons, shall be sentenced by any court of this Commonwealth, to undergo confinement in the jail and penitentiary-house, it shall be lawful for the judge of the court, or any two justices of the peace of the county 'or corporation' wherein the said court was held, by warrant under his or their hands and seals, to empower the sheriff or serjeant, charged with the conveyance of such prisoner or prisoners, in all counties and places through which he shall pass with him or them, to impress, upon the best terms that the nature of the case will admit of, such and so many men, not exceeding two for each convict to be conveyed, (except in the cases herein-after provided for,) and so many horses and boats as shall be necessary for the safe conveyance of the

Warrant for impressing guards, horses, &c.

Number of guards allowed.

(t) From 1796, c. 2, § 23; edition, 1803, and '14, c. 200, § 23.

(v) *Ibid.*

(w) From 1796, c. 2, § 20; edition, 1803, and '14, c. 200, § 20.

(x) 1796, c. 2, § 21; edition, 1803, and 1814, c. 200, § 21.

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<p>Privilege of sheriff or serjeant, and guard attending a prisoner.</p>	<p>22. THE sheriff or serjeant, and guard attending any prisoner or prisoners by virtue of a warrant, as aforesaid, shall be privileged from arrests in all cases, except treason, felony and breaches of the peace, during the time that they are employed in conveying such prisoner or prisoners to the said jail and penitentiary-house, and in returning therefrom, allowing one day for every twenty miles from their place of abode; and shall be authorised to have and receive, each, one dollar and four cents for every day they shall be so employed, and four cents per mile for travelling to the said jail and penitentiary, and the same for returning, besides ferriages; and such sheriff shall also be allowed all necessary expenses incurred by him, as well for horses and boats impressed for the purposes aforesaid, as for the support of the prisoner or prisoners, during the time of their removal.(z)</p>
<p>Compensation.</p>	
<p>Necessary expenses allowed.</p>	
<p>Charges, on account of horses, deducted.</p>	<p>23. IN case any horse or horses should be impressed by a sheriff or serjeant, either for himself or any of the guard, all charges on account thereof, shall be deducted out of the pay of the person using such horse or horses; and the auditor of public accounts is required to issue his warrants on the treasurer for any money allowed by this act.(a)</p>
<p>Allowances, how payable.</p>	
<p>Keeper's receipt for prisoner, to be produced.</p>	<p>24. <i>PROVIDED, however,</i> That, before the sheriff or serjeant attending any prisoner, shall be entitled to a warrant or warrants under this act, he shall produce to the said auditor a receipt from the keeper of the said jail and penitentiary, for the prisoner or prisoners which he was required to convey, and make oath that the number of men, boats and horses impressed by him, in removing such prisoner or prisoners, and other expenses thereby incurred, were, in his opinion, absolutely necessary. And any person impressed as a guard, by virtue of this act, before he shall receive a warrant for the sum to which he is entitled, shall make oath as to the number of days he was employed, and the distance he travelled, and the ferriages paid, or to be paid by him.(b)</p>
<p>Oath required of sheriff or serjeant.</p>	
<p>And of guard.</p>	
<p>Judge or court may direct addition to number of guard.</p>	<p>25. WHENEVER, in the opinion of the judge or court, before whom any person condemned to confinement in the penitentiary, shall have been tried, the safe conveyance of such convict to the penitentiary will require a stronger guard than is above allowed, it shall be the duty of the judge, by warrant under his hand and seal, or of the court, by an order in court, to authorise the sheriff or serjeant to summon, as a guard, such number of men as may, in the opinion of such judge, or such court, be necessary for the purpose aforesaid. The pay of such extra guard shall be the same, and their expenses in every respect, shall be defrayed in the same manner, as is herein-before prescribed for the ordinary guard.(c)</p>
<p>Warrant for that purpose.</p>	
<p>Pay, &c. of such extra guard.</p>	

(y) Compiled of 1800, c. 58, § 1; edi. 1803, and '14, c. 279, § 1; 1807, c. 4, § 3; edi. 1808, c. 121, § 3.
(z) 1800, c. 58, § 3; edi. 1803, and 1814, c. 279, § 3.

(a) 1800, c. 58, § 3; edi. 1803, and 1814, c. 279, § 3.
(b) *Ibid*, § 4.
(c) 1812, c. 22, § 2.

26. If, by any attempt to rescue a convict on his way to the penitentiary, or by any other unforeseen danger, it shall become essentially necessary, for the safe conveyance of such convict, to summon a stronger guard than the sheriff or serjeant conducting him may have been theretofore authorised to summon, it shall be lawful for such sheriff or serjeant to summon such additional guard, as shall be essentially necessary for that purpose, the expense whereof shall be defrayed out of the treasury, upon the order of the Executive: *Provided*, That such order shall not be granted, unless the sheriff or serjeant by his own oath, or solemn affirmation, and by corroborating evidence, shall prove to the satisfaction of the Executive, that such extra guard was necessary.(d)

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Where sheriff or serjeant may, by his own authority, increase the guard.

