

N.J.S.A. 2A:113-5

March 29, 1974

LEGISLATIVE NOTES ON N.J.S.A. 2A:113-5 (Manslaughter)

Copy 1

Source: L.1898, chap.235 - §109 - S147
Committee on Judiciary.
No statement on bill.
No hearings or reports located.

L.1908 - chap.300 - §1 - S218
Committee on Revision of Laws.
No statement on bill.
No hearings or reports located.

L.1937 - R.S.2:138-5 - chap.188.
(Complete codification of criminal and penal laws.)

L.1951 - chap.344 - N.J.S.A.2A:113-5
(Complete revision of Title 2, becoming Title 2A.)

In 1898, part of the statutory penalty for manslaughter read, "ten years hard labor..."

In 1908, the phrase "or otherwise" was added. The text then read, "ten years hard labor or otherwise..."

In 1937, the same text was retained.

In 1951, both the "hard labor" and "otherwise" phrases were deleted, the sentencing then became "ten years imprisonment."

No hearings or reports were located.

N.J.S.A. 2A:152-14

December 17, 1974

LEGISLATIVE HISTORY OF R.S. 2A:152-14
(Informers exempt from prosecution in certain cases)

COPY 1

L. 1907, c. 136, p. 362 - S206

Hinchliffe.

Referred to Committee on the Judiciary.

The bill, S206, as it appears in the bound volume of the Senate bills for 1907 does not contain the exact same text as the text of the law in L. 1907, c. 136. It is inferred that the bill was amended during passage. The official copy reprint(s), however, is not bound in the volume of bound bills.

No statement on bill.

Copy of bill enclosed.

No hearings or reports were located.

L. 1937, c. 188, R.S. 2:178-10

This is the section of the 1937 revision which incorporates substantially L. 1907, c. 136.

There are minor changes in the wording of the revision.

L. 1951, c. 344, N.J.S.A. 2A:152-14

This was a general revision of R.S. Title 2.

The Revision of Titles 2 and 3 and Sections of Other Titles of the Revised Statutes of New Jersey, Tentative Draft, Part I, Title 2A-Chapters 1 to 215, and New Jersey Criminal Law Revision Commission Study Draft of a New Penal Code for New Jersey did not yield any information on N.J.S.A. 2A:152-14.

The section was substantially adopted from R.S. 2:178-10.

The wording or phraseology is significantly revised, however.

PR 187
NEW JERSEY

87

18 W

JRM/PC

SENATE, No. 206

STATE OF NEW JERSEY.

INTRODUCED MARCH 5, 1907.

By Mr. HINCHLIFFE.

Referred to Committee on Judiciary.

A SUPPLEMENT to an act entitled "An act for the punishment of crimes (Revision of 1898)."

1 BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1 1. Whoever shall hereafter give any information to anyone in authority or shall
2 in any other way aid the authorities in the arrest and prosecution of the parties im-
3 plicated in any murder or any injury or damage to person or property that may re-
4 sult from the use of dynamite or any other explosive, by any person or persons, with
5 intent to kill or injure, shall be exempt from any prosecution or punishment.

1 2. This act shall take effect immediately.

PROPERTY RECEIVED

RES 2A : 113 - 8

April 21, 1971

APR 12 1971

LEGISLATIVE HISTORY OF R.S.2A:113-8
(Advocating or threatening to take life)
Division of State Library
Archives and History
Trenton, N. J.

Copy 3

L.1908 - chap.45 (Copy enclosed)

Compiled Statutes p.1782: Wording identical to Laws 1908, chapter 45.

1937 Revision: 2:138-8 (copy enclosed)

Changed wording from 1908 law. Wording of all three drafts of this revision remained the same. There were no revisors notes.

1950 Revision of Title 2
2:138-8 became 2A:138-8. Wording changed (copy enclosed). There were no revisors notes or comments.

NJ N.J. Advisory Commission on Revision
KA6.2 of the Statutes.
2 Suggested changes to the Tentative
1951a drafts of the revisions of Titles 2 and 3

No changes suggested for 2A:138-8

L.1951 - First special session - Chapter 344.
Adopted Revision Titles of 2 and 3 to Titles 2A and 3A
No statement on the bill.
2:138-8 became 2A:113-8 Wording changed slightly from draft of revision.
We can locate no comment on this slight change from the revision.

For discussion of section see also:

N.J. Judicial Conference Proceedings... 1951
pp. 101-103 [enclosed]

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Enclosure

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inted), the members and officers
legislature of this State, and the
and United States Senators,
pective terms of office, shall pass
ge on all railroads now or here-
tate.
effect immediately.
08.

CHAPTER 45.

A Further Supplement to an act entitled "An act for the
punishment of crimes (Revision of 1898)," approved
June fourteenth, one thousand eight hundred and
ninety-eight.

BE IT ENACTED *by the Senate and General Assembly
of the State of New Jersey:*

CHAPTER 44.

to an act entitled "An act rela-
and management of the insane
owned by the State of New Jer-
h eleventh, one thousand eight
hree, which supplement was ap-
one thousand nine hundred and

*the Senate and General Assembly
New Jersey:*
appropriated for the maintenance of
insane, and for the State Home
me for Girls and the Home for
at Vineland, in this State, in
acts, shall be available monthly
bills of said insane asylums or

of act inconsistent with the pro-
hereby repealed.
effect immediately.
908.

1. Any person who shall, in public or private, ad-
vocate, by speech, writing, printing, drawing, or by any
other method, the death of any person, or who shall, in
public or private, by speech, writing, printing, drawing,
or by any other method, threaten to take or to procure
the taking of the life of any person, shall be guilty of
a high misdemeanor, and punished by imprisonment at
hard labor for a term of not exceeding fifteen years or
by a fine not exceeding five thousand dollars, or both,
at the discretion of the court.

Penalty for
threatening
to take life.

2. Nothing herein contained shall be construed to
repeal or limit any of the provisions of an act entitled
"A supplement to an act entitled 'An act for the punish-
ment of crimes (Revision of 1898),' approved June
fourteenth, one thousand eight hundred and ninety-
eight," which said supplement was approved April third,
one thousand nine hundred and two.

Construction
of act.

3. This act shall take effect immediately.
Approved April 1, 1908.

Revision of 1937 - 1934 Draft

2:138-1

ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE

2:138-1

imposed upon a conviction of murder in the second degree.

Source: L. 1898, c. 235, §107, p. 824 [C. S. p. 1780, §107], as am. by L. 1917, c. 238, §1, p. 801 [1924 Suppl. §52-107].

2:138-1. Murder; punishment. Every person convicted of murder in the first degree, his aiders, abettors, counselors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.

Every person convicted of murder in the second degree shall suffer imprisonment at hard labor not exceeding thirty years.

Source: L. 1898, c. 235, §108, p. 825 [C. S. p. 1781, §108], as am. by L. 1916, c. 270, §1, p. 576, L. 1919, c. 134, §1, p. 303 [1924 Suppl. §52-108].

2:138-5. Manslaughter. Any person who shall commit the crime of manslaughter shall be punished by fine not exceeding one thousand dollars, or imprisonment at hard labor or otherwise not exceeding ten years, or both.

Source: L. 1898, c. 235, §109, p. 825, as am. by L. 1908, c. 300, §1, p. 609 [C. S. p. 1781, §109].

2:138-6. Killing by misadventure; self-defense or defense of others. Any person who shall kill another by misadventure, or in his or her own

defense, or in the defense of himself, his wife, parent, child, brother, sister, maiden, mistress or servant, or who shall kill any person attempting to commit arson, burglary, larceny, rape, robbery or seduction, shall be acquitted and totally acquitted and discharged.

Source: L. 1898, c. 235, §110, p. 825 [C. S. p. 1781, §110].

2:138-7. Attempts to kill by poisoning. All willful poisoning of any person that shall be done, or attempted to be done, with intent to kill, although death shall not ensue therefrom, shall be a high misdemeanor, and punished by fine not exceeding one thousand dollars, or imprisonment at hard labor not exceeding fifteen years, or both.

Source: L. 1898, c. 235, §111, p. 825 [C. S. p. 1782, §111].

2:138-8. Advocating or threatening to take life. Any person who shall, in public or private, by speech, writing, printing or drawing, or by any other method:

a. Advocate the death of any person; or

b. Threaten to take or procure the taking of the life of any person—

shall be guilty of a high misdemeanor, and punished by fine not exceeding five thousand dollars, or imprisonment at hard labor not exceeding fifteen years, or both.

Source: L. 1908, c. 45, §1, p. 63 [C. S. p. 1782, §111a], suppl. to L. 1898, c. 235, p. 794.

Chapter 139. INCEST.

Section

2:139-1. Incest.

2:139-1. Incest. Persons who shall intermarry within the degrees prohibited by law, or who, being related within such degrees, shall together commit fornication or adultery, shall be guilty of incest, and punished by fine not exceeding one thousand dollars, or imprisonment at hard labor not exceeding five years, or both.

Source: L. 1898, c. 235, §45, p. 807 [C. S. p. 1760, §45].

2:139-2. Incestuous conduct between parent and child. Every parent who shall be guilty of incest, fornication, adultery or open lewdness with, or any

Section

2:139-2. Incestuous conduct between parent and child.

act of indecency towards, or tending to debauch the morals and manners of any child or children of such parent, or who shall make any infamous proposal to any child or children of his own flesh and blood, with intent to commit adultery or fornication with such child, shall be guilty of a high misdemeanor, and punished by fine not exceeding one thousand dollars, or imprisonment at hard labor not exceeding fifteen years, or both.

Source: L. 1898, c. 235, §46, p. 807 [C. S. p. 1760, §46].

Chapter 140. INDECENCY AND OBSCENITY.

Section

2:140-1. Lewdness or indecency.

2:140-2. Uttering or exposing obscene literature or pictures.

2:140-3. Causing indecencies in publication.

2:140-1. Lewdness or indecency. Any person who shall be guilty of open lewdness, or any notorious act of public indecency, grossly scandalous and tending to debauch the morals and manners of the people, or who shall in private be guilty of any act of lewdness or carnal indecency with another, grossly scandalous and tending to debauch the morals and manners of the people, shall be guilty of a misdemeanor.

Source: L. 1898, c. 235, §51, p. 808, as am. by L. 1906, c. 71, §1, p. 101 [C. S. p. 1762, §51].

Section

2:140-4. Indecent communications to female.

2:140-5. Exposing to view body of one who has suffered death penalty; exceptions.

2:140-2. Uttering or exposing obscene literature or pictures. Any person who, without just cause, shall utter or expose to the view of another, or have in his possession with intent to utter or expose to the view of another, or to sell the same, any obscene or indecent book, pamphlet, picture or other representation, however made, or who shall in any way advertise, or aid in advertising the same, or shall in any manner give or cause to be given, or aid in giving any information how or

murder, and if, upon arraignment, such plea should be offered, it shall be disregarded, and the plea of not guilty entered, and a jury, duly impaneled, shall try the case in manner aforesaid.

Nothing herein contained shall prevent the accused from pleading non vult or nolo contendere to such indictment; the sentence to be imposed, if such plea be accepted, shall be either imprisonment at hard labor for life or the same as that imposed upon a conviction of murder in the second degree.

Source. R. S. 2:138-3.

2A:138-4. Murder; punishment. Every person convicted of murder in the first degree, his aiders, abettors, counselors and procurers, shall suffer death, if the jury unanimously agrees upon such penalty, in which case the verdict shall be "guilty of murder in the first degree". The jury may by its verdict and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case the verdict shall be "guilty of murder in the first degree with a recommendation of imprisonment at hard labor for life", and upon such recommendation, this and no greater punishment shall be imposed.

Every person convicted of murder in the second degree shall suffer imprisonment at hard labor not exceeding 30 years.

Source. R. S. 2:138-4.

Note of Reporter. This is a revision of language rather than an actual amendment. Its design is to make clear that the verdict and all of its parts must be unanimous. (See *State v. Bunk*, 4 N. J. 461.)

2A:138-5. Manslaughter. Any person who shall commit the crime of manslaughter shall be guilty of a high misdemeanor and be punished by fine not exceeding \$10,000, or imprisonment at hard labor or otherwise not exceeding 10 years, or both.

Source. R. S. 2:138-5.

2A:138-6. Killing by misadventure; self-defense or defense of others. Any person who shall kill another by misadventure, or in his or her own

defense, or in the defense of his or her husband, wife, parent, child, brother, sister, master, mistress or servant, or who shall kill any person attempting to commit arson, burglary, murder, rape, robbery or sodomy, shall be guiltless and totally acquitted and discharged.

Source. R. S. 2:138-6.

2A:138-7. Attempts to kill by poisoning. All willful poisoning of any person that shall be done, or attempted to be done, with intent to kill, although death shall not ensue therefrom, shall be a high misdemeanor, and punished by fine not exceeding \$10,000, or imprisonment at hard labor not exceeding 15 years, or both.

Source. R. S. 2:138-7.

2A:138-8. Advocating or threatening to take life. Any person who shall, in public or private, by speech, writing, printing or drawing, or by any other method:

a. Advocate the homicidal death of any person; or

b. Threaten to take or procure the taking of the life of any person—

shall be guilty of a high misdemeanor, and punished by fine not exceeding \$5,000, or imprisonment at hard labor not exceeding 15 years, or both.

Source. R. S. 2:138-8.

Note of Reporter. In *State v. Gibbs*, 134 N. J. L. 366, the supreme court said that "a" meant homicidal death.

2A:138-9. Killing by driving vehicle carelessly and heedlessly; judgment or conviction not evidence in action for damages. Any person who shall cause the death of another by driving any vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others shall be guilty of a misdemeanor; but it shall be unlawful to use or offer in evidence the record of any judgment or conviction obtained hereunder in any civil action brought to recover damages arising out of the accident in which such death occurred.

Source. R. S. 2:138-9.

Chapter 139. INCEST.

Section

2A:139-1. Incest.

2A:139-1. Incest. Persons who shall intermarry within the degrees prohibited by law, or who, being related within such degrees, shall together commit fornication or adultery, shall be guilty of incest, and punished by fine not exceeding \$1,000, or imprisonment at hard labor not exceeding 5 years, or both.

Source. R. S. 2:139-1.

2A:139-2. Incestuous conduct between parent and child. Every parent who shall be guilty of incest, fornication, adultery or open or private

Section

2A:139-2. Incestuous conduct between parent and child.

lewdness with, or any act of indecency towards, or tending to debauch the morals and manners of any child or children of such parent, or who shall make any infamous proposal to any child or children of his own flesh and blood, with intent to commit adultery or fornication with such child, shall be guilty of a high misdemeanor, and punished by fine not exceeding \$1,000, or imprisonment at hard labor not exceeding 15 years, or both.

Source. R. S. 2:139-2.

and a minimum fine of \$1,000 up to a maximum.

JUDGE FRANCIS: I don't think that we have been construing it that way in our County. We have been following "a year or," although we are entirely in sympathy with the sentiment that it ought to read \$1,000 fine or a year in jail or both.

MR. DIXON: My criticism is not directed to the vesting of discretion in the trial judges as to whether he should impose both, but inasmuch as it was the law for some forty years to impose both fine and imprisonment, a minimum of \$1,000 and a minimum of one year. And despite the fact that notwithstanding the provisions of the Act, there was some indication that there may have been a violation of the statute during that period of time. It would seem inadvisable to re-enact the statute now so as to eliminate completely any floor under the penalty that might be provided.

There has been an increase in the penalty that may be imposed as a monetary penalty, but there is no floor in the statute now so that the judge could impose a nominal fine with no imprisonment, which would seem to be contrary to the present tendency to stamp out organized gambling.

It would be my thought, therefore, that the Committee should not report this particular statute or this section of the statute without some floor as to the fine and imprisonment that might be imposed.

JUDGE FRANCIS: Chapter 136. (No comment.)

Chapter 138.

MR. AUERBACHER: In degrees of murder, I see the Committee

has enlarged the present language. In other words, murder in the first degree is not only the killing and the perpetration of these various offenses, but also cases in which death shall ensue from the perpetration.

Now, as I remember it in the case of State v. Bunk you held that the defendants would be acquitted if someone other than one of the defendants did the killing, and it seems to me that situation now is quite an abrupt change from what the law was before that. If there is a robbery in a tavern, for example, and one of the patrons takes a gun and shoots somebody during the affray, under this language those who committed the robbery or made the entrance--it says an attempt here-- would be held liable for first degree murder.

JUDGE FRANCIS: So they would, and that was the intention of the re-draft.

MR. AUERBACHER: If this is an enlargement I think the members of the Bar ought to understand that this is a considerable change from the existing language.

JUDGE FRANCIS: Well, depending upon whether or not I was right in the Bunk case, it may be there isn't any substantial change in the wording, but there is a separation of the clause, "which shall ensue," so that now it appears to make sense and would justify the submission of such a death as you indicate on the proximate cause theory which has been espoused in so many States. It is for the jury's determination.

MR. WEINTRAUB: May I comment that so far as I know at

least there is no case which has heretofore construed the "ensuing" clause. While under the statute as it presently exists one might suspect that an ensuing death, whatever it is, would be murder in the second degree, I don't understand that in the Bunk case the situation described by Mr. Auerbacher is regarded as falling in that situation at all. More recently I did urge a like contention in State v. Meyer, but the Court did not interpret that clause.

So while it is true that we did shift it so that clearly an ensuing death would be first degree, no one knows what an ensuing death really is, and I am not so sure that we have really accomplished much by the change.

JUDGE FRANCIS: I am more optimistic.

Chapter 139. (No comment.)

Chapter 140. (No comment.)

Chapter 143. (No comment.)

MR. HOLLERAN: 2A:145-1, page 255. I don't know whether or not it was intentionally done, but it makes any unlawful taking from a person a high misdemeanor. In the community where I come from, the City of Newark, being a Metropolitan area, you can find instances where a man might be taking up with a female, in a tavern or some such place, and the next morning he finds himself relieved of his pocketbook. I don't think, if you can show that the young lady might have taken it from his person, that there was ever any intention to make her guilty of a high misdemeanor. I think that the reasoning that your Honor advanced before might very probably get us into

Library References

Practice Series

Deed, see Walzer, 4A New Jersey Practice § 80.5 (4th ed.)
 Examination of officials' deeds, see Celentano, 13A New Jersey Practice § 31.29.
 Recital in a sheriff's deed, conveyances, see Celentano, 13 New Jersey Practice § 11.20.

Texts and Treatises

30 Am Jur 2d, Executions §§404, 407.

Notes of Decisions

Sheriff's deed 1 _____
 1. Sheriff's deed
 Showing judgment and execution is not requisite, when sheriff's deed is introduced to show the adverse party's title. Morehouse v. Cotheal, 22 N.J.L. 521 (1850).

2A:17-43. Amendments to cure variances considered made

Any court of this state in which the record or exemplification of any judgment or execution is offered in evidence in support of any deed or conveyance made by a sheriff or other officer pursuant to an execution directed to him, shall consider the judgment or execution as amended in any particulars as to which they could have been, by rules of law or practice, amended at any time by the court in which the judgment was rendered or out of which the execution was issued, and the judgment or execution shall have the same force and effect as if it had been so amended.

Historical and Statutory Notes

Source: R.S. 2:26-141.
 Rev.1877, p. 1043, § 8 [C.S. p. 4675, § 8].

2A:17-44. Reversal of judgment or execution; effect as to purchaser of real estate sold

If any judgment or execution, the execution having been recorded as required by law, by virtue whereof a sale shall be made of real estate, shall be reversed, such reversal shall only operate against the respondent on review, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the real estate so sold, and shall not be given in evidence, or be of any force or avail against any bona fide purchaser under such judgment or execution; but such purchaser, his heirs and assigns,

shall hold the real estate so bona fide purchased, notwithstanding such reversal, if it be after such purchase.