Expense to be defrayed by Executive order.
Proviso.
Oath and corroborating evidence required.

27. EVERY person convicted of any crime, and who shall be confined in the jail and penitentiary-house aforesaid, shall be placed and kept in the solitary cells thereof, on low and coarse diet, for such part or portion of the term of his or her imprisonment, as the court in their sentence shall direct and appoint: *Provided*, That it be not more than one-half, nor less than one-twelfth part thereof; and that the directors of the said jail shall have power to direct the infliction of the said solitary confinement, at such intervals, and in such manner as they shall judge best.(e.)

Confinement of prisoners in solitary cells.

Power of directors in relation thereto.

28. In order to prevent the introduction of contagious disorders, every person who shall be ordered to hard labor in the said jail, shall be separately lodged, washed and cleaned; and shall continue in such separate lodging, until it shall be certified by some physician that he or she is fit to be received among the other prisoners; and the cloaths in which such person shall be then clothed, shall either be burnt, or, at the discretion of two of the said directors, be baked, fumigated, or carefully laid by, until the expiration of the term for which such offender shall be sentenced to hard labor, to be then returned to him or her.(f)

Prisoner when first received, to be separately lodged, washed and cleaned.
Certificate of physician required.
Cloaths worn by such prisoner, how disposed of.

29. ALL such convicts shall, at the public expense, during the term of their confinement, be clothed in habits of coarse materials, uniform in color and make, and distinguishing them from the good citizens of this Commonwealth; and the males shall have their heads and beards close shaven, at least once in every week; and all such offenders shall, during the said term, be sustained upon bread, indian meal, or other inferior food, at the discretion of the said directors, and shall be allowed two meals of coarse meat in each week, and shall be kept, as far as may be consistent with their sex, age, health and ability, to labor of the hardest and most servile kind, in which the work is least liable to be spoiled by ignorance, neglect or obstinacy, and where the materials are not easily embezzled or destroyed; and, if the work to be performed is of such a nature, as may require previous instruction, proper persons for that purpose, to whom a suitable allowance shall be made, shall be provided, by order of any two of the directors; during

Clothing during confinement.

Heads and beards to be shaven, and when.

Diet of prisoners.

Labor.

Instructors.

Their compensation.

(d) 1812, c. 22, § 3.

(e) 1796, c. 2, § 22; edi. 1803, and 1814, c. 200, § 22.

(f) 1796, c. 2, § 22; edi. 1803, and 1814, c. 200, § 22.

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Prisoners at work,
when to be kept
separate & apart;
And when toge-
ther.

Duty of keeper,
&c. in last men-
tioned case.
Days and hours of
labour.
Time allowed for
meals.

Regulation as to
working tools and
materials.

Board of directors,
by whom and
when appointed.

Vacancies how
supplied.

Powers of the
board to appoint
purchasing agents.
To provide for sale
of manufactured
articles.

To contract for
clothing and diet
of convicts.
To make rules
and regulations for
punishing offences
committed
within the peni-
tentiary;

And to do what-
ever they think
beneficial for insti-
tution.
Proviso; power of
pardon by Execu-
tive retained.
Further Proviso.
Board not to draw
money from trea-
sury, or appropri-
proceeds of

which labor, the said offenders shall be kept separate and apart from each other, if the nature of their several employments will admit thereof; and, where the nature of such employment requires two or more to work together, the keeper of the said jail, or one of his deputies, shall, if possible, be constantly present.(g)

50. Such offenders, unless prevented by ill health, shall be employed in work every day in the year, except Sundays, and such days when they shall be confined in the solitary cells; and the hours of work, in each day, shall be as many as the season of the year, with an interval of half an hour for breakfast, and an hour for dinner, will permit; but not exceeding eight hours in the months of November, December and January; nine hours in the months of February and October; and ten hours in the rest of the year; and when such hours of work are past, the working tools, implements and materials, or such of them as will admit of daily removal, shall be removed to places proper for their safe custody, until the hour of labour shall return.(h)