Historical and Statutory Notes

Source: R.S. 2:26-142.
 Rev.1877, p. 1044, § 10 [C.S. p. 4677, § 10].

American Law Reports

Execution sale as affected by modification of judgment, 32 ALR3d 1019.
 Right of purchaser at execution sale, upon failure of title, to reimbursement or restitution from judgment creditor, 33 ALR4th 1206.

Library References

Texts and Treatises

30 Am Jur 2d, Executions §§437-442.

2A:17-45. Sale by sheriff or coroner for time being of property levied upon but not sold; special order

Whenever any sheriff or coroner, or other person to whom any writ of execution is directed levies on the goods and chattels or on the real estate of the party named therein, and such sheriff, coroner or other person dies or becomes disabled by law to discharge the duties of his office or appointment, or removes himself out of the jurisdiction of the state, and continues to reside thereout, without discharging the duties of his office or appointment, by a sale of the property or estate so levied on, then, or in either of such cases, the court, in which judgment is or shall be had, may proceed in a summary manner to order the sheriff or coroner, for the time being, of the county where the levy was made, to sell the property or estate so levied on, or so much thereof as may be sufficient to satisfy the whole or the residue of the moneys due on such execution. Thereupon the sheriff or coroner shall make the sale, and shall be entitled to the same fees for services done, and liable to all the penalties and consequences of law for neglect of duty, all as if the execution had been originally directed to him.

Historical and Statutory Notes

Source: R.S. 2:26-143.
 Rev.1877, p. 1106, § 40 [C.S. p. 4850, § 40].

2:26-140. Variances between deed and execution or execution and judgment

The deed mentioned in section 2:26-138 of this title, shall be good and valid and received in evidence as such, notwithstanding any variance between the recitals in such deed and the execution or executions by virtue of which the real estate was sold, and notwithstanding any variance between such execution or executions and the judgment or judgments upon which the execution or executions were issued.

Historical Note

Source. Rev.1877, p. 1043, § 8 [C.S. p. 4675, § 8].

Notes of Decisions

1. Construction and application

The statute and supplement, P.L. 1869, p. 1238, now incorporated in this section, directing that the recitals in a deed given by a public officer shall be prima facie evidence of the truth of the facts recited, did not affect the title under the deed, but only changed the rule of evidence as to the manner of proving the facts required to constitute a valid sale, and applied where a deed given before the passage of the act was offered in evidence. *Campbell v. Dewick*, 20 N.J.Eq. 186.

The doctrine of variance between the judgment and the recital of it in a sheriff's deed applies as well to actions of tort as to those of contract. *Brookfield v. Morse*, 12 N.J.L. 331.

A variance between the recital of an execution in a sheriff's deed and the judgment on which it was issued was cured by Act of Nov. 28, 1831. *Arrow-smith v. Taylor*, 16 N.J.L. 532; *Newcomb v. Downam*, 13 N.J.L. 135.

In discussing the construction of the prior similar act of Nov. 28, 1831, the Supreme Court, in the case of *Arrow-smith v. Sayre*, 16 N.J.L. 532, said: "The only question is, whether or not the act of the 28th of November 1831, curing certain variances between the deed and execution, and the execution and judgment, can be fairly construed to cover the present case. My opinion is that it can and ought to be so construed. It will be recollected that the frequent difficulties growing out of these trifling variances, had become a source of general complaint: and the necessity for the adoption of the rule which rendered them fatal to

a sheriffs' deed, was a matter of general regret to the profession. The act in question was intended to correct the grievance, and protect purchasers in all such cases. There is no variance in this case, between the recital in the deed and the execution, but the execution varies materially from the judgment, still the words of the act are, that the deed shall be good "notwithstanding any variance between the said execution or executions, and the judgment or judgments, &c." This objection therefore is directly within the words and meaning of the act.

"But it may be alleged that the statute does not cure a variance between the deed and judgment. Nor does it in very words, but it does that which is tantamount to it; it cures a misrecital of the execution, in the deed, and a misrecital of the judgment, in the execution. Now, the judgment is never recited in the deed, except by way of reciting the execution. Suppose then, the judgment in this case had been correctly recited in the execution, but in reciting that part of the execution, in the deed, which sets out the amount of the judgment, it had been incorrectly stated; the variance would have been cured by the express terms of the act. Or in other words, the act would cure a variance between the deed and both the execution and the judgment as set out in that execution, but will not cure a variance between the deed and the judgment alone. This could never have been the intent of the legislature. The act in its nature is remedial; and it is our duty to give it such a construction, as will effect its intent, and advance the purposes of justice."

2:26-141. Amendments to cure variances considered made

Any court of this state in which the record or exemplification of any judgment or execution is offered in evidence in support of any deed or conveyance made by a sheriff or other officer pursuant to an execution directed to him, shall consider the judgment or execution as amended in any particulars as to which they could have been, by rules of law or practice, amended at any time by the court in which the judgment was rendered or out of which the execution was issued, and the judgment or execution shall have the same force and effect as if it had been so amended.

Historical Note

Source. Rev.1877, p. 1043, § 8 [C.S. p. 4675, § 8].

Notes of Decisions

1. Construction and application

Court would not determine whether sheriff's deed was improperly admitted on ground that recital in deed

varied from execution, in view of prior statute similar to this section. *Newcomb v. Dowam*, 13 N.J.L. 135.

2:26-142. Reversal of judgment or execution; effect as to purchaser of real estate sold

If any judgment or execution, the execution having been recorded as required by law, by virtue whereof a sale shall be made of real estate, shall be reversed for error, such reversal shall only operate against the respondent on review, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the real estate so sold, and shall not be given in evidence, or be of any force or avail against any bona fide purchaser under such judgment or execution; but such purchaser, his heirs and assigns, shall hold the real estate so bona fide purchased, notwithstanding such reversal, if it be after such purchase.

Historical Note

Source. Rev.1877, p. 1044, § 10 [C.S. p. 4677, § 10].

Notes of Decisions

1. Construction and application

A subsequent reversal of a judgment under which an execution sale was had does not divest the title of the ex-

ecution purchaser, unless he is plaintiff in execution. *Eisberg v. Shultz*, 38 N. J.Eq. 293; *Shultz v. Sanders*, 38 N.J. Eq. 154.

Lands sold clear of judgments, &c., on which executions have not issued.

R. S. 660, § 9.

Reversal of judgment or execution only to affect plaintiff in action.

Ib. § 10.

And not to operate against bona fide purchaser.

In case of death or disqualification of a sheriff after sale, his successor to make deed.

R. S. 660, §§ 11, 12. Amended.

On certificate from court of common pleas.

issued; and the said judgment or execution shall have the same force and effect as if it was amended accordingly.(a)

9. Whereas other judgments, and recognizances, besides those, or some of those, by virtue whereof the sale aforesaid was made, might affect the lands, tenements, hereditaments, and real estate so sold, if no provision be made to remedy the same; and whereas, the persons who have not taken, or will not take out executions upon their judgments, or recognizances, ought not to hinder or prevent such as do take out executions having the proper effect and fruits thereof—therefore be it enacted, that the purchaser, his heirs and assigns, shall hold the lands, tenements, hereditaments, and real estate by him or her purchased as aforesaid, free and clear of all other judgments and recognizances, whatsoever, on or by virtue of which no execution has been taken out and executed on the lands, tenements, hereditaments and real estate so purchased.(b)

10. If any judgment or execution (the said execution being recorded as required by the act respecting executions), by virtue whereof such sale as aforesaid shall be made of any lands, tenements, hereditaments and real estate, shall be reversed for error, such reversal shall only operate against the defendant in error, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the lands, tenements, hereditaments and real estate so sold as aforesaid, and shall not be given in evidence, or be of any force or avail against any bona fide purchaser under the said judgment or execution; but the said purchaser, his heirs and assigns, shall hold the said lands so bona fide purchased, notwithstanding such reversal, if it be after the said purchase.

11. If any sheriff or coroner who hath made or shall make sale of any lands, or real estate, by virtue of an execution against the same, shall abscond, or depart from the state, or be disqualified by law, or rendered unable by death, or be otherwise incapable to make a deed or conveyance for the same, it shall be lawful for any succeeding sheriff of the county, in which such lands or real estate are situate, on receiving a certificate from the court of common pleas of such county, signed by the clerk by order of the said court, setting forth that sufficient proof hath been made to the said court, that such sale was fairly and legally made, and on tender of the purchase money, or if the purchase money or any part of it has been paid, then on proof of such payment and on tender of the residue, if any there be, to sign, seal and deliver to the said purchaser or his legal representative, a deed or conveyance of the lands and real estate, so sold; which deed shall be as good and valid and shall have the same force and

(a) A sheriff has no estate or interest in lands levied upon and sold by him. He has a naked power to sell given by statute, and the validity of his deed depends upon the directions of the statute being complied with, and it must positively appear, either by recitals in the deed, or proof *aliunde*, that such directions as advertising, &c., have been complied with, *Den, Todd v. Philhower*, 4 Zab. 796, 804. A sheriff's deed as between the defendant and the purchaser, may be fairly considered as the defendant's own deed made by the sheriff as his legally constituted agent for that purpose, *Den v. Winans*, 2 Gr. 1. A variance between the recital of an execution, in a sheriff's deed and the judgment on which it was issued, is cured by the act of the 28th of November, 1831. *Den, Arrowsmith v. Taylor*, 1 Harr. 532. *Den v. Downam*, 1 Gr. 135. The statute and supplement (P. L. 1869, p. 1238), directing that the recitals in a deed given by a public officer shall be *prima facie* evidence of the truth of the facts recited, do not affect the title under the deed, but only change the rule of evidence as to the manner of proving the facts required to constitute a valid sale, and apply where a deed given before the passage of the act is offered in evidence, *Campbell v. Dewick*, 5 C. E. Gr. 186. A sheriff's deed may be admitted in evidence although it contains no recitals of advertisements, but the grantee must prove that due public notice was given, *Den v. Downam*, 1 Gr. 135. *Osborne v. Tunis*, 1 Dutch. 633, 662. *Den v. Thibault*, 1 Harr. 25, affirmed, Feb. 1838. A sheriff's deed takes full effect only from the time of delivery, and does not relate back to the time of sale, so as to sustain an intermediate sale and conveyance by the sheriff, of the lands therein mentioned, *Den v. Steelman*, 5 Hal. 193. A deed, executed and acknowledged by a sheriff in this state for lands sold by him under execution, may be delivered in another state, *Walker v. Hill*, 7 C. E. Gr. 513, affirming 6 C. E. Gr. 192. A refusal by the sheriff to deliver a deed to the purchaser at a sheriff's sale, when rightfully demanded, will not release the purchaser from his obligation to comply with his contract, if after such refusal the purchaser offer to accept the deed and upon a tender thereof he declines to receive it,

Ely v. Perrine, 1 Gr. Ch. 396. A defendant is not estopped by a sheriff's deed, from showing collusion between the sheriff and the purchaser, *Lot v. Thomas*, Pen. 407e, 412e. What defects in entering a judgment were formerly deemed sufficient to invalidate a sale, *Den, Pearson v. Hopkins*, Pen. 195, 203. The legal title of land is not affected by a sheriff's deed, where at the time of levy and sale the title was not in the defendant in execution, *Belford v. Crane*, 1 C. E. Gr. 265. (b) The word "executed" means "levied," *Den v. Young*, 7 Hal. 300. On a bill to foreclose a mortgage, it appeared that C., one of the defendants, recovered a judgment against K., the mortgagor, on the 23d of Jan. 1858, but took out no execution thereon until June 25th, 1862. Complainant's mortgage was recorded on the 26th of Dec., 1859, and in June, 1861, several other judgments were recovered against the mortgagor, on which executions were promptly taken out and levied on the mortgaged premises. On a dispute about the priority of these several encumbrances, *Held*, that C., by neglecting to issue an execution on his judgment until after executions had been issued on the junior judgments had lost his priority, not only over the younger judgments, but also over the complainant's mortgage, which was entitled to priority over the younger judgments, *Clement v. Kaighn*, 2 McCart. 47. The history of the legislation of this state regulating the priority of executions reviewed, *Ibid*. Although the statute in terms, relates merely to the title which a purchaser by virtue of a sheriff's sale under an execution at law shall acquire, yet the operation of it cannot be limited to the case of a sale under the junior judgment, where no execution has been sued out upon the senior judgment, and levied on the land, *Ibid*. The junior judgment creditor, by suing out and levying the first execution upon the land, acquires a priority of lien, which cannot be affected by any execution subsequently issued, nor by any mode in which the land may be sold. The issue of the execution upon the junior judgment, and its delivery, duly recorded, to the sheriff, destroys the priority which was enjoyed by the older judgment, and transfers it to the junior judgment, *Ibid*.

CHAPTER 15.

SALE, FOR PAYMENT OF DEBT'S.

- 1. Lands sold for debt.
- 2. Judgment to bind from entry.
- 3. Execution recorded, evidence.
- 4. Form of the writ.
- 5. Defendant may have land first sold.
- 6. Only two adjournments, unless consent.
- 7. Part of land may be sold.
- 8. Sheriff's deed for.
- 9. Sale, clear of what encumbrances.
- 10. Judgment reversed, purchaser not affected.
- 11. Sheriff's successor may make deed.
- 12. Pay over money.
- 13. Proprietary rights sold.
- 14. What judgment not to affect land.
- 15. Proceedings for order for sale.
- 16. When orphans' court to make order.
- 17. Report and confirmation of sale.
- 18. Deed, what to recite.
- 19. Of omissions and variances.
- 20. Proceeds of sale assets.
- 21. Personal estate first applied.
- 22. Bond, on order for sale.
- 23. Prosecution of, etc.
- 24. Removal of executors and administrators.
- 25. Sales of unlocated lands, etc.
- 26. How long lands liable.

REV. 430, 670,
794.
MAR. 51, 130,
368.
1837-8.
PAMPH. 30.
Lands sold
for debt.

An Act making lands liable to be sold for the payment of debts.

Revision.....Approved April 16, 1847.

Judgment binds from entry.

Execution to be recorded, and record evidence.

Form of the writ.

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That all lands, tenements, hereditaments, and real estate, shall be and hereby are made liable to be levied upon and sold by executions to be issued on judgments, which are or shall be obtained in any court of record of this state (except justices courts constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money and costs so recovered or to be recovered.
2. And be it enacted, That no judgment shall affect or bind any lands, tenements, hereditaments, or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court.
3. And be it enacted, That every writ of execution which shall be sued forth against lands, tenements, hereditaments, and real estate, shall, before it be delivered to the sheriff or other officer, be recorded in a book by the clerk of the court out of which the same was issued; and the record of such writ, so made, shall be as good evidence as the writ itself.
4. And be it enacted, That in every writ of execution, which shall be issued against lands, tenements, hereditaments, and real estate, the sheriff or other officer to whom the said writ may be directed, shall be commanded, that of the goods and chattels in his county, of the party against whom such execution issues, he cause to be made the debt, damages, and costs, or sum of money mentioned in the said execution; and if sufficient goods and chattels of the said party cannot be found in his county, that then he cause the whole or the residue, as the case may require, of the said debt, damages, and costs or sum of money, to be made of the lands,

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

5. And be it enacted, That in case a writ of fieri facias shall be issued against the goods and chattels, lands, tenements, hereditaments, and real estate of any person or persons, and such person or persons shall desire that the whole or a part of the said lands, tenements, hereditaments, and real estate, shall be sold before any of the said goods and chattels, and signify the same in writing, under his, her, or their hands, and deliver the same to the sheriff or other officer to whom the said writ of fieri facias shall be directed, within twenty days from the time of notice of said writ, and before the goods shall be sold, and enter into bond to the said sheriff or other officer, with good and sufficient sureties, that the goods and chattels levied on in virtue of the said writ, shall be forthcoming to answer the exigencies of said writ, at a day therein named, not exceeding three months from the date of said bond, then and in that case, it shall be the duty of the said sheriff or other officer to whom the said writ shall be directed, to suspend the sale of the said goods and chattels, and proceed to sell the said lands, tenements, hereditaments, and real estate, or such part thereof as the owner or owners thereof shall have desired to be sold as aforesaid, any thing contained in the fourth section of this act, the said writ of fieri facias, or any law to the contrary notwithstanding.
6. And be it enacted, That it shall be lawful for the said sheriff or other officer to make two adjournments, and no more, of the sale of lands, tenements, hereditaments, and real estate by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftener, or for a longer time, without permission in writing, previously obtained of the party at whose instance the said writ of execution was issued, he shall be and hereby is

Form, when against terre tenants, heirs or devisees.

How defendant may have lands first sold.

Two adjournments, only, allowed, unless by plaintiff's consent.

A FURTHER SUPPLEMENT to the act entitled "An act making lands liable to be sold for the payment of debts." passed the eighteenth February, seventeen hundred and ninety-nine.

Sheriff's deeds valid, notwithstanding variance between recital and execution,

Or variance between execution and judgment.

Record of judgment, or execution in evidence, may be considered as amended.

Deeds made by order of Orphans' Court, valid, notwithstanding variance between recital and order.

SEC. 1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That any deed or conveyance, heretofore made, or which may hereafter be made, by any Sheriff or other officer, for any lands, tenements, hereditaments or real estate, sold by virtue of any writ or writs of execution, issued or to be issued out of any of the courts of this State, by virtue of the act to which this is a supplement, shall be good and valid, and received in evidence as such by the said courts notwithstanding any variance between the recital in said deed, and the execution or executions by virtue of which the sale was made, and notwithstanding any variance between the said execution or executions, and the judgment or judgments upon which the said execution or executions were issued.

Sec. 2. And be it enacted, That it shall and may be lawful for any court in this State, in which the record or exemplification of any judgment or execution shall be offered in evidence in support of any deed or conveyance made by sheriff or other officer who may have sold any lands, tenements, hereditaments or real estate, by virtue of any writ or writs of execution issued as aforesaid, to consider the said judgment or execution as amended in any particulars in which the same might, by the rules of law and practice, have been at any time amended by the court in which the said judgment was rendered or out of which the said execution was issued, and the said judgment or execution shall have the same force and effect, as if it was amended accordingly.

Sec. 3. And be it enacted, That any deed or conveyance heretofore made, or which may hereafter be made, by any executor or executors, administrator or administrators, or surviving executor or executors, administrator or administrators for any lands, tenements, hereditaments or real estate, sold by virtue of any order of the Orphans' Court of any county in this State, by virtue of the acts to which this is a further supplement, shall be good and valid, and received in evidence as such in any court of this State, notwithstanding any variance in the recital in said deed of the order of such Orphans' Court, authorizing such sale, and the record of such order.

Passed November 28, 1831.

AN ACT to confirm the last will and testament of Joseph Holmes, late of the township of Upper Freehold, in the county of Monmouth, deceased.

Preamble.