31. It shall be the duty of the Governor of the Commonwealth, by and with the advice of council, 'annually, on the first Monday in January, or as soon thereafter as may be,' to appoint five intelligent and discreet persons, who are hereby constituted and appointed a board of directors, to superintend and manage the affairs of the penitentiary. 'Vacancies in the board of directors, shall be filled by the Executive as they occur, from time to time.' The said board shall have power, to appoint an agent or agents to purchase raw materials for the manufactories carried on in the penitentiary, and to provide for the sale of all articles manufactured therein, to be sold at public auction or otherwise, (within twelve months from the time the same shall have been manufactured,) either at the penitentiary or elsewhere. The said board, or a majority of them, shall have power to contract for the cloathing and diet of the convicts; to make rules and regulations for providing for, and enforcing all such punishments, by solitary confinement, low and coarse diet, or by stripes not exceeding thirty-nine, as may be necessary for punishing offences, disobedience, profane cursing and swearing, indecent behaviour, idleness, and other breaches of duty and good order, committed within the jail and penitentiary-house, by the convicts therein confined: which rules and regulations, so ordained and established, it shall be the duty of the keeper, his clerks, assistants and turnkeys, to obey and execute; and to do and perform every act, which they shall think will be most conducive to the welfare and prosperity of the said institution: *Provided*, That nothing herein contained shall be so construed, as to take from the Executive, the power of pardoning in any case which may seem to that body to be advisable: *And provided also*, That the powers of the said board shall not extend to the drawing of any money from the treasury, or to the appropriation of any part of

(g) 1796, c. 2, § 28; edi. 1803, and 1814, c. 200, § 28.

(h) 1796, c. 2, § 29; edi. 1803 and 1814, c. 200, § 29.

the proceeds of the sales of articles, manufactured at the said jail and penitentiary house.(i)

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32. It shall be the duty of the said board of directors, to make a fair and correct report, every three months, to the Executive, of the receipts and disbursements of the institution, and communicate to that department of the government, any information which they may deem advisable, having relation to the operations of the aforesaid institution. And it shall be the duty of the Executive to lay before the General Assembly, annually, the reports made, by the board of directors hereby created, according to the provisions of this act.(k)

Reports by directors to Executive, quarter yearly.

Such reports to be laid before the General Assembly annually.

33. Each of the directors, appointed by the authority of this act, shall be entitled to receive, out of the nett profits of the institution, (that is, the excess of the proceeds of the actual sales over the expenditures on account of the institution in each year,) the sum of three dollars per day, for every day they, or a majority of them, shall actually attend for the purpose of discharging the duties required by this act: *Provided, however,* That no director shall receive for his services above the sum of one hundred and fifty dollars *per annum*.(l)

Compensation allowed directors.

Not to exceed \$150 per annum.

34. So much of this act as requires, that every person, who shall be sentenced to the public jail and penitentiary, shall be confined a certain portion of his or her time in solitary confinement, shall be strictly enforced; and any failure therein shall be reported, by the directors aforesaid, to the Executive from time to time.(m)

Solitary confinement to be strictly enforced.

Directors to report any failure to enforce it.

35. On the discharge of any prisoner from the penitentiary-house, the board of directors shall have power to make him an allowance, not exceeding thirty dollars, if, in their judgment, such prisoner shall have been industrious, and conducted himself in an orderly manner.(n)

Allowance to prisoners on discharge. Discretionary power in relation thereto.

36. No person, whose duty does not require it, shall be permitted to visit the interior of the said jail and penitentiary-house, except the members of the Legislature and the Executive, persons accompanying any member of the Legislature or Executive, ministers of the gospel voluntarily offering to perform divine service therein, and such other persons as the Governor or any member of the privy council may permit.(o)

Who may be permitted to visit interior of penitentiary.

37. UNLESS at any time it shall be otherwise ordered by the board of directors, the doors of all the lodging rooms and cells in the said jail shall be locked, and all light therein extinguished at the hour of nine; and one or more watchmen shall patrol the said jail, at least twice in every hour, from that time until the return of the time of labour in the morning of the next day.(p)

Hour of locking up at night.

Watchmen to patrol the jail.

38. THE walls of the cells and apartments in the said jail, shall be white-washed with lime and water, at least twice in

Walls to be white-washed at least twice a year.

(i) Compiled of 1816, c. 13, § 1; 1806, c. 13, § 2; edi. 1808, c. 111, § 2.

(k) 1816, c. 13, § 2.

(l) *Ibid*, § 3; and 1817, c. 25, § 4.

(m) 1816, c. 13, § 7.

(n) 1803, c. 117, § 2; edi. 1808, c. 41, § 3.

(o) Altered from 1796, c. 2, § 33; edi. 1803 and 1814, c. 200, § 33, by 1817, c. 25, § 4.

(p) 1796, c. 2, § 33; edi. 1803 and 1814, c. 200, § 33.

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Floors to be washed once a week, or oftener.
By whom.
Compensation.
Prisoners when permitted to walk and air themselves.
When to work in the yard.
Proviso.

Infirmary to be fitted up.
Prisoners when and how removable to it.
Names to be entered in a book.

When and how to quit the infirmary.
Physician's report to be entered in like manner.

Surgeon to public guard and prisoners, by whom and when appointed.

His duty.

Powers of keeper to punish for offences committed within the jail.