WHEREAS, the said Joseph Holmes, being seized and possessed of considerable real and personal estate, in and by his last will and testament, in writing, signed and published in the presence of two subscribing witnesses, only, and bearing date the fifth day of May, in the year of our Lord one thousand eight hundred and thirteen, did give and dispose of all his said real and personal estate; AND WHEREAS, by reason of the informality in the execution of the said will, the same is valid only as to the disposition of the personal estate, and void as to the real estate, which would entirely defeat the intention of the testator, and produce manifest injustice to his children; AND WHEREAS, James Holmes, one of the devisees named in the will of the testator, in his life time, entered into the possession of the lands specifically devised to him, and held and enjoyed the same until his death; since which, the same hath been sold and applied to the payment of his debts; and as well the said James Holmes as the other children and devisees of the testator, were entirely satisfied with the said will, and intended to confirm the same; but the said James Holmes and Sarah Bruere, the wife of John H. Bruere, have died, leaving issue, infants of tender years: AND WHEREAS the surviving children and devisees of the said Joseph Holmes, and the natural guardians of the said infants, and the administrators of the deceased devisees and children of the said Joseph Holmes, as well as all others interested in the estate of the said Joseph Holmes and his deceased children and devisees, have united in praying that the Legislature would pass a law to confirm the said last will and testament, and to make the same as valid and effectual as if the same had been signed and published in the presence of three subscribing witnesses; which appearing to be just and equitable: Therefore,

SEC. 1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the last will and testament of the said Joseph Holmes, late of the township of Upper Freehold, in the county of Monmouth, bearing date the fifth day of May, in the year of our Lord one thousand eight hundred and thirteen, probate whereof has been granted by the Surrogate of the county of Monmouth, on the second day of August, in the year of our Lord eighteen hundred and fifteen, and the several bequests and devises therein contained, shall be, and the same is hereby declared to be, as good, valid, and effectual,

Will of Joseph Holmes to be effectual for devisees of lands.

Proviso. lars, then one per cent. on such excess: *Provided*, that in all cases where such execution shall be settled between the parties without actual sale, and such settlement is produced to the officer, such officer shall be allowed and paid, on any sum or portion of the debt, not exceeding one thousand dollars, at the rate of one per cent. by the plaintiff; and where, in such case, the debt exceeds one thousand dollars, then one half per cent. on such excess: *Provided also*, that the plaintiff, on such settlement, shall also pay the execution fees incurred before the settlement.

Duty of sheriffs, &c. in cases of sales. 7. *And be it enacted*, That in case of a sale on execution, made by a sheriff, under-sheriff, or coroner, he shall, within thirty days thereafter, file in the clerk's office of the county where such sale was made, a true statement and calculation, in order of time of the execution or executions in his hands, upon which such sale was made, and the amount due thereon, respectively, at the time of such sale, mentioning the time or times of sale, as also the amount of sales, certified under his hand, together with his bill of costs or execution fees, for which service he shall be entitled to one dollar, and on failure thereof he shall be liable to pay to the defendant or defendants whose property was sold, his, or their executors or administrators, the sum of fifty dollars, and to the plaintiff or plaintiffs, on every execution in his hands, or to his or their executors or administrators, the sum of fifty dollars: *Provided nevertheless*, that such statement, so filed, shall not be conclusive against any person other than such officer: *And provided*, that if there be more sales than one, such statement shall be made and filed within thirty days after the final sale.

Penalty. Proviso. 8. *And be it enacted*, That every judge, clerk, or other person, who by law now is, or hereafter shall be directed or authorized to tax any bill of costs or fees, shall, in such bill, class and set together those which appertain and belong to the courts or justices, or judges, clerk, attorney and counsellor, sheriff, and other person or persons, distributively, by not intermingling the same, as heretofore.

Taxation of bills of cost. 9. *And be it enacted*, That so much and such parts of any act or acts of the legislature as come within the purview of the several provisions in this act made, and are contrary thereto, be, and the same are hereby repealed.

Repealing clause. C. Passed December 12, 1823.

AN additional Supplement to "An act establishing a Militia System."

1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That it shall be lawful for the respective brigade boards, at their discretion, upon application made to them, by any number of uniform companies competent to form a battalion, squadron, or regiment, to set off said uniform companies into an independent battalion, squadron, or regiment, as the case may be.

2. *And be it enacted*, That it shall be the duty of the respective brigade inspectors, in the annual returns required from them, to make a particular statement of the troops and companies in uniform, their arms and equipments; likewise the arms and equipments, if any, belonging to the state, which may have been loaned to the brigade, or to any troop or companies within the bounds thereof, or that may have been purchased with money arising from fines of exempts, or others, within the respective brigades.

3. *And be it enacted*, That all fines imposed upon the members of any uniform troop or company, under the provisions of the act to which this is a supplement, be, and they are hereby appropriated to the use of such uniform troop or company, and the battalion paymaster is hereby directed to pay the same, when collected, after deducting therefrom the expenses of the troop or company court, into the hands of the respective commanding officers, for that purpose.

C. & A. Passed December 11, 1823.

A further Supplement to an act, entitled "An act making lands liable to be sold for the payment of debts," passed the eighteenth of February, seventeen hundred and ninety-nine.

1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That when any Orphans' Court in this state shall order and direct any executor or administrator to sell any lands, tenements, hereditaments, or real estate of any testator or intestate, it shall and may be lawful for the said Orphans' Court, at their discretion, to take of the respective executor or executors, administrator or administrators, applying for such order, sufficient bonds, with two or more able and sufficient sureties, being resi-

dents in the county, to the ordinary of the state and his successors, in a penalty double the amount of the estimated value of the lands, tenements, hereditaments, or real estate ordered to be sold, with condition in form and manner following, to wit:—The condition of this obligation is such, that if the above bound A. B., executor of the last will and testament of C. D., deceased, (or administrator of all and singular the goods, chattels, and credits of C. D., deceased, as the case may be) shall well and truly administer the moneys arising from the sale of any lands, tenements, or real estate of the said C. D., directed by the order of the Orphans' Court of the county of M. to be sold according to law; and further do make, or cause to be made, a just and true account of his administration, within twelve months from the date of the above obligation; and the surplus of money which shall be found remaining upon the account of such sale or sales, the same being first examined and allowed of by the judges of the Orphans' Court of the county, or other competent authority, shall distribute and pay unto such person or persons respectively, as is, are, or shall be by law entitled to receive the same; then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue.

2. *And be it enacted*, That all bonds given by executors or administrators and their sureties, in pursuance of this act, shall be good, to all intents and purposes, and pleadable in any court of justice; and in case such bonds shall become forfeited, it shall and may be lawful for the ordinary to cause the same to be prosecuted in any court of record, at the request of any party grieved by such forfeiture; and the moneys recovered upon such bond shall be applied towards making good the damages sustained by the not performing the said condition, in such manner as the judge of the Prerogative Court shall, by his sentence or decree, direct; and further, that it shall and may be lawful to and for the judges of the Orphans' Court of the respective counties in this state, after such executors or administrators shall have legally accounted for and touching the sale or sales of the said lands, tenements, hereditaments, and real estate of the person so deceased, to order a just and equal distribution of the surplus, after debts and just expenses of every sort first allowed and deducted, among the heirs or devisees to whom the lands, tenements, hereditaments, and real estate so sold, descended, or were devised according to the law of descents, in the former, and the will of the testator in the latter case, and the same distribution to decree and settle; and the person entitled to such distribution shall have their remedy at law, in case of non-payment, for the recovery of the same against the executor or executors, administrator or administrators so accounting, saving to every one, supposing him, her, or themselves aggrieved, his, her, or their right of appeal.

3. *And be it enacted*, That where the Orphans' Court of the proper county has made an order to shew cause, as is mentioned in the nineteenth section of the act to which this is a supplement, either on the application of the said executor or administrator, or of a creditor or creditors, as is directed in the twentieth section of the act, entitled "An act to ascertain the powers and authority of the ordinary and his surrogates to regulate the jurisdiction of the Prerogative Court, and to establish an Orphans' Court in the several counties of this state," passed thirteenth June, eighteen hundred and twenty, if the said executor or administrator shall, at the term mentioned in the said order, neglect or refuse to give bonds, with sureties, as aforesaid, then, and in every such case, the said court shall forthwith, by sentence, revoke or repeal the letters testamentary or letters of administration of such executor or administrator neglecting or refusing, and thereupon the surrogate shall grant letters of administration or letters testamentary with the will annexed, to such person or persons having right thereunto, as will give bonds in manner and form aforesaid, who may have every lawful and proper action against such removed executor or administrator, to recover the amount of all moneys, assets, goods, or chattels received by such removed executor or administrator, and not applied according to law, as well as all damages done or committed by such executor or administrator, in respect of the estate in his hands: *Provided*, that this act shall not go into operation until the first day of July next.

A. Passed December 11, 1823.

AN ACT for arranging, repairing, and preserving the public arms and accoutrements.

1. **BE IT ENACTED** by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That it shall be the duty of the quartermaster general to cause to be constructed in the room of the state-house occupied as an arsenal, such additional racks as the same will conveniently contain, for the arrangement of the arms lately received from the United States; also to fit and prepare the adjoining room, upon the north side, for the same purpose, previously causing it to be lathed and plastered.

2. *And be it enacted*, That it shall be the duty of the quartermaster general to cause the arms heretofore in the arsenal to be repaired, cleaned, and oiled, in a workmanlike manner; and to clean and oil the accoutrements in the attic story, as far as the same may be necessary.

time he shall be sworn or affirmed into

acted, That there shall be paid to the vice-council, and the speaker of the House of Assembly three dollars and fifty cents; and to every Council and Assembly, the sum of three dollars and every day that they have respectively attended this or any future meeting of the House to every member the additional sum of every twenty miles of the estimated distance usual road between his place of residence and of government in going and returning, a certificate to be produced to the treasurer, expressing the number of days and miles, signed by the vice-president of Council, for the members of the House of Assembly, for the speaker of the House of Assembly, for the House of Assembly, or by Ebenezer F. Smith, Asa Stites, and Isaiah Toy, or any two members of Assembly.

acted, That there shall be paid to the secretary, and to the clerk of Assembly, the sum of fifty cents, for every day they have resided at this, or may attend any future sitting of the House, and the sum of eight cents by the sheet, for every hundred words to the sheet, for entering the minutes of Council and Assembly and the joint-meetings, and five cents by the sheet for a copy of the minutes, on a certificate produced to the treasurer by the president or vice president of Council, and by the president of the House of Assembly, for the year.

acted, That the treasurer pay to such persons as shall print the Law Reports, twenty dollars every sheet; that the treasurer pay to such persons as shall print the Laws, the sum of sixteen dollars for every sheet, and that sixteen hundred copies be printed; that the treasurer pay to such persons as shall be appointed by the House to print the Votes and Proceedings of the Assembly, or any person or persons as shall be appointed to print the Journals of Council, and the Minutes of the next Meeting, the sum of twenty-two dollars every sheet, and that thirteen hundred copies of the Laws be printed, and that the printer of the Laws be required to print the public and private laws together in one pamphlet, and to print the title of each public act in one table, and the title of each private act in another table.

5. *And be it enacted*, That there shall be paid to the Sergeant-at-Arms for the time being, who shall attend the Council and the House of Assembly, and to the door keepers of Council and the House of Assembly, for the time being, the sum of two dollars by the day, for each day, on a certificate to be produced to the Treasurer, expressing the sum and the number of days they have respectively attended, signed by the president of Council, or the speaker of the House of Assembly.

6. *And be it enacted*, That there shall be paid to the secretary of Council, and to the clerk of Assembly, who shall severally engross the bills of Council and Assembly, this session of this Legislature, at the rate of eight cents by the sheet, on a certificate of the amount signed by the president or vice-president of Council, or by the speaker of Assembly.

7. *And be it enacted*, That this act be, and continue in force for one year from the twenty-fifth day of October, one thousand eight hundred and twenty-five, and no longer.

C. Passed December 12, 1825.

Laws of New Jersey

1823-1828

A FURTHER SUPPLEMENT to the act entitled, "An act making lands liable to be sold for the payment of debts," passed the eighteenth of February, seventeen hundred and ninety-nine.

BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the lands, tenements, hereditaments, and real estate of any person who shall die seized thereof, or entitled to the same, shall be and remain liable for the payment for his or her debts, for one year after his or her decease, and may be sold by virtue of an order of the Orphans' Court of the county where such lands, tenements, hereditaments, and real estate shall lie, if obtained within the said period of time, any alienation or incumbrance made, or attempted to be made, by his or her heir or heirs, devisee or devisees, to the contrary notwithstanding: *Provided always*, that nothing herein contained shall affect any right of dower in the said lands, tenements, and real estate.

C. & A. Passed December 12, 1825.

such court, to appoint some fit person of the state, during said term, who is vested with the powers, entitled to the penalties as above prescribed, in respect of the person who shall have Council and Assembly in the joint-

troop or company; and the battalion paymaster is hereby directed to pay the same, when collected, after deducting therefrom the expenses of the troop or company court, into the hands of the respective commanding officers, for that purpose.

1823.

Act 6th Nov. 1829, Com.

See Sup. 23d February, 1830, Com.

d, That the second section of the act, repeal an act respecting deputies to the said to provide for the appointment of judges of the state, in the several counties under the ninth, one thousand eight hundred and thirty shall be, and the same is hereby re-enacted of any Prosecutor of the pleas, and by virtue of the said section, shall be: *Provided nevertheless*, that until a judge shall be chosen and appointed in any county in this act directed, all acts done and proceedings of the prosecutor of the pleas as aforesaid, in any county, under his said appointment, in conformity with the said section, shall be as valid as if this act had been passed.

A further Supplement to an act, entitled "An act making lands liable to be sold for the payment of debts," passed the eighteenth of February, seventeen hundred and ninety-nine.

Pat. 369. Rev. 430, 670, 782, 794.

Passed the 11th of December, 1823.

Supplement to "An act establishing a Militia System."

Passed the 11th of December, 1823.

Enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That when any Orphans' Court in this state, shall order and direct any executor or administrator to sell any lands, tenements, hereditaments, or real estate of any testator or intestate, it shall and may be lawful for the said Orphans' Court, at their discretion, to take of the respective executor or executors, administrator or administrators, applying for such order, sufficient bonds, with two or more able and sufficient sureties, being residents in the county, to the Ordinary of the state and his successors, in a penalty double the amount of the estimated value of the lands, tenements, hereditaments, or real estate ordered to be sold, with condition in form and manner following, to wit:—The condition of this obligation is such, that if the above bound A. B., executor of the last will and testament of C. D., deceased, (or administrator of and singular the goods, chattels, and credits of C. D., deceased, as the case may be) shall well and truly administer the moneys arising from the sale of any lands, tenements, or real estate of the said C. D., directed by the order of the Orphans' Court of the county of M. to be sold according to law; and further do make, or cause to be made, a just and true account of his administration, within twelve months from the date of the above obligation; and the surplus of money which shall be found remaining upon the account of such sale or sales, (the same being first examined and allowed of by the judges of the Orphans' Court of the county, or other competent authority,) shall distribute and pay unto such person or persons respectively, as is, are, or shall be by law entitled to receive the same; then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue.

Orphans' Court may require bond on order to sell by executors or administrators.

Condition.

2. And be it enacted, That all bonds given by executors or administrators and their sureties, in pursuance of

1823.

that may be brought on bond.

Orphans' Court to order distribution of the residue of the moneys.

this act, shall be good, to all intents and purposes, and pleadable in any court of justice; and in case such bonds shall become forfeited, it shall and may be lawful for the Ordinary to cause the same to be prosecuted in any court of record, at the request of any party grieved by such forfeiture; and the moneys recovered upon such bond, shall be applied towards making good the damages sustained by the not performing the said condition, in such manner as the judge of the Prerogative Court shall, by his sentence or decree, direct; and further, that it shall and may be lawful to and for the judges of the Orphans' Court of the respective counties in this state, after such executors or administrators shall have legally accounted for and touching the sale or sales of the said lands, tenements, hereditaments, and real estate of the person so deceased; to order a just and equal distribution of the surplus, after debts and just expenses of every sort first allowed and deducted, among the heirs or devisees to whom the lands, tenements, hereditaments, and real estate so sold, descended, or were devised, according to the law of descents in the former, and the will of the testator in the latter case; and the same distribution to decree and settle; and the persons entitled to such distribution, shall have their remedy at law, in case of non-payment, for the recovery of the same, against the executor or executors, administrator or administrators so accounting, saving to every one, supposing him, her, or themselves aggrieved, his, her, or their right of appeal.

On refusal to give bond as aforesaid, the letters testamentary or of administration, to be revoked and new ones granted.

Rev. 782.

3. *And be it enacted*, That where the Orphans' Court of the proper county, has made an order to shew cause, as is mentioned in the nineteenth section of the act to which this is a supplement, either on the application of the said executor or administrator, or of a creditor or creditors, as is directed in the twentieth section of the act, entitled "An act to ascertain the powers and authority of the Ordinary and his Surrogates, to regulate the jurisdiction of the Prerogative Court, and to establish an Orphans' Court in the several counties of this state," passed thirteenth June, eighteen hundred and twenty, if the said executor or administrator shall, at the term mentioned in the said order, neglect or refuse to give bonds, with sureties, as aforesaid, then, and in every such case, the said court shall forthwith by sentence, revoke or repeal the letters testamentary or letters of administration of such executor or administrator neglecting or refusing, and thereupon the Surrogate shall grant letters of administration or letters testamentary with the will annexed, to such person or persons having right thereunto, as will give bonds in manner and form aforesaid, who may have every lawful and proper action against such removed executor or administrator, to recover the amount of all moneys, assets, goods, or chattels received by such removed executor or administrator, and not applied according to law, as well as all damages done or committed by such executor

good, to all intents and purposes, and
 of justice; and in case such bonds
 it shall and may be lawful for the
 same to be prosecuted in any court of
 of any party grieved by such forfeit-
 recovered upon such bond, shall be ap-
 good the damages sustained by the
 said condition, in such manner as the
 tive Court shall, by his sentence or de-
 ther, that it shall and may be lawful to
 f the Orphans' Court of the respective
 e, after such executors or administra-
 ly accounted for and touching the sale
 ands, tenements, hereditaments, and real
 so deceased; to order a just and equal
 surplus, after debts and just expenses of
 ved and deducted, among the heirs or
 e lands, tenements, hereditaments, and
 descended, or were devised, according to
 in the former, and the will of the testa-
 use; and the same distribution to decree
 e persons entitled to such distribution,
 edy at law, in case of non-payment, for
 same, against the executor or executors,
 dministrators so accounting, saving to
 ng him, her, or themselves aggrieved,
 ght of appeal.

ected, That where the Orphans' Court of
 has made an order to shew cause, as is
 neteenth section of the act to which this
 ther on the application of the said execu-
 or, or of a creditor or creditors, as is di-
 icth section of the act, entitled "An act
 wers and authority of the Ordinary and
 regulate the jurisdiction of the Preroga-
 establish an Orphans' Court in the seve-
 state," passed thirteenth June, eighteen
 ty, if the said executor or administrator
 mentioned in the said order, neglect or
 s, with sureties, as aforesaid, then, and in
 e said court shall forthwith by sentence,
 e letters testamentary or letters of admi-
 executor or administrator neglecting or
 upon the Surrogate shall grant letters of
 letters testamentary with the will annex-
 or persons having right thereunto, as
 a manner and form aforesaid, who may
 and proper action against such removed
 istrator, to recover the amount of all mo-
 is, or chattels received by such removed
 istrator, and not applied according to law,
 ages done or committed by such executor

or administrator, in respect of the estate in his hands : 1823.
Provided, that this act shall not go into operation until the Proviso.
 first day of July next.

See further Supplement passed 12th Dec. 1825, Com. Fur. Sup.
 28th November, 1831, Com.

AN ACT for arranging, repairing, and perserving the
 public arms and accoutrements.

Passed the 11th of December, 1823.

Sections 1st, 2d, and 3d, executed.