His tenure of office.
Empowered to appoint assistant keepers and turnkeys.

every year, and the floors of the said cells and apartments shall be washed once every week, or oftener, if the said directors shall so direct, by one or more of the said prisoners in rotation, who, at the discretion of the said keeper, shall have an extra allowance of diet for so doing; and the said prisoners shall be allowed to walk and air themselves, for such stated times, as their health may require, and the said keeper shall permit; and, if proper employment can be found, such prisoners may also be permitted, with the approbation of two of the said directors, to work in the yard: *Provided*, such airing and working in the yard be in the presence or within the view of the said keeper, or his deputies or assistants.(q)

39. ONE or more of the apartments in the second story of the said jail, and at the extreme end of the west wing, shall be fitted up as an infirmary; and in case any such offender, being sick, shall, upon examination of the attending physician, be found to require it, he or she shall be removed to the infirmary, and his or her name shall be entered in a book to be kept for that purpose; and when such physician shall report to the said keeper, that such offender is in a proper condition to quit the infirmary, and return to his or her employment, such report shall be entered by the said keeper in a book to be kept for that purpose, and the said keeper shall order him or her back to his or her former labour, so far as the same shall be consistent with his or her state of health.(r)

40. IT shall be the duty of the Governor and council, to appoint, annually, one person to act as surgeon to the public guard, established in the city of Richmond, and to the prisoners, who are or may be confined in the public jail and penitentiary-house. It shall be the duty of such surgeon, to render to the persons aforesaid, all surgical and medical aid, which may be requisite; and to visit the penitentiary once in every day (Sundays excepted,) from the first of July to the first of November, and once in two days the residue of the year, for the purpose of examining the convicts as to their health and ability to work.(s)

41. THE keeper of the said jail shall have power to punish all such prisoners, guilty of assaults, within the said jail, when no dangerous wound or bruise is given, profane cursing and swearing, or indecent behaviour, idleness or negligence in work, or wilful mismanagement of it, or of disobedience to the orders or regulations which have been or may be made, by solitary confinement, low and coarse diet, or by stripes, subject to the regulations and controul of the board of directors.(t)

42. IT shall be lawful for the Governor, with the advice of council, to appoint a suitable person to be keeper of the said jail, who shall, however, be liable to be removed whenever occasion may require. The said keeper shall have power, with the approbation of the Governor and council, to appoint assis-

(q) 1796, c. 2, § 34; edi. 1803 and 1814, c. 200, § 34.

(r) 1796, c. 2, § 35; edi. 1803 and 1814, c. 200, § 35.

(s) Compiled of 1801, c. 20; and

1806, c. 13, § 5; edi. 1808, c. 111, § 5.

(t) Compiled of 1796, c. 2, § 36; edi. 1803 and 1814, c. 200, § 36; and 1806, c. 13, § 2; edi. 1808, c. 111, § 2.

tant keepers and deputies or turnkeys. Before the keeper shall exercise any part of the said office, he shall give bond to the Governor of the Commonwealth, with two sufficient sureties, to be approved by the court of the city of Richmond, in the sum of two thousand dollars, upon condition, that he, his deputies and assistants, shall well and faithfully perform the trusts and duties in them reposed, which said bond, being executed before, and certified by the said court, shall be recorded therein, and copies thereof, attested by the clerk of the said court, shall be legal evidence in all courts of law, in any suit against such jailor or his deputies.(v)

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Required to give bond and sureties. Condition.

Bond, when executed.
To be recorded.
Copy legal evidence against keeper or deputies.

43. THE officers of the penitentiary shall be classed in the following manner, to wit: the first assistant keeper shall be responsible for the good government of the institution, in the necessary absence of the keeper or superintendant; the second assistant keeper shall do and perform the duties of the first assistant keeper, in case of sickness or inability to attend; the third assistant keeper shall do and perform the duties, which shall be prescribed by his superiors in grade. The turnkey and serjeant shall do and perform the duties prescribed by the keeper or superintendant, or, in his absence, the next officer who shall have charge of the institution.(w)

Officers of penitentiary classed. Duties of first;

Second;

And third, assistant keeper.

Of turnkey and serjeant.

44. THE serjeant shall take charge of the public guard, whilst stationed at the penitentiary, in such manner as he may, from time to time, be directed by the officer having charge of the institution for the time being.(x)

Serjeant to take charge of public guard stationed at penitentiary.

Under whose direction.

45. THE duties of all and singular the officers of the penitentiary, shall be prescribed by the keeper or superintendant.(y)

Keeper to prescribe duties of officers.

46. It shall be the duty of the directors of the penitentiary, to cause the house, intended for the residence of the keeper of the penitentiary, and connected with the principal building, to be put in good tenantable repair; and, if the keeper, thereafter, shall fail to reside thereat, then, during such failure, he shall receive compensation at the rate of twelve hundred dollars per annum only.(z)

House of residence of keeper to be repaired.

Reduction of his salary, if he fail to reside in it.

47. THE rules, regulations and orders, adopted by the board of directors, shall be hung up in at least six of the most conspicuous places of the said jail and penitentiary-house; and, if the said keeper, or either of his assistants or deputies shall obstruct or resist the said directors, or any of them, in the exercise of the duties or powers vested in them by this act, such person shall forfeit and pay the sum of sixty dollars, to be recovered by action of debt, the one half to the use of the person suing, the other half to be paid to the treasurer of this Commonwealth for the use and benefit of the literary fund, and shall moreover be liable to be removed from office in manner aforesaid.(a)

Regulations to be hung up in at least six places in the jail.

Penalty on keeper &c. obstructing directors in exercise of their duties and powers.

How recoverable and appropriated.

Offender moreover removable from office.

48. THE said keeper of the jail, his deputies and assistants, in case any of the said offenders shall escape from confinement without the knowledge or consent of the said keeper, his de-

Penalty on keeper &c. for escape taking place without his knowledge or consent.

(v) 1796, c. 2, § 37; edi. 1803 and 1814, c. 200, § 37.

(w) 1816, c. 13, § 4.

(x) *Ibid*, § 5.

(y) 1816, c. 13, § 6.

(z) 1816, c. 14, § 5.

(a) 1796, c. 2, § 40; edi. 1803, and 1814, c. 200, § 40.

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How recoverable
and appropriated.
Proviso.

Keeper to take
receipts from sell-
ing agent, and de-
liver them to au-
ditor; and when.

Such agent to set-
tle with auditor
quarter-yearly.

Vouchers requir-
ed.

Balances to be
paid into treasury
forthwith.

Proceeding against
him for default.

Motion for judg-
ment, when and
where.
Notice.

Judgment.

Interest on sum
recovered.

Keeper to deliver
annually to auditor
inventories of ma-
nufactured articles
and raw materials.

What shall be sta-
ted therein.

Auditor to ascer-
tain balance for or
against institution.
Rule for so doing.

puties or assistants, shall forfeit and pay the sum of thirty dollars, to be recovered and applied in manner aforesaid; *Provided*, That nothing in this act contained shall be deemed or taken to extend to escapes voluntarily suffered by the keeper of the said jail.(b)

49. 'For all articles delivered to the agent for sale, the keeper of the penitentiary shall take plain receipts; and, at least once in every month, he shall deliver the receipts so taken, to the auditor of public accounts.'

50. 'It shall be the duty of such agent, quarter yearly, that is to say, on or before the first day of January, April, July, and October, in each year, to make settlements with the auditor, for all his receipts and disbursements; and, on such settlements, he shall be allowed no credits, which are not supported by written and satisfactory vouchers. Whatever balance of money may be in the hands of the agent, on any such settlement, he shall forthwith pay into the treasury.'

51. 'If any agent shall fail to make any settlement hereby required, or to pay into the treasury any money in his hands, on such settlement, it shall be the duty of the auditor to move for a judgment against him, at the next term of the general court; and it shall be the duty of such court, if reasonable notice of such motion shall have been given to the agent, and he shall not appear and shew good cause to the contrary, to render judgment against him for the whole amount appearing to be in his hands, on such settlement, and not paid into the treasury, and for the whole amount of his receipts, for which he shall have failed to settle, together with the costs of the motion, and interest not exceeding ten *per centum per annum*, on the sum recovered, from the time when such settlement should have been made, or such money paid into the treasury until the judgment shall be discharged.'

52. 'It shall be the duty of the keeper of the penitentiary, annually, on or before the fifteenth day of October, to deliver to the auditor of public accounts, an inventory of all articles of manufacture and raw materials on hand on the last day of September next preceding; stating particularly the market prices of the manufactured articles; the cost of the raw materials: and what part of such raw materials was purchased within the year next preceding the said last day of September. The auditor shall then ascertain the balance, for or against the institution for such year, by debiting the institution with all expenditures, on account thereof, within that year; including all monies paid for raw materials; for the transportation, maintenance and cloathing of the prisoners; for allowances to prisoners on their discharge; for agent's commissions, and other expenses incident to sales; for officers' and surgeon's salaries, deducting from the surgeon's salary allowed by law, one half thereof; and for all other incidental expenses; debiting, moreover, to the institution all articles of manufacture and raw materials on hand upon the last day of September in the year next before; and crediting the said institution by the gross amount of sales, by all raw materials

on hand, at first cost, and by all manufactured articles on hand, deducting ten *per centum* from their market price.'

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53. If the balance, thus ascertained, be in favour of the institution, that balance shall constitute the fund for the payment of all allowances charged by law on the profits of the institution. If such balance be insufficient to pay such allowances, they shall abate in proportion to their sums respectively: *Provided, however*, That one half the *maximum* of such allowances shall be paid out of the proceeds of sales, whether the profits of the institution be sufficient for that purpose or not; and that this rule shall govern as well for the next preceding year as for all subsequent years: And *provided*, also, That if this balance should be against the institution, or the balance in its favour should be insufficient to pay the compensation of three dollars per day to each director of the institution, for every day's actual service, which he may have performed in discharging his duties to the institution, then such compensation to the directors shall nevertheless be paid out of the treasury of this Commonwealth, by warrant from the auditor of public accounts.'