4. *And be it enacted*, That it shall be the duty of the
 Quarter-Master General, hereafter, carefully to compare the
 returns made by the respective Brigade Inspectors, of the
 number and condition of public arms and equipments, in the
 respective regiments inspected, with the number actually
 loaned to such regiment; and if the number does not
 fully appear on the respective returns, or their good condi-
 tion is not manifested, the said Quarter-Master General
 shall, as soon as may be, cause the public arms and equip-
 ments of such regiment, to be returned to his care: he is
 also authorized to cause all such arms belonging to the state,
 deposited in any place, or in possession of any person or
 persons not under lawful responsibility, to be returned to
 the arsenal, and he is hereby required to keep any arms and
 equipments returned in pursuance of this act, separate from
 those now in the arsenal; and it shall be the duty of the
 Quarter-Master General, on the first week of every session
 of the Legislature, to lay before them a particular return of
 all the arms and equipments belonging to the state, the num-
 ber loaned out, in whose hands, and whether they remain
 under proper responsibilities, including in said return, all
 the camp equipage in his charge; and the Quarter-Master
 General is authorized to require, from the respective brig-
 ade inspectors, such particular returns, as may give
 every information requisite fully to carry this section into
 effect.

See Act passed 28th December, 1824, Com.

5 *

1825. A further Supplement to the act, entitled "An act making
 Pat. 369. lands liable to be sold for the payment of debts," passed
 Rev. 430, the eighteenth of February, seventeen hundred and ninety-
 670, 782, nine.
 794.
 Com. 51. Passed the 12th of December, 1825.

BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the lands, tenements, hereditaments, and real estate of any person who shall die seized thereof, or entitled to the same, shall be and remain liable for the payment of his or her debts, for one year, after his or her decease, and may be sold by virtue of an order of the Orphans' Court of the county where such lands, tenements, hereditaments, and real estate shall lie, if obtained within the said period of time, any alienation or incumbrance made, or attempted to be made, by his or her heir or heirs, devisee or devisees, to the contrary notwithstanding: Provided always, that nothing herein contained, shall affect any right of dower in the said lands, tenements, and real estate.

Lands liable for debts one year after debtor's decease.

Proviso.

See further Supplement passed 28th Nov. 1831, Com.

AN ACT for the removal of certain Officers, for causes therein stated.

Passed the 12th December, 1825.

BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That in all cases, where any one of the surrogates of the several counties of this state is, or shall become incapacitated by mental derangement, insanity, or great debility of mind, from properly performing the duties of their respective offices, it shall be the duty of the Surrogate-General, upon information thereof in writing, signed by a majority of the judges of the Orphan's Court of the county for which such surrogate has or shall be appointed, supported by affidavit or affidavits, if the said Surrogate-General shall think it necessary; to appoint some fit person to perform the duties thereof during such incapacity, or until the next meeting of the legislature, as the case may require; which said person, so appointed, shall, before he enters upon the duties of the office, make oath or affirmation, and give bond for faithfully performing the duties thereof, in the manner required by the twenty-ninth section of the act entitled, "An act to ascertain the power and authority of the Ordinary and his surrogates, to regulate the jurisdiction of the Prerogative Court, and to establish an Orphans' Court in the several counties of this state," passed the thirteenth day of June, in the year of our Lord one thousand eight hundred and twenty.

Surrogate may be removed for insanity, &c.

Vacancy how filled.

Rev. 785.

1831. *3. And be it enacted,* That the inhabitants of the township of Camden, shall hold their town-meetings at the Court-House in the city of Camden, on the second Monday in March, annually.

4. And be it enacted, That the inhabitants of the township of Newton, shall hold their first annual town-meeting at the Friends School-House, in Haddonfield, on the second Wednesday in March next.

Section 5, executed.

Pat. 369,
Rev. 450,
670, 782,
794.
Com. 51,
130.

A Further Supplement to the act entitled "An act making lands liable to be sold for the payment of debts," passed eighteenth February, seventeen hundred and ninety-nine.

Passed the 28th of November, 1831.

Sheriff's
deeds valid,
notwith-
standing
variance be-
tween reci-
tal and exe-
cution,

Or variance
between ex-
ecution and
judgment.

Record of
judgment,
or execution
in evidence,
may be con-
sidered as
amended.

1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same. That any deed or conveyance, heretofore made, or which may hereafter be made, by any sheriff or other officer, for any lands, tenements, hereditaments or real estate, sold by virtue of any writ or writs of execution, issued or to be issued out of any of the courts of this state, by virtue of the act to which this is a supplement, shall be good and valid, and received in evidence as such, by the said courts, notwithstanding any variance between the recital in said deed, and the execution or executions by virtue of which the sale was made, and notwithstanding any variance between the said execution or executions, and the judgment or judgments upon which the said execution or executions were issued.

2. And be it enacted, That it shall and may be lawful for any court of this state, in which the record or exemplification of any judgment or execution shall be offered in evidence in support of any deed or conveyance made by a sheriff or other officer who may have sold any lands, tenements, hereditaments or real estate, by virtue of any writ or writs of execution issued as aforesaid, to consider the said judgment or execution as amended in any particulars in which the same might, by the rules of law and practice, have been at any time amended by the court in which the said judgment was rendered or out of which the said execution was issued, and the said judgment or execution shall have the same force and effect, as if it was amended accordingly.

at the inhabitants of the township
at town-meetings at the Court-
house, on the second Monday in

at the inhabitants of the township
at the first annual town-meeting at the
Haddonfield, on the second Wed-

nesday, executed.

the act entitled "An act making
provision for the payment of debts," passed
the seventeenth hundred and ninety-

was passed the 28th of November, 1831.

*the Council and General Assembly
by enacted by the authority of the
said Council, heretofore made, or
made, by any sheriff or other officer,
hereditaments or real estate, sold
under writs of execution, issued or to be
issued by the courts of this state, by virtue of
of a supplement, shall be good and
of force as such, by the said courts,
notwithstanding any variance between
the recital in said
deeds, and the judgment or judgment
of execution or executions were*

that it shall and may be lawful for
whichever the record or exemplifica-
tion of execution shall be offered in evi-
dence or conveyance made by a
person who may have sold any lands,
or real estate, by virtue of any
writ issued as aforesaid, to consider
the same as amended in any particu-
lar, by the rules of law and prac-
tice, as amended by the court in which
the same is offered or out of which the said
judgment or execution
and effect, as if it was amended.

3. *And be it enacted*, That any deed or conveyance hereto-
fore made, or which may hereafter be made, by any execu-
tor or executors, administrator or administrators, or sur-
viving executor or executors, administrator or administra-
tors, for any lands, tenements, hereditaments or real estate,
sold by virtue of any order of the Orphan's Court of any
county in this state, by virtue of the acts to which this is a
further supplement, shall be good and valid, and received in
evidence as such, in any court of this state, notwithstanding
any variance in the recital in said deed, of the order of such
Orphans' Court, authorizing such sale, and the record of
such order.

1831.
Deeds made
by order of
Orphan's
Court, valid,
notwith-
standing va-
riance be-
tween reci-
tal and or-
der.

A Further Supplement to the Act, entitled "An act for
erecting the town of Bordentown, in the county of Bur-
lington, into a borough," passed the ninth December,
eighteen hundred and twenty-five.

Com. 117.

Passed the 29th of November, 1831.

1. *BE IT ENACTED by the Council and General Assembly
of this State, and it is hereby enacted by the authority of the
same*, That from and after the passage of this act, the person
now holding the office of High Constable of the borough of
Bordentown, in virtue of any election held in pursuance of
the provisions of the act to which this is a supplement, and
every person who shall hereafter hold such office by virtue
of any future election, shall have the same power and autho-
rity, and be authorized to perform the same duties in all re-
spects, in civil, as well as criminal cases, and be entitled to
receive the same fees and compensation for his services, as
if he had been lawfully elected to the office of constable, at
an annual town-meeting of the inhabitants of the township
of Chesterfield, in the county of Burlington, and had taken
the oath or affirmation, and given the security required by
law: *Provided always*, that before any such High Constable
shall proceed to exercise the powers conferred upon him by
this act, he shall take and subscribe such oath or affirmation
for the due execution of his office, and enter into such bond
with sureties to be approved by the burgesses of the said
borough, as he would be by law required to take and enter
into, if he had been so elected to the office of constable, at an

High Con-
stable of
Bordentown,
to have the
same powers
as if elected
by the town-
ship.

Proviso.

1799.

firmation or declaration. And if such person shall choose to affirm, it shall be in the words following, to wit:

Form of affirmation.

I, affirm: do solemnly, sincerely and truly declare and

But if such person shall choose to declare, it shall be in the words following, to wit:

Form of declaration.

I, do declare, in the presence of Almighty God, the witness of the truth of what I say:

The validity of such affirmation or declaration.

Either of which forms shall be as good and effectual in law, as an oath taken in the usual form. In which affirmation or declaration, the words, "So help me God," at the close of the usual oath, shall be omitted.

Authority given to administer such affirmation or declaration.

6. And be it enacted, That every person, who is or shall be empowered and required to tender and administer an oath in the usual form, shall be, and hereby is empowered and required to tender and administer the affirmation or declaration aforesaid, when requested to that purpose by any such scrupulous person as aforesaid.

Such an affirmation or declaration may be taken in every case where an oath in usual form is or shall be required.

7. And be it enacted, That in all cases, where by any act of the legislature of this state, now in force or hereafter to be made, an oath is or shall be allowed or required, the affirmation or declaration, in the form above prescribed, of any such scrupulous person as aforesaid, shall be allowed and taken instead of an oath in the usual form, although no provision for that purpose is or shall be made in such act.

A false affirmation or declaration to be punished as perjury.

8. And be it enacted, That if any person, who shall make such affirmation or declaration, shall falsely, wilfully and corruptly affirm or declare any matter or thing which, if the same had been sworn or deposed in the usual form, would have amounted to wilful and corrupt perjury; then such person, so offending, shall be deemed and adjudged to be guilty of wilful and corrupt perjury, and, on being convicted thereof, shall be punished accordingly.

Former acts repealed.

9. And be it enacted, That all and every act and acts, and part and parts of any act, within the purview of this act, shall be, and they are hereby repealed.

PAT. 369.

AN ACT making lands liable to be sold for the payment of debts.

Passed the 18th of February, 1799.

Lands made liable to be taken and sold by executions.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That all lands, tenements, hereditaments and real estate, shall be, and hereby are made liable to be levied upon and sold by executions to be issued on judgments, which are or shall be obtained in any court of record of this state (except justices' courts constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money, and costs, so recovered or to be recovered.

2. And be it enacted, That no judgment shall affect or bind any lands, tenements, hereditaments or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court.

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

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

5. And be it enacted, That upon judgment obtained, or to be obtained, for debt, damages, and costs, or other sum of money, in the supreme court, or any of the inferior courts of common pleas of this state, the party obtaining the same may have an execution against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of the party, against whom such judgment is or shall be awarded; but no execution shall be issued against the proper goods and chattels, lands, tenements, hereditaments and real estate of any executor, administrator, heir or devisee, unless he or she shall have made his or her estate liable for the money so recovered by false pleading or otherwise.

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

1799.

Lands bound from the time of entering judgment.

Goods bound from the time of delivering execution to sheriff.

Time of such delivery to be endorsed on the execution.

The like rule of preference to obtain in executions against lands as in executions against goods, when delivered on the same day.

Execution may be issued against the body or estate of the party.

In what form and manner execution shall issue against lands and real estate.

1799. such debt, damages and costs, or sum of money, specifying the day particularly, or at any time afterwards, in whose hands soever the same may then be; but when such execution shall be issued against terretenants, or heirs, or devisees (unless they shall have made their estate liable by false pleading or otherwise) it shall only command the sheriff or other officer, that of the lands, tenements, hereditaments and real estate, whereof the ancestor, testator, or person deceased, was seized on the day, when the said lands, tenements, hereditaments and real estate, became liable as aforesaid, or at any time afterwards, or at the time of his or her death, as the case may require, he cause to be made the debt, damages, and costs, or sum of money, in the said writ mentioned.

Sum due to be endorsed on the execution.

7. *And be it enacted*, That the party, at whose instance any writ of execution shall issue against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of any person, shall endorse on the said writ, before it be sealed, the debt, damages, and costs, or sum of money, really due and to be made.

Executions against lands to be recorded.

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

Lands taken in execution to be advertised two months before the time of sale.

9. *And be it enacted*, That the sheriff or other officer, who, by virtue of such writ of execution, levies on any lands, tenements, hereditaments and real estate, shall give notice, by advertisements, signed by himself, and put up at five or more public places in the county, one whereof to be in the township, where the said lands, tenements, hereditaments and real estate do lie, of the time and place where they will be exposed to sale, at least two months before the time appointed for selling them; and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder.

The sheriff may adjourn the said sale twice, and no more, and then not exceeding one month each time.

10. *And be it enacted*, That it shall be lawful for the said sheriff or other officer to make two adjournments, and no more, of the sale of lands, tenements, hereditaments and real estate, so by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftener, or for a longer time, without permission, in writing, previously obtained of the party, at whose instance the said writ of execution was issued, he shall be, and hereby is made liable to the amount of the debt, or damages and costs, or sum or sums of money, mentioned in the said writ, with interest; and for the recovery thereof may be amerced and proceeded against in the manner prescribed in and by the twenty-second section of the act, entitled "An act concerning sheriffs." *Provided always*, That if the said sheriff or other officer, shall, after two adjournments as aforesaid, sell the lands, tene-

But if the sheriff, after two adjournments,

ments, hereditaments and real estate, and bring the whole amount of the product of such sale (after deducting his lawful fees) into the court, from whence such execution issued, at any time before the entry of such amercement against him as aforesaid, the said sheriff or other officer shall be exonerated from all liability to the said amercement.

1799.

and before amercement, bring the money into court, he shall be exonerated.

11. *And be it enacted*, That the person, whose lands, tenements, hereditaments and real estate are so taken in execution, may, if part of them be sufficient to satisfy such execution, elect what part thereof shall be sold; and thereupon it shall be the duty of the said sheriff or other officer to sell the part so elected, and no other, if it be sufficient: *Provided always*, That such election shall be made in writing, signed by such person, and delivered to the said sheriff or other officer, at least twenty days previous to the time appointed for the sale.

The party, whose lands are taken in execution, may elect what part thereof shall be sold.

12. *And be it enacted*, That the sheriff or other officer, who, by virtue of such writ or writs of execution, shall sell as aforesaid the lands, tenements, hereditaments and real estate, or any part or parcel of them, so levied upon, shall make to the purchaser thereof as good and sufficient a deed or conveyance for the lands, tenements, hereditaments and real estate so sold, as the person, against whom the said writ or writs of execution were issued might or could have made for the same at or before the time of rendering judgment against him or her; which deed or conveyance shall transfer to and vest in the said purchaser, as good and perfect an estate to the premises therein mentioned, as the person, against whom the said writ or writs of execution were issued, was seized of or entitled to at or before the said judgment, and as fully, to all intents and purposes as if such person had sold the said lands, tenements, hereditaments and real estate to such purchaser, and had received the consideration money, and signed, sealed, and delivered a deed for the same: *And further*, That the said deed or conveyance, so to be made by the said sheriff or officer, shall recite the writ or writs of execution, by virtue whereof of the said lands, tenements, hereditaments and real estate therein described, were sold as aforesaid.

Sheriff to make deeds for lands, by him sold in virtue of executions; which deeds shall be as good and effectual as if they had been made by the party.

13. *And whereas* other judgments, statutes, and recognizances, besides those, or some of those, by virtue whereof the sale aforesaid was made, might affect the lands, tenements, hereditaments and real estate so sold, if no provision be made to remedy the same; and whereas the persons, who have not taken, or will not take out executions upon their judgments, statutes, or recognizances, ought not to hinder or prevent such as do take out executions from having the proper effect and fruits thereof: *Therefore, be it enacted*, That the purchaser, his heirs and assigns, shall hold the lands, tenements, hereditaments and real estate, by him or her purchased as aforesaid, free and clear of all other judgments, recognizances, statutes-merchant and statutes-staple whatsoever, on or by virtue of which no execution has been taken out and executed on the lands, tenements, hereditaments, and real estate so purchased.

Land sold by sheriff to be clear of all judgments, on which executions have not been issued.

14. *And be it enacted*, That if any judgment or execution

Reversal of judgment, for error, not to affect lands sold prior to such reversal.

How and in what cases a succeeding sheriff may make deed for lands sold by his predecessor in office.

How to pay the money received thereon.

Proprietary rights may be levied on and sold by executions.

(the said execution being recorded as aforesaid) by virtue whereof such sale as aforesaid shall be made of any lands, tenements, hereditaments and real estate, shall be reversed for error, such reversal shall not be given in evidence, or be of any force or avail against any bona fide purchaser under the said judgment or execution; but the said purchaser, his heirs and assigns, shall hold the said lands, so bona fide purchased, notwithstanding such reversal, if it be posterior to the said purchase; and further, such reversal shall only operate against the defendant in error, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the lands, tenements, hereditaments and real estate so sold as aforesaid.

15. *And be it enacted*, That if any sheriff, who hath made or shall make sale of any lands, tenements hereditaments and real estate, by virtue of an execution against the same, shall abscond, or depart from the state, or be disqualified by law, or rendered unable by death, or otherwise incapable, to make a deed or conveyance for the same, it shall be lawful for any succeeding sheriff of the county, on receiving a certificate from the inferior court of common pleas of such county, signed by the clerk by order of the said court, setting forth, that sufficient proof hath been made to the said court, that such sale was fairly and legally made, and on tender of the purchase money, or if the purchase money or any part of it has been paid, then on proof of such payment, and on tender of the residue, if any be, to sign, seal and deliver to the said purchaser, or his legal representative, a deed or conveyance of the lands, tenements, hereditaments and real estate so sold; which deed shall be as good and valid, and shall have the same force and effect, as if the sheriff, who made such sale, had signed, sealed, and delivered a deed of conveyance for the same in due form of law.

16. *And be it enacted*, That if such succeeding sheriff receive any money by virtue of the preceding section of this act, he shall pay the same to the person thereunto entitled by law.

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

18. *And be it enacted*, That no lands, tenements, heredita-

ments or real estate, of any testator or intestate, shall be sold or in any wise affected by any judgment or execution against executors or administrators.

19. *And be it enacted*, That when any executor or administrator shall discover or believe, that the personal estate of his testator or intestate is insufficient to pay his debts, then it shall be the duty of such executor or administrator, as soon as conveniently may be, to make and exhibit, under oath, a just and true account of the said personal estate and debts, as far as he can discover the same, to the orphans' court of the county, where the lands, tenements, hereditaments and real estate, of which the said testator or intestate died or shall die seized, do lie, and request their aid in the premises; and the said court shall thereupon make an order, directing all persons interested in such lands, tenements, hereditaments and real estate to appear before them at a certain day and place, in the said order to be mentioned, not less than two nor more than three months after the day of making such order, to shew cause, why so much of the said lands, tenements, hereditaments and real estate of the said testator or intestate should not be sold, as will be sufficient to pay his debts, or the residue thereof, as the case may require; which order, signed by the surrogate or clerk of the said court, shall be immediately thereafter set up at three of the most public places in the said county for six weeks successively, and be published for the same time in one or more of the newspapers printed in this state.