Balance in its favour, to be the fund for paying allowances charged on nett profits. Provision in case such balance be insufficient. Proviso, directing payment, of half the *maximum* of such allowances; and for what years. Farther proviso, in favour of directors.

54. If any such offender sentenced to hard labour shall escape, he or she shall, on conviction thereof, suffer such additional confinement and hard labour, agreeably to the directions of this act, and shall also suffer such additional corporal punishment, not extending to life or limb, as the court shall adjudge and direct.(c)

Punishment of prisoners for escapes.

55. The trial of prisoners escaping from the penitentiary, shall in future be had for such escape, before the superior court of law for Henrico county; and prisoners so escaping, shall remain in the penitentiary, and be treated as other convicts, after their apprehension, until such trial shall take place; upon which trials, the copies of the records, transmitted to the keeper of the penitentiary, relative to the former trials of such prisoners, shall be produced and filed of record in the said superior court of law.(d)

Trial for such offences, where. Copies of records of former trials to be produced and filed in court.

56. If any person or persons, convicted of any offence, and confined therefor in the public jail and penitentiary of this State, shall openly rebel, with intent to kill or wound the keeper thereof, or any turnkey, or other person having lawful authority in the government, or with intent by open violence to escape therefrom; he or they so offending shall be deemed guilty of felony and shall suffer death by hanging. And if any three or more of such persons shall conspire together, for the purpose of committing such offence, such persons shall be deemed guilty of a high misdemeanor; and, upon conviction thereof, shall be sentenced to undergo a farther confinement in the said jail and penitentiary, for a term not less than two nor more than five years, to commence at the expiration of the terms of time, respectively, for which said persons were under sentence of confinement when such offence shall have been committed, if such terms be not expired when judgment is pronounced;

Open rebellion, with intent to kill or wound keeper &c., or to escape, felony punishable by death.

Conspiring to commit such offence, a high misdemeanor, punishable by farther imprisonment.

(c) 1796, c. 2, § 42; edi. 1803, and 1814, c. 200, § 42.

(d) 1803, c. 117, § 3; edi. 1808, c. 41, § 3; 1807, c. 4, § 9; edi. 1808, c. 121, § 9.

A. D. 1819.
A. R. C. 43.

Proviso, as to solitary confinement.

Judge of Henrico circuit court to appoint special session, for trial of such offenders.

Warrant to the clerk.

His duty on receiving it.

Sheriff's duty.

Grand jury and venire.

Warrant to keeper to bring offender,

and witnesses, for or against him.

Powers of such special court.

Such trials may take place at any stated term.

Examining court not requisite.

Guard stationed at jail, subject to orders of keeper.

Penalty for introducing into the jail spirituous or fermented liquors.

Provided, nevertheless, That the confinement in the solitary cells, which shall be ascertained by such judgment, may be inflicted at such intervals of time, even before the expiration of such previous terms of confinement, as to the Executive may seem proper.(e)

57. IN vacation, the judge of the general court assigned to the circuit of which the county of Henrico shall be a part, upon complaint made to him in writing, verified by oath, that any of the aforesaid offences have been committed by any such person or persons as aforesaid, shall appoint a special session of the superior court of law for such county, to be holden at such place, as the ordinary superior courts of law for the said county are usually holden, for the trial of such offence or offences; and, in such case, the said judge shall issue his warrant under his hand and seal, directed to the clerk of the superior court of law for the said county, who shall thereupon give notice to the attorney general for the Commonwealth, the other officers of said court, and cause information thereof to be given to the party or parties charged, and shall issue all necessary process, returnable to such special session; which process the sheriff of the said county shall be bound to execute; as also to summon a grand jury and venire to attend said special court, under the same limitations and restrictions, as in the case of a regular court in course.(f)

58. To bring the person or persons, charged with any of the said offences, before the said court for trial, the judge shall issue his warrant, under his hand and seal, to the keeper of the jail and penitentiary, directing him to bring such person or persons before the said court, as well as any other person or persons confined therein, who may be witnesses either for the Commonwealth, or for the party charged, which warrant the said keeper shall obey.(g)

59. SUCH special court shall have all the powers and authority, in relation to such trials, which a stated court now hath, or may have, in relation to other criminal trials.(h)

60. THE superior court of law for the county of Henrico, at any stated term, shall have the same authority to hear and determine such offences, and the same power to bring the offenders and witnesses into court, as is given to the special court hereby authorised; and the same persons shall be competent witnesses in each court.(i)

61. FOR the purpose of bringing such offenders to trial, no examining court shall be had.(k)

62. THE guard stationed at the jail and penitentiary, whilst there, shall be subject to the orders and controul of the keeper of the same, in the same manner as if he was the commander thereof.(l)

63. IF the jailor or any other person, shall introduce into, or give away, barter, or sell, within the said jail, any spirituous or fermented liquors, except only such as the said keeper shall make use of in his own family, or such as may be required for

(e) 1814, c. 29, § 1.

(f) *Ibid.*, § 2.

(g) *Ibid.*, § 3.

(h) *Ibid.*, § 4.

(i) 1814, c. 29, § 5.

(k) *Ibid.*, § 6.

(l) *Ibid.*, § 7.

any prisoner in a state of ill health, and for such purpose prescribed by an attending physician, and delivered into the hands of such physician, or other person appointed to receive them, such person shall forfeit and pay the sum of twenty dollars, one moiety thereof to the use of the person suing, the other moiety to the Commonwealth for the use of the literary fund.(m)

A. D. 1819.
A. R. C. 43.

Exceptions.

How appropriated.

64. WHEN any convict shall hereafter be condemned to confinement in the penitentiary, for a term not longer than one year, the estate of such convict, if any he hath, both real and personal, shall, by the court of the county in which the property lies, be committed to the care and management of some person, to be fixed on by the said court, who shall be a trustee for the convict, until his discharge from confinement. The trustee so to be appointed, shall give bond and security to be approved by the court, for taking care of the estate to him committed, and for its re-delivery to the convict on his application, after being discharged from confinement. He shall annually render to the court, by whom he shall be appointed, a true account of all necessary disbursements and expenditures, by him made out of the said estate; and shall stand in every respect, in the same situation as an administrator. He shall be liable to the action or actions of each and all the creditors of the convict, who may think proper to sue for debts, justly due them. He shall be compelled to pay the same, as far as the said estate will go, enjoying the privilege of an administrator, as to the preference of his own debt if any be due him; and shall possess the power of receiving and recovering by action, when necessary, any debt which may be due the said convict. The said trustee shall allow a sufficient maintenance, out of the estate of the convict to him committed, for the wife and family of such convict, if any he hath: and, in every case, the wife shall be entitled to the same proportion of the estate of the convict, as if he had died intestate. The said trustee shall annually retain in his own hands, such compensation, out of the estate of the convict, as the court who appointed him, shall deem reasonable and competent to his services.(n)

Trustee, of convict's estate, when and by whom appointed.

To give bond and security.

To render accounts to court, annually.

To stand in situation of an administrator.

His liabilities,

privilege,

and powers, as such.

Maintenance of convict's wife and family.

Wife's proportion of estate.

Trustee's compensation.

65. ALL acts and parts of acts, coming within the purview of this act, shall be, and are hereby repealed: *Provided, however*, that nothing in this act contained shall be construed to repeal any act heretofore made, for so much thereof as may relate to any offence committed or done before the commencement of this act.

Repealing clause. Proviso.

66. THIS act shall commence and be in force from and after the first day of January, eighteen hundred and twenty; except so much thereof, as relates to the manner of settling the agent's accounts, and to his duties and liabilities; and so much thereof, as relates to the manner of ascertaining and settling the accounts of the institution, and the payment of allowances charged upon the profits thereof; and so much of this act, as relates to the subjects aforesaid, shall commence and be in force, from and after the passing thereof.

Commencement.

(m) 1796, c. 2, § 43; edi. 1803, and '14, c. 200, § 43.

(n) 1802, c. 16, § 1; edi. 1808, c. 21, § 1.

C. 172.

*An act concerning the Benefit of Clergy.**

A. D. 1789.

A. R. C. 14.

[Passed November 27, 1789.]

Benefit of clergy,
in what cases not
allowable to prin-
cipals in first de-
gree.

1. *Be it enacted and declared by the General Assembly, That the benefit of clergy shall not be allowed to principals in the first degree; first, in murder; secondly, or in burglary; thirdly, or in arson at common law; fourthly, or for the wilful burning of any court-house, or county or public prison, or of the office of the clerk of any court within this Commonwealth; fifthly, or for the felonious taking of any goods or chattels, out of any church, chapel or meeting-house belonging thereto; sixthly, or for the robbing of any person or persons in their dwelling-houses or dwelling-place, the owner or dweller in the same house or dwelling-place, his wife, his children or servants then being within, and put in fear and dread by the same; seventhly, or for the robbing of any person or persons in or near about any highway; eighthly, or for the felonious stealing of any horse, gelding or mare; ninthly, or for the felonious breaking of any dwelling-house by day, and taking away of any goods or chattels, being in any dwelling-house, the owner or any person being therein and put in fear.*

In second degree.

2. *The benefit of clergy shall not be allowed to principals in the second degree in any of the cases above-mentioned.*

In what offences,
not allowed to ac-
cessaries before
fact.