20. *And be it enacted*, That the said orphans' court shall, at the time and place mentioned in the said order, or at such other time and place as they may then appoint, hear and examine the allegations and proofs of the said executor or administrator, and other persons interested; and if on full examination the said court shall find, that the personal estate of the said testator or intestate is not sufficient to pay his debts, the said court shall order and direct the executor or administrator to sell the whole, if necessary, of the lands, tenements, hereditaments and real estate of the said testator or intestate, for the payment of his debts, or so much thereof as will be sufficient for that purpose; and when a part only of the said lands, tenements, hereditaments and real estate is sufficient, such order shall specify the part to be sold: *Provided always*, That where any houses, and lots, or lands are so circumstanced, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the said court may, at their discretion, order the whole or a greater part, than is necessary to pay such debts, to be sold; and the surplus money arising from such sale shall be distributed among the heirs or devisees, according to the law of descents in the former, and the will of the testator in the latter case; and further, that the heir or devisee, whose lands, tenements, hereditaments and real estate, so descending or devised to him, have been sold as aforesaid, for the payment of the debts of his intestate or testator, may compel all others claiming or holding under such intestate or testator, to contribute in proportion to their respective interests, so as to equalize the burden or loss.

Judgment or execution against executors or administrators not to affect lands of the testator or intestate.

If the personal estate of the testator or intestate be insufficient to pay his debts, the executor or administrator may make application to the orphans' court; whose duty it shall be to order all persons interested to appear before them, on a certain day, to shew cause, why the real estate should not be sold.

If the personal estate be inadequate to pay the debts of the testator or intestate, the orphans' court may direct the real estate to be sold.

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Lands, ordered to be sold by the orphans' court, to be advertised 2 months before the time of sale.

21. And be it enacted, That the executor, or administrator, who may be ordered to sell any lands, tenements, hereditaments or real estate of any testator or intestate, shall give notice by advertisements, signed by himself, and set up at five or more public places in the county, of the time and place of selling the premises, at least two months before the time appointed for selling them, and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder; and the executor or administrator, making the said sale, shall report in writing all proceedings thereon to the next orphans' court, after such sale: *Provided always*, That the said executor or administrator may adjourn the said sale from time to time, not exceeding two months in the whole.

For lands so sold, the executor or administrator to make deed.

22. And be it enacted, That the said executor or administrator shall, and hereby is authorized to make a deed to the purchaser for the lands, tenements, hereditaments and real estate so sold; which deed shall set forth the said order at large, and shall vest in the said purchaser as good and perfect an estate in the premises therein mentioned, as the heirs or devisees of the said testator or intestate were seized of or entitled to, at the time of the making of the said order by such orphans' court.

Moneys received by executor or administrator from sale of lands, to be assets for the payment of debts.

23. And be it enacted, That the moneys arising from such sale of the lands, tenements, hereditaments and real estate of such testator or intestate, shall be received by the said executor or administrator, and be considered as assets in his hands for the payment of debts, and the surplus, if any, shall be distributed among the heirs or devisees in the proportion and manner directed by the twentieth section of this act.

Lands of testator or intestate not to be sold till the personal estate be applied to the payment of debts.

24. *Provided always, and be it further enacted*, That no part of the lands, tenements, hereditaments and real estate of any testator or intestate, shall be ordered by the said orphans' court to be sold as aforesaid, until the executor or administrator shall have applied the personal estate, or such part thereof as may have come to his hands, towards payment of the debts of such testator or intestate; and no more of the said lands, tenements, hereditaments and real estate, except as is excepted in the twentieth section of this act, shall be sold, than may be necessary to pay the residue of the said debts: *Provided also*, That nothing herein contained shall prevent or bar any person from bringing and maintaining any action against an executor or administrator, for or in respect of the personal estate of his testator or intestate, or for or in respect of any waste or misapplication thereof by such executor or administrator.

This act not to prevent suits against executor or administrator for waste, &c.

Certain acts, &c. repealed.

25. And be it enacted, That the act, entitled "An act subjecting real estates in the province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon," passed the second day of December, in the year of our Lord, one thousand seven hundred and forty-three; and the act, entitled "An act to amend an act, entitled an act subjecting real estates in the province of New-Jersey to the payment of

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debts, and directing the sheriff in his proceedings thereon," passed the eighth day of June, in the year of our Lord, one thousand seven hundred and seventy-nine; and the act, entitled "An act directing the mode by which shares of propriety and rights to unlocated lands in the state of New-Jersey, may be sold for the payment of debts," passed the twenty-third day of November, in the year of our Lord, one thousand seven hundred and eighty-five; and the eleventh and twelfth sections of the act, entitled "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the sixteenth day of December, in the year of our Lord, one thousand seven hundred and eighty-four, and all and every other act and acts, and part and parts of any act, within the purview of this act, be, and they are hereby repealed; but such repeal shall not extend to or affect any execution heretofore issued, out of any of the courts of record in this state, against lands, tenements, hereditaments and real estate, or against proprietary shares and rights to unlocated lands, or any order heretofore made by any orphans' court for the sale of real estate; but such execution and order shall be of the same validity, and be proceeded upon to effect in the like manner, as if this act had not been made.

But such repeal not to affect antecedent executions and orders.

See supplement, passed 21st February, 1820.

AN ACT to issue commissions for the examination of witnesses, and to take their depositions in certain cases. PAT. 374.

Passed the 18th of February, 1799.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That if a material witness in any action or suit in the court of chancery, or in the supreme court, or any of the inferior courts of common pleas of this state, reside out of this state, or, if in this state, be ancient or very infirm, or be sick, or bound on a voyage, or about to go out of this state, it shall and may be lawful for the said court, in which such action or suit is depending, on affidavit or proof thereof to the satisfaction of the said court, and upon motion made by or in behalf of either party in open court, at such terms as the said court shall direct, to award and issue, under the seal of the said court, a commission to such person or persons, as the said court may think fit, authorizing such person or persons, or any two or more of such persons, to examine de bene esse the said witness on oath or affirmation, upon the interrogatories annexed to the said commission, and to reduce such examination to writing, and to return the same annexed to the said writ, unto the said court, with all convenient speed; and the name of every witness, to be so examined by virtue of such commission, shall be inserted in the said commission; and the interrogatories for the examination of such wit-

In what cases the courts may grant commissions to examine material witnesses.

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1820. serve beyond the time at which said infant, if a male, shall have arrived at the age of two years, or, if a female, at the age eighteen years, the said indenture shall be void as against such infant, so far as the age inserted in said indenture shall exceed the age aforesaid: *Provided*, That nothing in this section, shall in any way impair the obligation of any covenant entered into by the parent or guardian of such infant, as to the age or time of service of such infant, nor shall it impair or affect any contracts, or indentures made with foreigners to serve for a term of years.

PAM. 46.
See ante 410.

A SUPPLEMENT to the act, entitled "An act for the limitation of actions," passed the seventh day of February, one thousand seven hundred and ninety-nine:

Passed the 21st of February, 1820.

1. *BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That if any person or persons, against whom there is or shall be any such cause of action as is specified in the first, second, third, fifth, sixth and seventh sections of the act to which this is a supplement, shall not be resident in this state when such cause of action accrues, or shall remove from this state after the same shall accrue and before the time of limitation mentioned in said sections is expired, then the time or times during which such person or persons shall not reside in this state as aforesaid, shall not be computed as part of the said limited period within which such action or actions are required to be brought as aforesaid; but the person or persons having, or who may have such cause of action as aforesaid, shall be entitled to all the time mentioned in the said several sections, for bringing their said actions after the cause thereof shall accrue, exclusive of the time or times during which the person or persons liable to such actions shall be not resident in this state as aforesaid.

2. *And be it enacted,* That the eighth section of the act to which this is a supplement, be, and the same is hereby repealed.

PAM. 47.
See ante 430.

A SUPPLEMENT to the act, entitled "An act making lands liable to be sold for the payment of debts."

Passed the 21st of February, 1820.

1. *BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That when any testator or intestate shall die possessed of any share or shares, or part or parts of a share of propriety of undivided rights, or warrant to locate any land, either in the eastern or western division of New-Jersey, and shall not leave other estate sufficient to pay all the just debts and maintain the children of such decedent, that then and in such case the executor or ex-

ecutors, administrator or administrators, shall apply to the orphans' court of the county where such decedent last resided, and the said court shall make an order for the sale of such share or parts of shares, or warrants for unlocated rights, on the like exhibition and proof of the deficiency of the estate of such decedents, to pay the just debts that shall appear against the same, under the same restrictions, notice and publicity as is by law directed for the sale of real estates.

2. *And be it enacted,* That in case a writ of fieri facias shall be issued against the goods and chattels, lands, tenements, hereditaments and real estate, of any person or persons, and such person or persons shall desire that the whole or a part of the said lands, tenements, hereditaments and real estate, shall be sold before any of the said goods and chattels, and signify the same in writing, under his, her, or their hands, and deliver the same to the sheriff or other officer to whom the said writ of fieri facias shall be directed, within twenty days from the time of notice of said writ, and before the goods shall be sold, and enter into bond to the said sheriff or other officer, with good and sufficient sureties, that the goods and chattels levied on in virtue of the said writ, shall be forthcoming to answer the exigencies of said writ, at a day therein named, not exceeding three calendar months from the date of said bond, then and in that case it shall be the duty of the said sheriff or other officer, to whom the said writ shall be directed, to suspend the sale of the said goods and chattels, and proceed to sell the said lands, tenements, hereditaments and real estate, or such part thereof as the owner or owners thereof shall have desired to be sold as aforesaid, any thing contained in the sixth section of the act to which this is a supplement, the said writ of fieri facias, or any law to the contrary notwithstanding.

3. *And be it enacted,* That it shall be the duty of the sheriff or other officer, to whom a writ of fieri facias may be directed, against lands, tenements, hereditaments and real estate, in addition to the notice required by the ninth section of the act to which this is a supplement, to cause the time and place of the sale of said lands, tenements, hereditaments and real estate, levied on by virtue of said writ, to be published in one of the newspapers printed and published in this state, and circulated in the neighborhood of the said lands, tenements, hereditaments, and real estate, at least four weeks successively, once a week, next preceding the time appointed for selling the same, and that the said sheriff or other officer, advertising as aforesaid, shall be entitled, in addition to his other fees, to the sum of one dollar and fifty cents.

4. *And be it enacted,* That whenever any lands, tenements, hereditaments, and real estate, shall be directed to be sold by an order made by the orphans' court, in any of the counties of this state, it shall be the duty of the executor, administrator, or guardian, as the case may be, to advertise the time and place of the sale thereof, in the manner directed in the preceding section of this act, in addition to the provision already prescribed by law.

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In what cases orphans' court may direct propriety rights, &c. to be sold.

On writs of fieri facias, lands may be sold before goods.

Conditions to be performed.

In what manner notice of sale to be given.

Lands ordered to be sold by the orphans' court, to be advertised.

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5. *And be it enacted*, That in all cases wherein an order hath heretofore been made, or shall hereafter be made, by the orphans' court of any county in this state, in which the said court hath ordered or directed, or may order or direct, two or more executors or administrators, to sell the whole or any part of the lands, tenements, hereditaments, and real estate of a testator or intestate, for the payment of debts, and one or more of the said executors, or administrators, shall or may have departed this life, before such sale shall have been made, or before a deed or deeds of conveyance may have been executed in pursuance thereof, that then and in such case, the survivor or survivors of such executors or administrators, shall be, and they are hereby authorized and empowered to sell the said lands, tenements, hereditaments, and real estate, and to make and execute good and sufficient deed or deeds of conveyance for the same, to the purchaser or purchasers, and in all respects to execute, carry into effect, and fulfil the said order as fully and effectually to all intents and purposes, as all the executors, or administrators, named in the same order, might, if living, execute and fulfil the same.

In what case surviving executors may convey lands.

6. *And be it enacted*, That the act, entitled "A supplement to the act, entitled an act making lands liable to be sold for the payment of debts," passed the eleventh day of November, one thousand eight hundred; and the act, entitled "An act to amend the act, entitled an act making lands liable for the payment of debts," passed the twenty-sixth day of November, one thousand eight hundred and four; and the act, entitled "A further supplement to the act, entitled an act making lands liable for the payment of debts," passed the sixth day of February, one thousand eight hundred and sixteen, be, and the same are hereby repealed: *Provided nevertheless*, That nothing in this repealing section shall in any way invalidate or render null any act, matter or thing, lawfully done or transacted under them, or any of them, or impair any right required under them or any of them, but the same shall be as good, valid and effectual, as though this repealing section had not been made.

See act, November 9th, 1820.

P.A.M. 65.
See ante 600.

A SUPPLEMENT to the act, entitled "An act relative to toll and chain bridges."

Passed the 21st of February, 1820.

BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That so much of the first section of the act to which this is a supplement, as relates to any kind of carriage, waggon, cart, sled, or sleigh, drawn by one horse, and also to single horses and mules, be, and the same is hereby repealed: *Provided nevertheless*, That nothing in this act contained, shall be construed to extend to or affect the toll-bridges already built over the river Delaware.

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A SUPPLEMENT to an act, entitled "An act for the preservation of deer and other game, and to prevent trespassing with guns," passed December twenty-first, one thousand seven hundred and seventy-one.

P.A.M. 66.
See ante 25.

Passed the 21st of February, 1820.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That if any person or persons shall kill, destroy, hunt, or take any doe, buck, fawn, or any sort of deer whatsoever, at any other time or season, except only between the last day of August and the second day of January, yearly and every year, he, she or they, so offending, shall forfeit and pay the sum of twenty dollars, for each and every such offence, to be sued for and recovered with costs of suit, in an action of debt, by any person, before any justice of the peace of the county wherein such offence shall have been committed, one half of the forfeit money shall be for the benefit of the person prosecuting for the same, and the remainder paid to the collector of the township wherein the offence shall have been committed, for the use of the township: *Provided*, That nothing in this supplement shall be construed or taken to extend to restrain the owners of parks or tame deer, from killing, hunting, or driving their own deer.

When deer may be killed.

Penalty.

To whom forfeited.

Proviso.

2. *And be it enacted*, That if any person or persons shall hunt for the purpose of killing, or to destroy or take, or kill any moor-fowl, grouse, partridge, quail, or rabbit, except only between the first day of September and the first day of February, and any woodcock, except only between the twenty-fifth day of June and the first day of February, yearly and every year, he, she or they, so offending, shall forfeit and pay for each moor-fowl, grouse or partridge, two dollars, and for each woodcock, rabbit, or quail, one dollar, for each and every offence, to be sued for and recovered in an action of debt, with costs of suit, by any person who shall sue for the same; and any person or persons in whose hands or custody any moor-fowl, grouse, partridge, quail or rabbit, shall be found, that shall have been killed contrary to the provisions of this act, shall be deemed, taken and adjudged to be the killer or destroyer of such game, and liable to the penalties aforesaid, unless such person or persons shall make it appear who it was that killed the same, or from whom such person, so thereof possessed, received the same: *Provided nevertheless*, That no person shall be prohibited from gunning on his own land.

When certain fowl, &c. may be killed.

Penalty.

Possession of the game, evidence of the killing.

3. *And be it enacted*, That the fourth and sixth sections of the act to which this is a supplement, and so much of the fourteenth section of the same act, as makes it a duty of the justices of the general quarter-sessions of the peace, to cause the said act to be read and given in charge to the grand jury, at every quarter-sessions of the peace, and also the supplement to said act, passed the eleventh day of February, one thousand eight hundred and eighteen, be, and the same are hereby repealed.

Acts repealed.

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proclamation, offering a reward, as aforesaid, for apprehending and securing any person or persons, charged, on oath or affirmation as aforesaid, with aiding, abetting, comforting, harboring or concealing any person or persons, who hath or have committed any of the crimes above specified and described, knowing him, her or them to be guilty thereof; which reward, on conviction of the person so charged, shall be paid in the same manner as is above directed.

May offer a reward for apprehending the unknown perpetrators of certain offences.

3. *And be it enacted*, That when any murder, burglary, robbery or other offence, as aforesaid, hath been, or shall be committed by any person or persons unknown, it shall and may be lawful for the governor or person administering the government, for the time being, on the oath or affirmation of one or more credible witness or witnesses, setting forth the fact, and that the same was perpetrated by a person or persons unknown, to issue his proclamation, offering a reward as aforesaid, for apprehending and securing the person or persons who may have committed the same, and any person or persons who may have aided, abetted, comforted, harbored or concealed him, her, them or any of them, to be in such wise guilty; which reward shall, in every case, be paid on conviction of the party offending, as in manner aforesaid.

Acts repealed.

4. *And be it enacted*, That the act, entitled "An act to empower the governor to offer a reward for the apprehension of certain offenders," passed the fifth day of March, one thousand seven hundred and ninety-five, be, and the same is hereby repealed.

P.A.M. 180.

AN ACT to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state.

Passed the 13th of June, 1820.

WHEREAS it is necessary that the power and authority of the ordinary of the state, and his surrogates, should be defined, the jurisdiction of the prerogative court regulated, and an orphans' court established, in the several counties of this state;
THEREFORE—

Authority of the ordinary, how far to extend.

1. *BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That from and after the passing of this act, the authority of the ordinary shall extend only to the granting of probates of wills, letters of administration, letters of guardianship, and to the hearing and finally determining of all disputes that may arise thereon.

Prerogative court when and where to be held.

2. *And be it enacted*, That for the more regular hearing and determination of all causes cognizable before the ordinary, he shall, at stated periods, hold a prerogative court, at the times and places appointed, or that hereafter shall be appointed by him for holding the court of chancery, when he shall hear and finally de-

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termine all causes that shall come before him, either directly or by appeal from any of his surrogates, or the orphans' court hereinafter established.

3. *And be it enacted*, That the secretary of the state, for the time being, shall be register of the prerogative court, and besides the business heretofore done by him, shall attend the sitting of the court at the stated times, to register the decrees and proceedings of the court.

Secretary of state to be register.

4. *And be it enacted*, That the ordinary shall hereafter appoint but one deputy or surrogate in each county of the state, and that the power and authority of such surrogate shall be limited to the county for which he shall be appointed.

One surrogate in each county.

5. *And be it enacted*, That the judges of the court of common pleas, in the several counties of this state, or any three of them, shall be, and they hereby are, constituted and appointed judges of a court of record, to be held four times a year, in the same week that the courts of general quarter-sessions of the peace are, or hereafter shall be held, and also at such other times as the said judges shall see occasion to hold the same; which court shall be styled "The Orphans' Court," and that the surrogate of the county shall be clerk or register of said court.

Orphans' court established.

6. *And be it enacted*, That the orphans' court shall have full power and authority to hear and determine all disputes and controversies whatsoever, respecting the existence of wills, the fairness of inventories, the right of administration and guardianship, and the allowance of the accounts of executors, administrators, guardians or trustees, audited and stated by the surrogate, as hereinafter directed; and also, all other matters and things hereinafter submitted to their determination, and to award process, and cause to come before them, all and every person and persons interested or necessary to give evidence in any such cause, or who, as executors, administrators, guardians, trustees or otherwise, are or shall be entrusted with, or in anywise accountable for, any lands, tenements, goods, chattels or estate, belonging, or which shall belong, to any orphan or person under age; and the ordinary of the state, his register and surrogates, are hereby directed and required, upon application made for that purpose, and payment of reasonable fees, to transmit into the orphans' courts, true copies or duplicates of all bonds, inventories, accounts and proceedings whatsoever, now or hereafter remaining or being in their respective offices or possession, which do or shall relate to the estates of orphans, or any of them.

Jurisdiction of the orphans' court.

7. *And be it enacted*, That the said orphans' court shall have full power and authority, where letters of administration or guardianship shall have been granted upon insufficient security, to order and direct all such administrators or guardians, to give such further or other security to the ordinary, by bonds in the usual form, as the said court, after hearing the objection of creditors, or persons concerned, shall approve of; and if it appears, on examination, that any administrator or guardian hath embezzled, wasted, or misapplied all or any part of the decedent's estate, or shall

Orphans' court may order administrators or guardians to give further security, and may revoke letters of administration or guardianship.