3. *It shall not be allowed to accessaries before the fact, first, in murder; secondly, or burglary; thirdly, or arson at common law; fourthly, or for the wilful burning of any court-house, or county or public prison, or of the office of the clerk of any court within this Commonwealth; fifthly, or for the robbing of any person or persons in their dwelling-houses or dwelling-places, the owner or dweller in the same dwelling-house or dwelling-place, his wife, his children or servants then being within, and put in fear and dread by the same; sixthly, or for the robbing of any person or persons in or near about any highway.*

When allowed, un-
less expressly tak-
en away by act of
assembly.

4. *It shall be allowed to principals and accessaries, in all offences which would otherwise be without clergy, whether the same be newly created by any act of the general assembly, or exist under the common law, unless it be taken away by the express words of some act of assembly.*

How often.

5. *It shall not be allowed to any person more than once, except in the following case, that is to say: Whensoever any person shall have been admitted to the benefit of clergy, such admission shall not operate as a pardon or discharge for other offences of a clergyable nature, committed by him before that admission to the benefit of clergy, but he shall be again allowed the benefit of clergy for every other offence of a clergyable nature committed by him before that admission to the benefit*

* 1789, c. 22; 1792, edi. 1794, 1803 and '14, c. 47. On the establishment of the penitentiary system, the benefit of clergy was abolished in respect to free persons: this act is now only applicable to slaves.

of clergy, and shall be burned in the hand for every such offence.

A. D. 1789.
A. R. C. 14.

6. BUT, if any person, who shall have been once admitted to the benefit of clergy, shall, before that admission, have committed any offence, in which the benefit of clergy is not allowed by law, or shall, after that admission, commit any offence in which the benefit of clergy is even allowed by law, he shall suffer death without the benefit of clergy.

7. A FEMALE shall, in all cases, receive the same judgment, and stand in the same condition, with respect to the benefit of clergy, as a male.

Females entitled to it, in like manner as males.

8. A SLAVE shall in all cases receive the same judgment, and stand in the same condition, with respect to the benefit of clergy, as a free negro or mulatto.

And slaves, as free negroes or mulattoes.

9. NOTHING in this act contained, shall be construed to take away the benefit of clergy from any offence in which it is now allowed by any act of the General Assembly, or to allow it in any offence from which it is now expressly taken away by any act of the General Assembly.

Not taken away by this act when expressly allowed by any other, or allowed when expressly taken away.

C. 178.

An act to reduce into one the several acts for the safe-keeping of prisoners committed, under the authority of the United States, into any of the jails of this Commonwealth.

A. D. 1819.
A. R. C. 43.

[Passed January 30, 1819.]

1. *Be it enacted by the General Assembly*, That it shall be the duty of the keeper of the jail in every county or corporation within this Commonwealth, to receive into his custody, any prisoner or prisoners, who may be, from time to time, committed to his charge, under the authority of the United States, and to safe keep every such prisoner or prisoners, according to the warrant or precept of commitment, until he shall be discharged by the due course of the laws of the United States: *Provided, however*, That no debtor or other person arrested on mesne process, or under execution by the marshal of the district of Virginia, or any of his deputies, shall be conveyed to any other jail than that of the corporation or county within which such debtor or other person may reside.(a)

Keepers of county or corporation jails to receive & keep prisoners under authority of United States.

2. THE keeper of every jail aforesaid shall be subject to the same pains and penalties for any neglect or failure of duty herein, as he would be subject to, by the laws of this Commonwealth, for a like neglect or failure, in the case of a prisoner committed under the authority of the said laws.(b)

Proviso. To what jails only, debtors may be conveyed by the federal officer.

Penalties on jailors for neglect of duties imposed by this act.

(a) Compiled of 1789, c. 4, § 1; 1792, edi. 1794, 1803, and '14, c. 41, § 1; and 1795, c. 3, § 1; edi. 1803, and '14, c. 184, § 1.

(b) 1789, c. 4, § 2; 1792, edi. 1794, 1803; and '14, c. 41, § 2.

A. D. 1819.

A. R. C. 43.

United States to
pay 50 cents per
month for use of
jail ;

Also to support
prisoners commit-
ted for offences.

Repealing clause.
Proviso.

3. *PROVIDED, always,* That the United States do pay, or cause to be paid, for the use and keeping of such jails, at the rate of fifty cents per month for each prisoner, that shall under their authority be committed thereto, during the time such prisoner shall be therein confined; and moreover, do support such of the said prisoners, as shall be committed for offences.(c)

4. ALL acts and parts of acts, coming within the purview of this act, are hereby repealed: *Provided, however,* That every right or remedy, fine, penalty, forfeiture and proceeding, heretofore accrued, incurred or commenced, shall be, and remain as if this act had not been passed.

(c) 1789, c. 4, § 3; 1792, *edi.* 1794, 1803, and '14, c. 41, § 3.

END OF THE FIRST VOLUME.

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