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neglect or refuse to give bonds, with sureties as aforesaid, or the security taken shall have been insufficient, then, and in every such case, the said court shall forthwith, by sentence, revoke or repeal the letters of administration or guardianship, and thereupon the surrogate shall grant letters of administration or guardianship, to such person or persons having right thereunto, as will give bonds in manner and form aforesaid, who may have actions of trover, detinue, or on the case, for such goods or chattels as came to the possession of the former administrators or guardians, and shall be detained, wasted, embezzled, withheld or misapplied by any of them, and no satisfaction made for the same.

In what cases the orphans' court may order executors, guardians and trustees to give security.

8. *And be it enacted*, That when any complaint is made to any one of the judges of the orphans' court, that an executrix having a minor or minors of her own, or being concerned for others, is married, or like to be espoused to another husband, without securing the minors' portions or estates, or that an executor, guardian or other person having the care and trust of minors' estates, is likely to prove insolvent, or shall refuse or neglect to exhibit true and perfect inventories, or give full and just accounts of the said estates come to their hands or knowledge, then and in every such case, the said judge is hereby required, forthwith to call an orphans' court, which court shall order and direct all and every such executrix, executor, guardian or trustee, to give security to the orphans or minors, by mortgage or bonds, in such sums and with such sureties as the said court shall think reasonable, conditioned for the performance of their respective trusts; and for the true payment or delivery, to and for the use and behoof of such orphan or orphans as they are concerned for, or such as shall legally represent them, the legacies, portions, shares and dividends of estates, real and personal, belonging to such orphans or minors, so far as they have assets, as also for their maintenance and education, as the said court shall judge fit for the benefit and best advantage of such orphans.

May order an administrator or guardian, on application of a surety, to render an account, and proceedings thereon.

9. *And be it enacted*, That where the surety, in any bond given by an administrator or guardian, for the faithful execution of his office, shall discover or believe that such administrator or guardian is wasting or mismanaging the estate, whereby the said surety may become liable to loss or damage, the said orphans' court, upon application of such surety, and upon sufficient reason therefor, may order and direct every such administrator or guardian, to render an account of his or her administration or guardianship, to such surety, and if it shall appear that such administrator or guardian has embezzled, wasted, misapplied or mismanaged the estate, in every such case the said court shall direct the said administrator or guardian, to give separate security to his or her surety, for the true payment of the balance remaining in his or her hands, to creditors, representatives, or the ward of such guardian, and on neglect or refusal, it shall be lawful for the said court to revoke the letters of administration or guardianship, and grant the same to such person or persons having right thereto, as will give sufficient bonds, in the usual form, to the ordinary, and in such case it shall be the duty of the said newly appointed

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administrator or guardian, immediately to bring an action on the case against such removed administrator or guardian, and hold him or her to bail, and in such action to recover the amount of all moneys, assets, rents, issues and profits received by such removed administrator or guardian, and not applied according to law, as well as all damages done or committed by such administrator or guardian, in respect of the estate in his or her hands.

10. *And be it enacted*, That whenever there are two or more acting executors, guardians or administrators, the orphans' court shall or may, from time to time, on application of any one or more of them, upon sufficient reasons given to the court therefor, order and direct every such executor, guardian or administrator, to account with his or her co-executor or co-executors, administrator or administrators, guardian or guardians, for all assets which have severally come to the hand of such executor, guardian or administrator, and whenever the court shall judge it necessary, shall compel each executor, guardian or administrator, to give separate security to his co-executor or co-executors, administrator or administrators, guardian or guardians, for the true payment of the balance remaining in his or her hands, to wards, creditors, legatees or representatives of the testator or intestate, and on neglect or refusal in giving such account or security, it shall and may be lawful for the same court to authorize such co-executor or co-executors, administrator or administrators, guardian or guardians, to sue for such assets in the hands of such executor or executors, administrator or administrators, guardian or guardians so neglecting or refusing as aforesaid.

May direct an executor, administrator or guardian to account with, and give security to his co-executor, &c.

11. *And be it enacted*, That executors, administrators, trustees or guardians, may, by leave and direction of the orphans' court, put out their minors' money to interest, upon such security, and for such a length of time, as the said court shall allow of, and if such security so taken, bona fide and without fraud, shall happen to prove insufficient, it shall be the minors' loss, and it shall be the duty of executors, administrators, trustees and guardians, in cases where the minors' estates may be materially benefited thereby, to make application to the orphans' court for such leave and direction, and in case they shall neglect so to do, they shall be accountable for the interest that might have been made thereby: but if no persons who may be willing to take the said money at interest, giving such security, can be found by the said executors, administrators, trustees or guardians, nor by any other friend or friends of such minors, then the said executors, administrators, trustees or guardians, shall, in such cases, be accountable for the principal money only, until it can be put out at interest, as aforesaid: *Provided nevertheless*, That in any case where executors, administrators, trustees or guardians shall make use of the money of minors, which shall come to their hands, they shall be accountable not only for the principal but for the interest thereon.

The money of minors may be put out to interest, under the direction of the court.

12. *And be it enacted*, That where any person hath died, or shall die intestate, seized in fee-simple of any lands, tenements, or hereditaments, leaving two or more children, or other heirs, any of whom being under the age of twenty-one years, the or-

The real estates of intestates may be divided in certain cases.

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phans' court of the county in which such real estate is situate, upon application made by the said heirs, or any of them, or by any person duly authorized in their behalf, or claiming under them or any of them, shall and may order and direct a division of such real estate to be made in such shares and proportions between them as they may be entitled to under the laws of this state, or any of them, directing the descent of real estates; the metes and bounds of each child's or other heir's share, to be ascertained by three disinterested commissioners, to be appointed by the court, whose report, or the report of any two of them, made in writing, under their hands, to the next or any subsequent orphans' court, after such division shall be made and approved of by the court, shall be recorded in the records of said court, and be conclusive to all parties concerned.

Real estates, devised by will, may be divided.

13. *And be it enacted*, That where any person hath died or shall die seized of any lands, tenements or hereditaments, leaving a legal will and testament, devising his or her real estate to two or more devisees, and not ascertaining the metes and bounds of each devisee's share, any of whom being under the age of twenty-one years, and their shares remaining undivided, or any such devisee shall die, leaving any heir under the age of twenty-one years, entitled to the share, or a part of the share of such devisee, so dying, and no division shall have been made among the said devisees, the said orphans' court, upon application by any of the devisees, or any person claiming under them, or any of them, or duly authorized by them, or any of them, shall and may order and direct a division of such real estate to be made, agreeably to the true intent and meaning of the said testator's last will and testament; the metes and bounds of each devisee's share to be ascertained by three disinterested persons, commissioners, to be appointed by the court, whose report, or the report of any two of them, made in writing, under their hands, to the next or any subsequent orphans' court, after such division made and approved of by the court, shall be recorded in the records of the court, and be conclusive to all parties concerned.

Cases where a person dies intestate, in which the surrogate-general is authorized to direct a division.

14. *And be it enacted*, That where any person hath died, or shall die intestate, seized in fee-simple of any lands, tenements or hereditaments, situate in two or more counties, leaving two or more children or other heirs, any of whom being under the age of twenty-one years, the surrogate-general, on application made by the said heirs, or any of them, or by any person duly authorized in their behalf, or claiming under them or any of them, shall and may order and direct a division of such real estate to be made in such shares and proportions between them, as they may be entitled to under the laws of this state, or any of them, directing the descent of real estates, the metes and bounds of each child's or other heir's share, to be ascertained by three disinterested persons, commissioners, to be appointed by the said surrogate-general, whose report or the report of any two of them, made in writing, under their hands, to the next or any prerogative court held after such division made, and approved by the surrogate-general, shall be conclusive to all parties concerned.

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and shall be recorded in the clerk's office in each of the counties where the lands lie, for which the said surrogate-general and register of the prerogative court, commissioners and clerks, shall be entitled to the same fees as are allowed, by this act, to the orphans' court, commissioners and surrogate, for similar services.

15. *And be it enacted*, That where any person hath died, or shall die, seized of any lands, tenements or hereditaments, leaving a legal will and testament, devising real estate to two or more devisees, situate in two or more counties, and not ascertaining the metes and bounds of each devisee's share, any of whom being under the age of twenty-one years, and their shares remaining undivided, or any such devisee shall die, leaving any heir under the age of twenty-one years, entitled to the share or a part of the share of such devisee so dying, and no division shall have been made among the said devisees, upon application made by said devisees, or any of them, or any person claiming under them, or any of them, or duly authorized by them, to the said surrogate-general, he shall and may order and direct a division to be made of such real estate, agreeably to the said last will and testament, by three disinterested persons, commissioners, appointed by the said surrogate-general; and the proceedings on such application shall be in like manner, in all respects, as is prescribed in the foregoing section, and have the same force and effect, and the same fees be allowed.

Cases where he is authorized to direct a division among devisees.

16. *And be it enacted*, That the persons appointed by the orphans' court, or by the surrogate-general, to make partition in any of the cases aforesaid, shall, before they enter upon the duties of their appointment, take an oath or affirmation, to make a fair and just partition of such real estate, without partiality, favor or affection; which oath or affirmation may be administered by any judge of the orphans' court, surrogate or justice of the peace of the county or counties in which the said real estate is situate, or by the said surrogate-general.

Persons appointed to make partition of lands, to take an oath.

17. *And be it enacted*, That the necessary costs and expenses which shall arise under an order of the orphans' court or surrogate-general, in any of the cases aforesaid, shall be assessed by the said court or surrogate-general, upon each share, in proportion to the value divided to him or her, and may be recovered by a warrant from the said court or surrogate-general, directing distress and sale to be made of so much timber, wood or herbage, or other property belonging to such devisee or heir, as may be found on the part divided to him or her, as will be sufficient to pay the costs and expenses aforesaid, and costs of such distress and sale.

Expense of division, how assessed and recovered.

18. *And be it enacted*, That on a division made in any of the cases aforesaid, if any devisee or heir as aforesaid, or any person claiming under him or her, hath, after the death of the testator or intestate and before the division, cut off or made use of any timber, or committed any waste or destruction on the premises, the commissioners appointed to make the division shall estimate the damage done by such heir or devisee, or person claiming under him or her, and divide the premises so that such heir or devisee

In making a division, damage committed to be estimated.

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shall be charged with said damage, and have a share proportionably less in value than the other heirs or devisees who have done no waste or damage.

Manner of proceeding in case a division cannot be made without great prejudice to the owners.

19. *And be it enacted*, That wherever commissioners, appointed in any of the cases mentioned in this act to divide real estate, shall be of opinion that the tract or tracts of land or real estate is or are so circumstanced, that a partition thereof cannot be made without great prejudice to the owners of the same, they may proceed as is directed in such case by the act, entitled "An act for the more easy partition of lands held by coparceners, joint tenants and tenants in common," and by an act, entitled "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the seventh February, eighteen hundred and sixteen; and the fees of the commissioners in such case shall be the same as is allowed by this act to commissioners for dividing lands: *Provided*, That such fees and expenses shall not bar any claim which may be made by such commissioners for services which may be performed under the fifth and eighth sections of said act.

In what case a creditor may apply to the orphans' court to direct a sale of real property.

20. *And be it enacted*, That when any creditor shall have obtained judgment against an executor or administrator, and the execution issued on the same shall remain unsatisfied in whole or part, for defect of personal estate to be levied on and sold, and there is real estate, it shall be lawful for the creditor or his legal representative, if the executor or administrator, being thereto required, shall neglect or refuse to obtain a sale thereof, according to law, for the space of six months after being so required, to apply to the orphans' court of the proper county, to order such sale to be made; and the said court, upon due notice given to said executor or administrator, of such application, shall examine the circumstances of the case; and if it appears that the said debt, or any part thereof, is unpaid, and the personal estate deficient as aforesaid, and no sufficient cause being shewn to the contrary, the said court may make such order to shew cause as is mentioned in the nineteenth section of the act, entitled "An act making lands liable to be sold for the payment of debts," passed eighteenth of February, seventeen hundred and ninety-nine; and such further proceedings shall be had as is prescribed in the same act in relation to the sale of real estate, where the personal estate is insufficient to pay debts.

Surrogates to take the depositions to wills, inventories, administrations, &c.

Disputes relative to the same, when and how to be settled.

21. *And be it enacted*, That the surrogate of each county shall take the depositions to wills, administrations, inventories and administration bonds, in case of intestacy, and issue thereon letters testamentary and of administration; which several letters shall be in the form herein after mentioned; but in all cases whatsoever, where doubts arise on the face of a will, or a caveat is put in against proving a will, and wherever disputes happen respecting the existence of a will, the fairness of an inventory, or the right of administration, the surrogate shall issue citations to all persons concerned, to appear at the next orphans' court to be held in and for the county; which citations shall be served at

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least ten days before the sitting of the court, when the cause shall be heard in a summary way, and determined by the judges of the court, subject to an appeal to the prerogative court, if demanded by any of the parties within thirty days after the sentence or decree of the orphans' court; after which, if no appeal be demanded, the surrogate shall proceed thereon as the sentence of the orphans' court shall direct; and all proceedings of surrogates, not brought as aforesaid before the orphans' court, shall, in like manner, be subject to an appeal to the prerogative court by any persons interested, or other person legally representing them, provided such appeal be made within six months after any such proceedings; and upon all causes heard in a summary way, as aforesaid, upon citation by the orphans' court, the evidence and proceedings, upon the application of either party, shall be reduced to writing by the register of the court, and the court, upon just cause, may put off the hearing of the cause to another time, upon the application of either party: *Provided*, That no surrogate shall proceed to prove any will until ten days from the death of the testator.

22. *And be it enacted*, That each of the surrogates, in the several counties of this state, shall record, in books to be provided for that purpose, at the expense of the county for which they shall be used, all wills proved before them or the orphans' court, together with the proofs thereof, all letters of guardianship, letters testamentary and letters of administration, by him issued or granted, and all things concerning the same, and also all inventories proved before him; which records shall be of the same force, validity and effect as the like records in the prerogative office, and the transcript of such records, certified under the hand and seal of office of the surrogate, shall be received in evidence in every court of this state, and have the same validity and effect as transcripts certified by the register of the prerogative court.

Surrogates to record all wills, letters of administration, guardianship, &c.

23. *And be it enacted*, That each of the said surrogates shall issue letters testamentary in the following form:

I, surrogate of the county of do certify the annexed to be a true copy of the last will and testament of late of the county of deceased, and that the executors therein named, proved the same before me, and are duly authorized to take upon themselves the administration of the estate of the testator, agreeably to the said will. Witness my hand and seal of office, the day of in the year of our Lord, one thousand eight hundred

Letters testamentary.

And the said surrogate shall issue letters of administration in the following form:

I, surrogate of the county of do certify, that on the day of administration of the goods and chattels, rights and credits, which were of late of the county of who died intestate, was granted by me to of who are duly authorized to administer the same agreeably to law. Witness my hand and seal of office, the day of in the year of our Lord, &c.

Letters of administration.

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And the said probate of wills and letters of administration shall have the same validity and effect as probate of wills and letters of administration issued by the register of the prerogative office, in the name of the ordinary or surrogate-general, with the seal of office affixed.

Surrogates to make returns to the register.

24. *And be it enacted,* That it shall be the duty of every surrogate, on the first Mondays of February, May, August and November, in each year, to transmit to the register of the prerogative court, all wills and inventories proved by him, and a return of all letters of administration granted during the preceding three months, to be filed in the said register's office.

To file administration bonds &c.

25. *And be it enacted,* That every surrogate shall carefully file all administration and guardianship bonds by him taken, and all other instruments of writing required by law in conducting the business of his office, or which were heretofore used to be filed in the prerogative office.

The ordinary may direct guardianship bonds to be prosecuted.

26. *And be it enacted,* That it shall and may be lawful for the ordinary or surrogate-general, to cause any guardianship bond to be prosecuted in any court of record, at the request and expense of any person aggrieved by the said bond having become forfeited, and the moneys recovered upon such bond shall be applied towards making good the damages sustained by the not performing the condition thereof, in such manner as the ordinary or surrogate-general shall by his sentence or decree direct.

Orphans' court to admit guardians.

27. *And be it enacted,* That the powers and duties formerly exercised and performed by the ordinary, relative to the admission of guardians, for persons under the age of twenty-one years, shall hereafter be exercised and performed by the orphans' court of the county in which the minor applying for a guardian may reside, or shall have real or personal estate, subject, however, to an appeal to the prerogative court, and the letters of guardianship shall be issued under the direction of the orphans' court, by the surrogate of the county in which the application shall be made, which letters shall be in the following form :

Form of letters of guardianship.

I, surrogate of the county of do certify on the day of the orphans' court of the county of admitted of as guardian of the person and property of being a minor under the age of . Witness my hand and seal of office, &c.

Provided, That nothing in this act shall be construed to prevent the ordinary or surrogate-general, in person, from granting probates of wills, letters of administration and letters of guardianship, from the prerogative office, in cases where a convenience will arise from doing the same.

When, how, and to whom letters of guardianship may be granted.

28. *And be it enacted,* That where an orphan is of the age of fourteen years or upwards, letters of guardianship shall be granted, on petition to the orphans' court, signed by such orphan in presence of the surrogate, and on the guardian or guardians first entering into a bond to the governor or ordinary of the state, with good security, in a sufficient sum, for the faithful execution of his, her or their office; but where an orphan is under the age

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of fourteen years, the mother, or next of kin, of full age, and where there are several relations in equal degree of kindred, any one, giving due notice to the rest, may apply to the orphans' court for the guardianship of such orphan, who, upon inquiry into the circumstances of the case, may admit one or more of them, or a stranger willing to accept the trust, at their discretion, to be guardian or guardians of such orphan, until he or she attains the age of fourteen years, or other guardian or guardians be appointed in his stead, such guardian or guardians, giving good security by bond as aforesaid, as the said court shall direct, and until the said orphan, after arriving at the age of fourteen, shall choose another guardian or guardians, the person or persons so first appointed shall remain the lawful guardian or guardians of such orphan, under the said first letters of guardianship, and the bond given thereon shall continue in full force; but where the orphan, after arriving to the age of fourteen years, shall choose any other person or persons to be guardian or guardians, letters of guardianship shall be applied for, as before directed, and all proceedings thereon be had accordingly.

Surrogates to give bond and take oath.

29. *And be it enacted,* That every surrogate, before he enters upon the execution of the duties of his office, shall enter into bond to the state of New-Jersey, in the sum of two thousand dollars, with at least two good and sufficient securities, being freeholders of the county for which such surrogate is appointed, to be approved of by two of the judges of the inferior court of common pleas of said county, which bond, with the condition thereof, shall be in the form hereinafter mentioned, and shall also take and subscribe the following oath, before one of the judges of the inferior court of common pleas aforesaid :

I, being appointed surrogate of the county of do solemnly swear, (or affirm, as the case may be) that I will well, truly, faithfully and impartially, execute the office of surrogate of the said county, agreeably to law, according to the best of my skill and understanding. So help me God.

Form of oath.

Which oath or affirmation shall, by the judge before whom the same is taken, be delivered or safely transmitted to the secretary of this state, together with the bond aforesaid, to be filed among the public papers of his office; and the bond to be entered into, as aforesaid, shall be in the following form :

Know all men by these presents, that we, of the county of in the state of New-Jersey, are held and firmly bound unto the said state in the sum of two thousand dollars, to be paid to the said state, to which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of in the year of our Lord, one thousand eight hundred and . The condition of this obligation is such, that if the above bounden shall well and truly execute the office of surrogate of the county of and in all things touching and concerning the said office shall well and truly, faithfully and impartially, execute and perform the same

Form of bond.

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according to law, as well with respect to all persons whatsoever concerned, as to the said state of New-Jersey, and at the expiration of his said office, shall deliver the seal and all the books, records and papers remaining in said office or appertaining thereto, to his successor in office, then the above obligation to be void, otherwise to be and remain in full force and virtue.

Surrogates to state the accounts of executors, &c. and report the same.

30. *And be it enacted*, That the surrogate shall audit and state the accounts of executors and administrators exhibited to him, and report the same to the orphans' court, at the next sitting thereafter, the executor, in case of a will, or the administrator, in case of intestacy, giving at least two months' notice of his intention in five of the most public places in the county, as near as may be to the place of residence of the parties concerned, or some of them, where such account is to be allowed, which court, on due proof of notice as aforesaid, and no exception being made to the report of the surrogate, shall decree an allowance of the account as stated; but if any person or persons, interested in the settlement of said account, shall, by himself or attorney, appear and make exceptions to the report, the court shall either proceed to hear the proofs and allegations, and correct or amend any mistake or errors that may happen in the account as reported, or refer the same to auditors, who shall examine and restate the account, after hearing parties and witnesses, and make report to the next or some subsequent court, for confirmation and allowance as aforesaid: *Provided always*, That in all cases where it shall appear, that the executor or administrator hath not had sufficient assets in hand, of the testator or intestate, to satisfy all just debts and expenses, the court shall not proceed to decree an allowance of the account, until the next sitting after the report is made; and the accounts of guardians or trustees shall be audited and stated by the surrogate, and reported to, and finally settled and allowed by, the orphans' court, in manner aforesaid; but in cases of trustees and guardians, the surrogate shall issue citations to all persons concerned, to appear at the said orphans' court, which citations shall be served at least ten days before the sitting of the court; and the said court shall, upon application of an orphan or other person interested, from time to time order and direct the guardians to account, as aforesaid, for all moneys, goods and chattels they shall receive, and for the rents, issues and profits of any real estate in their possession, belonging to their wards.

In what manner errors are to be corrected.

Accounts of guardians and trustees to be audited and settled in like manner.

Executors, &c. exhibiting their accounts, may be examined on oath.

Allowance of their commissions.

31. *And be it enacted*, That it shall be lawful for the court to whom any account is reported for allowance, as aforesaid, or for the auditors to whom an account is referred, as aforesaid, at the instance of any party interested in the same, or by their own proper authority, to examine any executor, administrator, guardian or trustee exhibiting such account, on oath or affirmation, touching the truth and fairness of the same, or any part or item thereof, and the allowance of commissions to executors, administrators, guardians or trustees, shall be made with reference to their actual pains, trouble and risk, in settling such estate, rather than in respect to the quantum of estate; and where any difference arises between executors, administrators, guardians or trustees, in re-

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gard to the proportion of commissions between them, the orphans' court shall determine the same, having regard to their respective services.

32. *And be it enacted*, That the sentence or decree of the orphans' court, on the final settlement and allowance of the accounts of executors, administrators, guardians or trustees, shall be conclusive upon all parties, and shall exonerate and for ever discharge every such executor, administrator, guardian or trustee, from all demands of creditors, legatees or others, beyond the amount of such settlement, except for assets or moneys which may come to hand after settlement as aforesaid, excepting also in cases where a party applying for a re-settlement, shall prove some fraud or mistake therein, to the satisfaction of the said orphans' court.

Decree of the court, in the settlement of accounts, conclusive, except &c.

33. *And be it enacted*, That every person duly cited or summoned to appear at any of the said orphans' courts, ten days before the time appointed for appearance, who shall make default, shall be liable to attachment for contempt, and the said courts are hereby authorized and empowered to compel obedience to their process, orders and sentences, by imprisonment of body or distress and sale of lands and goods, as fully and amply as any other court of record in the state, and all final sentences or decrees of the orphans' courts, in the several counties of this state, where no appeal is given to the prerogative court, shall be subject to removal by certiorari into the supreme court: *Provided always*, That such certiorari be applied for by either of the parties, within ninety days after such final sentence or decree shall be made, and not afterwards.

Persons summoned to appear at court, and neglecting to attend, how punishable.

Certain decrees may be removed into the supreme court.

34. *And be it enacted*, That the sheriff and constables of the county shall be, and they hereby are, severally declared to be officers of the orphans' court, and shall attend the same as such, and serve all process and orders of the court or judges, directed to them, or any of them.

Sheriff and constables of officers of the orphans' court.

35. *And be it enacted*, That if it shall happen that an orphans' court shall not be held at the regular term or terms of said court, by reason of the non-attendance of a sufficient number of judges, the business and proceedings pending in said court and process returnable thereto, shall be considered continuing from term to term, until a regular court shall be held.

Court not held for want of judges, business pending continued.

36. *And be it enacted*, That the clerk of the orphans' court shall draw bills of costs on all litigated suits in said court, and present the same to the court, who shall adjudge and direct which of the parties shall pay the same, and examine and tax the said bill agreeably to the fees allowed by law, which bill of costs shall be filed by the surrogate, who is hereby authorized, if the same is not paid, to issue an execution against the goods and chattels, lands and tenements, of the party adjudged to pay the same, and the costs, when paid or levied, shall be received by the surrogate, who shall pay to the court, sheriff and cryer, each their fees, as the same shall be taxed, and the residue to the persons entitled thereto, and for issuing the said execution the surrogate shall be

Bills of costs, by whom drawn and taxed.

Manner of recovery.

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entitled to fifty cents, and the execution, before the same is delivered to the sheriff, shall be recorded by the clerk of the county, in the book by him kept for recording executions.

Surrogate to keep up, in his office, a list of fees, &c.

37. *And be it enacted*, That the surrogate shall cause to be affixed, and at all times kept up in his office, in some conspicuous place, a true list of all fees which may be lawfully demanded by him, as well in his capacity of clerk of the orphans' court as of surrogate of the county, and if he shall neglect to put up and keep in view such list of fees, or shall take other or greater fees than by law allowed, or shall take fees for services not performed, he shall, for every such offence, forfeit and pay the sum of thirty dollars, to be recovered in an action of debt, with costs of suit, before any court having cognizance thereof, by the party aggrieved.

Receipts and discharges given to the executor, &c., to be recorded by the surrogate.

38. *And be it enacted*, That it shall be lawful for every executor, administrator or guardian, who hath settled, or shall settle his or her account before the orphans' court, and who hath, or shall hereafter pay, any legacy or legacies, distributive share or shares, or sums of money, to any person or persons entitled by law to receive the same, his, her or their executors or administrators, to produce the receipts and discharges therefor, to the surrogate of the county in which letters testamentary, or of administration or guardianship have been or shall be granted, and the said surrogate shall immediately record the same in a book to be by him kept for that purpose: *Provided*, That the same be first proved and acknowledged, in the manner that deeds of conveyance of land are by law required to be proved and acknowledged, which proof or acknowledgment shall be recorded with such receipts or discharges, and the said surrogate shall endorse on such receipts and discharges, the book and page in which the same is recorded, with the time of recording the same, and sign his name thereto, and the said record, or a copy thereof, under the hand and seal of office of the surrogate, shall be received in evidence in any court of record in this state, if it shall be made appear to the satisfaction of said court, that the original receipt or discharge hath been lost, or that it is not in the power of the party offering the copy in evidence, to produce the same, and the surrogates of the several counties of this state, shall procure, at the expense of the county, a good bound book, in which they shall record such receipts and discharges, and be entitled to receive ten cents for recording each receipt or discharge.

How proved.

How special orphans' courts are to be appointed, and where held.

39. *And be it enacted*, That any special orphans' court, to be held in vacation, excepting in cases directed by the eighth section of this act, shall be appointed by the judges at a regular term, in open court, and be held at the place in the county, where the said court by law holds its regular terms.

Surrogate not to act as attorney &c. in certain courts.

40. *And be it enacted*, That no surrogate shall be allowed to appear or act as attorney, proctor or counsel, in the orphans' court of any of the counties of this state, and also that no surrogate of any county, being a judge of the court of common pleas of such county, shall sit as a judge of the orphans' court, on the hearing of any cause pending before said court.

41. *And be it enacted*, That upon the death, removal, or expiration of the office of surrogate, the minutes, papers, writings, documents and books of, and belonging to, such office, shall be delivered to his successor in office, on oath or affirmation of the preceding surrogate, or in case of his death, on the oath or affirmation of his executors or administrators, and if such surrogate, or the executors or administrators of a deceased surrogate, shall refuse or neglect to deliver the same on oath or affirmation, as aforesaid, being demanded by the successor in office, then every such person shall forfeit and pay five hundred dollars, to be recovered, with costs, by action of debt, in the name of the county collector, for the use of the state.

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Books and papers to be delivered over to the successor, on oath.

42. *And be it enacted*, That the transcript of any will or testament, registered or recorded in the prerogative office of this state, duly certified by the register of the said office to be a true transcript, shall be received in evidence in any court of this state, and shall be as good and effectual in law, as if the books in which the same are registered or recorded, were then and there produced and proved.

Transcripts of wills, certified by the register, to be received in evidence.

43. *And be it enacted*, That the judges, surrogates, and other officers of the orphans' court, shall be entitled to demand and receive, for the services hereinafter mentioned, the fees thereunto annexed, and no more, and that a sheet or folio shall contain one hundred words.

Fees of the officers of the orphans' court.

Fees to be divided among the judges who are present in court when the service is performed.

The first motion in every cause, (but no case to be deemed a cause in court, unless there be adverse parties to the same)

fifty cents.

Every rule in a cause

twenty cents.

The trial and argument of every cause

fifty cents.

Every judgment and decree,

eighty cents.

Every appointment of auditors, guardians, trustees or commissioners

eighty cents.

Taxing every bill of costs

fifty cents.

Fees of surrogate and clerk of the orphans' court.

For drawing and taking deposition on will, and inventory

one dollar thirty-three cents.

Engrossing a last will and testament, each sheet

twelve cents.

Recording proof

sixty cents.

Recording a last will and testament, each sheet

eight cents.

Granting probate

one dollar.

Engrossing probate

eight cents.

Recording probate

twelve cents.

In taking depositions to codicils

sixty-two and a half cents.

Recording proof

sixty cents.

Recording and engrossing codicil, the same as will.

1820. *Fees to be received by the surrogate, for services directed by law to be performed by the register of the prerogative court, and to be paid over to him.*

For recording the name of each testator, the year in which the will was proved, and filing the will twenty-five cents.

Recording the name of each intestate, where administration hath been granted, and the year when granted twelve cents.

Filing every inventory twelve cents.

Surrogate's fees.

Drawing administration bond, and taking deposition thereon one dollar thirty-three cents.

Granting letters of administration one dollar.

Recording ditto twelve cents.

Filing administration bond ten cents.

Recording inventory, each sheet eight cents.

Drawing bond and petition for guardianship one dollar thirty-three cents.

Reading do. do. ten cents.

Filing do. do. ten cents.

Granting letters of guardianship one dollar.

Recording do. twelve cents.

Entering rule of court on appointment of guardian twenty cents.

Recording inventories, made by guardians, each sheet eight cents.

Drawing petition, stating a list of debts and credits on application for the sale of real estate, entering rule, and making copies one dollar fifty-five cents.

Exhibiting proofs of advertising rule to shew cause, entering decree, copies thereof, and receiving, filing, and recording report of sales four dollars twenty cents.

For advertising the rule of court, when done by the surrogate one dollar.

For services enjoined by the act concerning contracts of real estate, made by testators and intestates, in their lifetime, the same fees as allowed for the sale of land.

Drawing petition, reading, filing and recording decree, appointing commissioners for the division of real estate, and a certified copy of such decree three dollars forty cents.

Recording report of commissioners, each sheet eight cents.

Recording drafts, for each and every course three cents.

Drawing petition on application for rule to limit time to creditor's demand, entering the rule, advertising, entering the decree, making the rule absolute, and a certified copy of the decree four dollars twenty cents.

Drawing every citation or other process thirty cents.

Sealing the same fourteen cents.

Entering every action eight cents.

Entering the return of a writ ten cents.

Entering every rule or order of court ten cents.

Copy of such rules or order eight cents.

Searching the records twelve cents.

Swearing each witness six cents.

Reading every petition or other writing given in evidence eight cents.

Filing every citation, exception, or other paper ten cents.

Entering every discontinuance eight cents.

Entering every judgment or decree ten cents.

Entering and filing appeal twenty cents.

Copies of citations, exceptions, records, and other papers, each sheet eight cents.

Seal and certificate twenty-five cents.

Depositions taken in court, each sheet twelve cents.

Engrossing copy, when required eight cents.

Recording certified copy of proceedings in cases of lunacy, transmitted to the court, each sheet eight cents.

Transmitting bond of guardianship, in the above cases, or of trustees' bonds to the register's office twelve cents.

Recording discharges taken by executors and administrators on a final settlement, each sheet eight cents.

For auditing and stating the account of executors, administrators, guardians, or trustees, and reporting the same to the court, such fees as the court shall think reasonable.

Fees of sheriff.

Serving citation or other process one dollar fifty cents.

Returning every writ twelve cents.

Mileage, the same as allowed in serving writs issued out of the court of common pleas.

Fees of commissioners to divide land.

Each commissioner one dollar fifty cents per diem, for every day employed in the service, together with all actual expenses for surveying, chain-bearing, assistants, and other necessary charges.

Cryer's fees.

Making proclamation on application for the fulfilment of contracts eight cents.

Swearing a witness six cents.

44. *And be it enacted*, That the act, entitled "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the sixteenth day of December, one thousand seven hundred and eighty-four; and the act, entitled "A supplement to an act entitled an act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the twenty-second day of March, one thousand seven hundred and eighty six; and the act, entitled "An act to revive the orphans' court, and for other purposes therein mentioned," passed the twentieth day of November, one thousand seven hundred and ninety; and the act, entitled "An act concerning surrogates, and declaring what exemptions of

Acts repealed.

1820.

wills and testaments shall be holden and received as good evidence," passed the seventh day of June, one thousand seven hundred and ninety-nine; and the act, entitled "An act concerning the surrogates in the several counties of this state," passed the eighteenth day of March, one thousand seven hundred and ninety-six, and the supplement thereto, passed the sixth day of March, one thousand seven hundred and ninety-seven; and the act, entitled "An act relative to the probate of wills, granting letters of administration and guardianship," passed the ninth day of November, one thousand eight hundred and three; and the act, entitled "An act relative to the mode of dividing real estates of intestates, situate in more counties than one," passed the sixth day of March, one thousand eight hundred and six; and the act, entitled "A supplement to the act concerning executors, and the administration and distribution of intestates' estates," passed the second day of March, one thousand seven hundred and ninety-five, which supplemental act was passed the fifth day of February, one thousand eight hundred and twelve; and the act, entitled "An act relative to the division of real estates of intestates," passed the sixth day of February, one thousand eight hundred and eighteen; and an act, entitled "An act to regulate fees of the judges, surrogates, clerks, and other officers of the orphans' court," passed the eighteenth day of February, one thousand eight hundred and nineteen, be, and the same are hereby repealed: *Provided nevertheless*, That nothing contained in this repealing section shall destroy, or any way impair any right acquired under the acts so repealed, nor invalidate or make void any proceedings legally had or done under the same.

See act concerning surrogate's office.

PAM. 203.
See ante 747.

AN ACT relative to commissioners for taking the acknowledgment and proof of deeds and conveyances.

Passed the 2d of November, 1820.

Former act explained.

BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That nothing in the repealing section of the act, entitled "A supplement to an act entitled an act respecting conveyances," passed June seventh, one thousand seven hundred and ninety-nine; and to an act, entitled "An act to register mortgages," passed June seventh, one thousand seven hundred and ninety-nine, which said supplemental act was passed the fifth day of June, one thousand eight hundred and twenty, shall be so construed, as to make void the appointment, or in any way affect the power of any commissioner appointed under the act passed the eighth of February, one thousand eight hundred and sixteen, or to render null, or in any way to invalidate or impair any act or proceeding of such commissioner, done or had by virtue of his appointment.

A further supplement to the act, entitled "An act for the punishment of crimes," passed the eighteenth day of March, one thousand seven hundred and ninety-six.

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PAM. 203.
See ante 244.

Passed the 3d of November, 1820.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That when any slave shall hereafter be convicted of manslaughter, arson, burglary, rape or robbery, or of an assault and battery, with intent to commit murder, arson, burglary, rape, or robbery, or of a misdemeanor in poisoning, or attempting to poison, and so to endanger the life of any person whatsoever, and shall have judgment of imprisonment for the same, it shall be lawful for the governor of this state, at any time during the said imprisonment, by writing sealed with the great seal, to authorize and empower the owner of such slave to send him or her out of this state, and of the United States; and to direct the officer in whose custody such slave may be, to deliver him or her to such owner, for that purpose, accordingly: *Provided*, That such owner, before he shall obtain such authority, shall enter into bond to this state, with one or more surety or sureties, to be approved of by the governor, and filed in the secretary's office, in the penal sum of four hundred dollars; conditioned that such slave shall be sent so out of this state and of the United States, within ten days after such delivery by the said officer, and shall never return to this state without lawful permission: *And provided also*, That such owner, before the delivery of such slave by such officer, shall pay all the costs of the prosecution, imprisonment and maintenance of such slave, up to the time of such delivery.

Condemned criminal may be sent out of United States, &c.

2. *And be it enacted*, That the fifth and sixth sections of the act, entitled "A supplement to the act entitled an act for the punishment of crimes," passed the thirty-first day of March, one thousand eight hundred and twenty, be, and the same are hereby repealed.

AN ACT to repeal an act, entitled "A supplement to an act entitled an act for the relief of persons imprisoned for debt," passed the eighteenth day of March, one thousand seven hundred and ninety-five; and to an act, entitled "An act to repeal the several insolvent laws, passed since the eighteenth day of March, one thousand seven hundred and ninety-five;" and to revive the act, entitled "An act for the relief of persons imprisoned for debt."

PAM. 204.

Passed the 3d of November, 1820.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the act, entitled "A supplement to an act entitled an act for the relief of persons imprisoned for debt," passed the eighteenth day of March, one thousand seven hundred and ninety-five; and to an act, entitled "An act to repeal the several insol-

1820. vent laws passed since the eighteenth day of March, one thousand seven hundred and ninety-five; and to revive the act, entitled "An act for the relief of persons imprisoned for debt," passed the third day of March, one thousand eight hundred and twenty, be, and the same is hereby repealed.

2. *And be it enacted*, That in all cases where an inventory and bond shall have been given, agreeably to the provisions of the first section of the act hereby repealed, the same shall be valid; and all persons who have given such inventory and bond, shall be entitled to the benefit, and subject to the provisions of the said act, to all intents and purposes, as if this repealing act had not been passed.

PAM. 205.

AN ACT concerning the boundaries and jurisdiction of this state in the bay of Delaware.

Passed the 7th of November, 1820.

Commissioners to be appointed, &c.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That the governor be, and he hereby is, authorized, empowered and directed to appoint three commissioners on the part of this state, who shall be entitled to a reasonable compensation, to meet commissioners appointed by the competent authority of the state of Delaware, should the state of Delaware think proper to appoint such commissioners; which said commissioners of the state of New-Jersey and of the state of Delaware, when so met, shall have full power and authority to make and conclude an agreement between the said states of New-Jersey and Delaware, defining their respective boundaries, jurisdiction, rights to islands, subaqueous soil, fisheries and products of the river and bay of Delaware, southeasterly of the circular boundary between the states of Delaware and Pennsylvania.

2. *And be it enacted*, That the agreement so made by the commissioners, shall not be binding on the state of New-Jersey, until ratified and confirmed by the legislatures of the states of New-Jersey and Delaware, respectively.

3. *And be it enacted*, That the governor of this state transmit to the governor of the state of Delaware, a copy of this act, and request him to communicate it to the legislature of that state.

PAM. 205. See ante 430.

A further supplement to the act, entitled "An act making lands liable to be sold for the payment of debts," passed the eighteenth of February, seventeen hundred and ninety-nine.

Passed the 9th of November, 1820.

Application for order to orphans' court, &c.

BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That on any application hereafter made by the executor or ad-

ministrator of any testator or person dying intestate, to the orphans' court of any county in this state, for an order to shew cause, agreeably to the nineteenth section of the act to which this is a supplement, why so much of the said testator or intestate's real estate shall not be sold as will be sufficient to pay his debts, or the residue thereof, as the case may require, it shall be lawful for the said court to fix upon any day for the said hearing, not less than two months from the time of granting the order, any thing in the said nineteenth section to the contrary notwithstanding.

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No day for hearing to be fixed under two months.

A further supplement to an act, entitled "An act making provision for carrying into effect the act for the punishment of crimes," passed February fifteenth, one thousand seven hundred and ninety-eight.

PAM. 206. See ante 325.

Passed the 11th of November, 1820.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That at the first joint-meeting after the accounts of the state-prison are settled, three suitable persons shall be chosen as inspectors of the state-prison, who shall continue in office until the next session of the legislature, and until others are chosen in their stead; and at the first joint-meeting which shall happen after every annual settlement of the accounts of the state-prison, the inspectors shall be re-elected or others chosen in their stead; and if any vacancy shall happen by the death, removal, resignation, refusal to act, or other inability of any of the inspectors, in the recess of the legislature, it shall and may be lawful for the person administering the government to appoint a person or persons to fill the vacancy.

Vacancies, how filled.

2. *And be it enacted*, That the tenth section of the act, entitled "A supplement to an act, entitled an act making provision for carrying into effect the act for the punishment of crimes," passed February fifteenth, one thousand seven hundred and ninety-eight, which said supplement was passed on the thirtieth day of May, one thousand eight hundred and twenty, be, and the same is hereby repealed.

Section repealed.

AN ACT to repeal two certain acts therein named.

PAM. 206.

Passed the 14th of November, 1820.

BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That the act, entitled "An act for the more effectual administration of justice," passed February the second, eighteen hundred and eighteen, and the supplement thereto, passed the fourteenth of the same month, and every section and clause contained in the said act, be, and the same are hereby repealed: *Provided*, That nothing herein contained shall be so construed as to affect any judgment or process issued under or by virtue of the above recited acts.

CHAP. DCCLXX.

An Act to suspend the Operation of part of a certain Act therein mentioned, so far as the same relates to a certain Tract of Tide Swamps and Meadows in the County of Bergen.

SECT. 1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the owners of a certain tract of tide swamps and meadows, in the county of Bergen, and township of Bergen, lying between the fast land of Secaucus and the fast land of Bergen woods, which tract is already enclosed by banks, dams and other waterworks, to prevent the tide from overflowing the same, shall be and they hereby are empowered to proceed, in every respect, as is directed by the act, entitled, "An act to enable the owners of tide swamps and marshes to improve the same, and the owners of meadows already banked in and held by different persons, to keep the same in good repair," passed November the twenty-ninth, seventeen hundred and eighty-eight, to support and maintain the said banks, dams and waterworks, and to erect such others as may be necessary to complete the same; any thing in the last providing clause in the first section of the before recited act notwithstanding.

C. Passed at Trenton, February 16, 1799.

CHAP. DCCLXXI.

An Act supplementary to the Act concerning the Supreme and Circuit Courts.

SECT. 1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the circuit court in the county of Essex, from and after the first day of January next, shall be held annually on the second Tuesday in April, instead of the second Tuesday in January; and that the circuit court in the county of Salem, shall be held annually on the second Tuesday in June and the first Tuesday in December, instead of the first Tuesday in March and the third Tuesday in September.

Circuit courts in Essex and Salem when to be held.

Courts of general gaol delivery to be held as heretofore.

2. And be it further enacted, That courts of general gaol delivery, shall be held in the respective counties of this state, at

the times of holding the courts of oyer and terminer, whether the same be at the terms or times appointed by law, or at the times appointed by one of the justices of the supreme court, in pursuance of the act whereof mention is above made.

C. Passed at Trenton, February 16, 1799.

CHAP. DCCLXXII.

An Act making Lands liable to be sold for the Payment of Debts.

SECT. 1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That all lands, tenements, hereditaments and real estate, shall be and hereby are made liable to be levied upon and sold, by executions to be issued on judgments, which are or shall be obtained in any court of record of this state (except justices' courts constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money and costs, so recovered or to be recovered.

Lands liable to be sold for debts, &c.

2. And be it enacted, That no judgment shall affect or bind any lands, tenements, hereditaments or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court.

Lands to be bound from time of entering judgment.

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

Goods to be bound from the time of delivering execution to sheriff.

4. And be it enacted, That where sundry writs of execution shall be issued against the goods and chattels, lands, tenements, hereditaments and real estate of the same person, and sufficient cannot be found to satisfy all the sums commanded to be made, then the like priority and preference shall be given in such cases, as is given by the preceding section of this act, in writs of execution against the goods only, and all disputes respecting the same shall be adjudged and determined accord-

Of priority of executions.

ingly; and for that purpose the like endorsement as aforesaid, shall be made on the said writs by the proper officer, of the time that he shall have respectively received the same.

Of the form of execution.

5. *And be it enacted*, That upon judgment obtained or to be obtained for debt, damages and costs, or other sum of money, in the supreme court, or any of the inferior courts of common pleas of this state, the party obtaining the same, may have an execution against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of the party against whom such judgment is or shall be awarded; but no execution shall be issued against the proper goods and chattels, lands, tenements, hereditaments and real estate of any executor, administrator, heir or devisee, unless he or she shall have made his or her estate liable for the money so recovered by false pleading or otherwise.

Duty of sheriff upon execution.

6. *And be it enacted*, That in every writ of execution, which shall be issued against lands, tenements, hereditaments and real estate, the sheriff or other officer, to whom the said writ may be directed, shall be commanded, that of the goods and chattels, in his county, of the party against whom such execution issues, he cause to be made the debt, damages and costs, or sum of money mentioned in the said execution; and if sufficient goods and chattels of the said party cannot be found in his county, that then he cause the whole or the residue, as the case may require, of the said debt, damages and costs, or sum of money, to be made of the lands, tenements, hereditaments and real estate, whereof the said party was seised, on the day when the said lands, tenements, hereditaments and real estate became liable to such debt, damages and costs, or sum of money, specifying the day particularly, or at any time afterwards, in whose hands soever the same may then be: but when such execution shall be issued against tenants, or heirs or devisees (unless they shall have made their estate liable by false pleading or otherwise) it shall only command the sheriff or other officer, that of the lands, tenements, hereditaments and real estate, whereof the ancestor, testator or person deceased, was seised on the day when the said lands, tenements, hereditaments and real estate became liable as aforesaid, or at any time afterwards, or at the time of his or her death, as the case may require, he cause to be made the debt, damages and costs, or sum of money in the said writ mentioned.

Real debt, &c. to be endorsed.

7. *And be it enacted*, That the party, at whose instance any writ of execution shall issue against the body, or against the goods and chattels, or against the goods and chattels, lands,

tenements, hereditaments and real estate of any person, shall endorse on the said writ, before it be sealed, the debt, damages and costs, or sum of money really due and to be made.

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

9. *And be it enacted*, That the sheriff or other officer, who, by virtue of such writ of execution, levies on any lands, tenements, hereditaments and real estate, shall give notice, by advertisements, signed by himself, and put up at five or more public places in the county, one whereof to be in the township where the said lands, tenements, hereditaments and real estate do lie, of the time and place where they will be exposed to sale, at least two months before the time appointed for selling them; and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder.

10. *And be it enacted*, That it shall be lawful for the said sheriff or other officer to make two adjournments, and no more, of the sale of lands, tenements, hereditaments and real estate, so by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftener or for a longer time, without permission, in writing, previously obtained of the party, at whose instance the said writ of execution was issued, he shall be and hereby is made liable to the amount of the debt or damages and costs, or sum or sums of money, mentioned in the said writ, with interest; and for the recovery thereof may be amerced and proceeded against in the manner prescribed in and by the twenty-second section of the act, entitled, "An act concerning sheriffs:" *Provided always*, That if the said sheriff or other officer shall, after two adjournments as aforesaid, sell the lands, tenements, hereditaments and real estate, and bring the whole amount of the product of such sale (after deducting his lawful fees) into the court from whence such execution issued, at any time before the entry of such amercement against him as aforesaid, the said sheriff or other officer shall be exonerated from all liability to the said amercement.

11. *And be it enacted*, That the person whose lands, tenements, hereditaments and real estate are so taken in execution,

may, if part of them be sufficient to satisfy such execution, elect what part thereof shall be sold; and thereupon it shall be the duty of the said sheriff or other officer to sell the part so elected, and no other, if it be sufficient: *Provided always*, That such election shall be made in writing, signed by such person, and delivered to the said sheriff or other officer, at least twenty days previous to the time appointed for the sale.

Sheriff to make deeds.

12. *And be it enacted*, That the sheriff or other officer, who, by virtue of such writ or writs of execution, shall sell as aforesaid the lands, tenements, hereditaments and real estate, or any part or parcel of them so levied upon, shall make to the purchaser thereof as good and sufficient a deed or conveyance for the lands, tenements, hereditaments and real estate so sold, as the person against whom the said writ or writs of execution were issued, might or could have made for the same at or before the time of tendering judgment against him or her; which deed or conveyance shall transfer to and vest in the said purchaser, as good and perfect an estate to the premises therein mentioned, as the person against whom the said writ or writs of execution were issued, was seized of or entitled to at or before the said judgment, and as fully to all intents and purposes, as if such person had sold the said lands, tenements, hereditaments and real estate to such purchaser, and had received the consideration money, and signed, sealed and delivered a deed for the same: *And further*, That the said deed or conveyance, so to be made by the said sheriff or officer, shall recite the writ or writs of execution, by virtue whereof the said lands, tenements, hereditaments and real estate therein described, were sold as aforesaid.

13. And whereas other judgments, statutes and recognizances, besides those or some of those, by virtue whereof the sale aforesaid was made, might affect the lands, tenements, hereditaments and real estate so sold, if no provision be made to remedy the same; and whereas the persons who have not taken or will not take out executions upon their judgments, statutes or recognizances, ought not to hinder or prevent such as do take out executions, from having the proper effect and fruits thereof; Therefore, *Be it enacted*, That the purchaser, his heirs and assigns, shall hold the lands, tenements, hereditaments and real estate, by him or her purchased as aforesaid, free and clear of all other judgments, recognizances, statutes-merchant and statutes-staple whatsoever, on or by virtue of which no execution has been taken out and executed on the lands, tenements, hereditaments and real estate so purchased.

Purchaser to hold lands clear of judgments and statutes.

14. *And be it enacted*, That if any judgment or execution (the said execution being recorded as aforesaid) by virtue whereof

such sale as aforesaid shall be made of any lands, tenements, hereditaments and real estate, shall be reversed for error, such reversal shall not be given in evidence, or be of any force or avail against any *bona fide* purchaser under the said judgment or execution; but the said purchaser, his heirs and assigns, shall hold the said lands, so *bona fide* purchased, notwithstanding such reversal, if it be posterior to the said purchase; and further, such reversal shall only operate against the defendant in error, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the lands, tenements, hereditaments and real estate so sold as aforesaid.

Reversal of judgment for error not to affect bona fide purchaser.

15. *And be it enacted*, That if any sheriff, who hath made or shall make sale of any lands, tenements, hereditaments and real estate, by virtue of an execution against the same, shall abscond or depart from the state, or be disqualified by law, or rendered unable by death, or otherwise incapable, to make a deed or conveyance for the same, it shall be lawful for any succeeding sheriff of the county, on receiving a certificate from the inferior court of common pleas of such county, signed by the clerk by order of the said court, setting forth, that sufficient proof hath been made to the said court, that such sale was fairly and legally made; and on tender of the purchase-money, or if the purchase-money or any part of it has been paid, then on proof of such payment; and on tender of the residue, if any be, to sign, seal and deliver to the said purchaser or his legal representative, a deed or conveyance of the lands, tenements, hereditaments and real estate so sold; which deed shall be as good and valid, and shall have the same force and effect, as if the sheriff who made such sale, had signed, sealed and delivered a deed of conveyance for the same in due form of law.

Sheriff being incapable to make deed, succeeding sheriff may execute deed.

16. *And be it enacted*, That if such succeeding sheriff, receive any money by virtue of the preceding section of this act, he shall pay the same to the person thereunto entitled by law.

17. *And be it enacted*, That all proprietaries, rights, share and shares of propriety and rights to unlocated lands, shall be and hereby are made liable to be levied upon and sold by executions to be issued on judgments, for the payment of the debt or damages and costs, or sum of money thereby recovered, in the same manner as lands, tenements, hereditaments and real estate are made liable to be levied upon and sold by virtue of this act; but every such execution shall issue out of the supreme court; and if the said shares or rights be within the western division, shall be directed to the sheriff of the county

Proprietary rights may be levied on and sold.

of Burlington, and if within the eastern division, shall be directed to the sheriff of the county of Middlesex; and further, that the said sheriff shall give notice, by advertisements, signed by himself, and put up in five or more public places in the said county, and by an advertisement in one of the newspapers published in this state, of the time and place of exposing such shares or rights to sale, at least two months before the time appointed for selling the same.

To grant a final execution is not sufficient to affect lands of the deceased. 18. *And be it enacted*, That no lands, tenements, hereditaments or real estate, of any testator or intestate, shall be sold or in any wise affected by any judgment or execution against executors or administrators.

Time of execution, &c. where personal estate of deceased is not sufficient to pay debts. 19. *And be it enacted*, That when any executor or administrator shall discover or believe, that the personal estate of his testator or intestate is insufficient to pay his debts, then it shall be the duty of such executor or administrator, as soon as conveniently may be, to make and exhibit, under oath, a just and true account of the said personal estate and debts, as far as he can discover the same, to the orphan's court of the county, where the lands, tenements, hereditaments and real estate, of which the said testator or intestate died or shall die seised, do lie, and request their aid in the premises; and the said court shall thereupon make an order, directing all persons interested in such lands, tenements, hereditaments and real estate, to appear before them at a certain day and place, in the said order to be mentioned, not less than two nor more than three months after the day of making such order, to shew cause, why so much of the said lands, tenements, hereditaments and real estate of the said testator or intestate should not be sold, as will be sufficient to pay his debts or the residue thereof, as the case may require; which order, signed by the surrogate or clerk of the said court, shall be immediately thereafter set up at three of the most public places in the said county for six weeks successively, and be published for the same time in one or more of the newspapers printed in this state.

Orphan's court in such case, to direct lands to be sold for the payment of debts. 20. *And be it enacted*, That the said orphan's court shall, at the time and place mentioned in the said order, or at such other time and place as they may then appoint, hear and examine the allegations and proofs of the said executor or administrator, and other persons interested; and if on full examination the said court shall find, that the personal estate of the said testator or intestate is not sufficient to pay his debts, the said court shall order and direct the executor or administrator to sell the whole, if necessary, of the lands, tenements, hereditaments and real estate of the said testator or intestate, for the payment of his debts, or so much thereof as will be suffi-

cient for that purpose; and when a part only of the said lands, tenements, hereditaments and real estate is sufficient, such order shall specify the part to be sold: *Provided always*, That where any houses and lots, or lands are so circumstanced, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the said court may, at their discretion, order the whole or a greater part than is necessary to pay such debts, to be sold; and the surplus money arising from such sale, shall be distributed among the heirs or devisees, according to the law of descents in the former, and the will of the testator in the latter case; and further, that the heir or devisee, whose lands, tenements, hereditaments and real estate, so descending or devised to him have been sold as aforesaid, for the payment of the debts of his intestate or testator, may compel all others claiming or holding under such intestate or testator, to contribute, in proportion to their respective interests, so as to equalize the burthen or loss.

How to be substantiated and sold. 21. *And be it enacted*, That the executor or administrator, who may be ordered to sell any lands, tenements, hereditaments or real estate of any testator or intestate, shall give notice, by advertisements, signed by himself, and set up at five or more public places in the county, of the time and place of selling the premises, at least two months before the time appointed for selling them, and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder; and the executor or administrator making the said sale, shall report in writing all proceedings thereon to the next orphan's court after such sale: *Provided always*, That the said executor or administrator may adjourn the said sale from time to time, not exceeding two months in the whole.

Executors, &c. to make a deed. 22. *And be it enacted*, That the said executor or administrator shall and hereby is authorized to make a deed to the purchaser for the lands, tenements, hereditaments and real estate so sold; which deed shall set forth the said order at large, and shall vest in the said purchaser as good and perfect an estate in the premises therein mentioned, as the heirs or devisees of the said testator or intestate were seised of or entitled to, at the time of the making of the said order by such orphan's court.

Monies received from sale of lands after to pay debts. 23. *And be it enacted*, That the monies arising from such sale of the lands, tenements, hereditaments and real estate of such testator or intestate, shall be received by the said executor or administrator, and be considered as assets in his hands for the payment of debts, and the surplus, if any, shall be distributed among the heirs or devisees in the proportion and manner directed by the twentieth section of this act.

24: *Provident always, and be it further enacted,* That no part of the lands, tenements, hereditaments and real estate of any testator or intestate, shall be ordered by the said orphan's court to be sold as aforesaid, until the executor or administrator shall have applied the personal estate, or such part thereof as may have come to his hands, towards payment of the debts of such testator or intestate; and no more of the said lands, tenements, hereditaments and real estate, except as is excepted in the twentieth section of this act, shall be sold than may be necessary to pay the residue of the said debts: *Provided also,* That nothing herein contained shall prevent or bar any person from bringing and maintaining any action against an executor or administrator, for or in respect of the personal estate of his testator or intestate, or for or in respect of any waste or misapplication thereof by such executor or administrator.

Former acts repealed.

25. *And be it enacted,* That the act, entitled, "An act subjecting real estates in the province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon," passed the second day of December, in the year of our Lord, one thousand seven hundred and forty-three, and the act, entitled, "An act to amend an act, entitled, 'An act subjecting real estates in the province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon,'" passed the eighth day of June, in the year of our Lord, one thousand seven hundred and seventy-nine, and the act, entitled, "An act directing the mode by which shares of property and rights to unlocated lands in the state of New-Jersey, may be sold for the payment of debts," passed the twenty-third day of November, in the year of our Lord, one thousand seven hundred and eighty-five, and the eleventh and twelfth sections of the act, entitled, "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphan's court in the several counties of the state," passed the sixteenth day of December, in the year of our Lord, one thousand seven hundred and eighty-four, and all and every other act and acts, and part and parts of any act within the purview of this act, be and they are hereby repealed; but such repeal shall not extend to or affect any execution heretofore issued out of any of the courts of record in this state, against lands, tenements, hereditaments and real estate, or against proprietary shares and rights to unlocated lands, or any order heretofore made by any orphan's court for the sale of real estate; but such execution and order shall be of the same validity, and be proceeded upon to effect, in the like manner as if this act had not been made.

A. Passed in Trenton, February 18, 1799.

C H A P. DCCLXXVIII.

An Act to issue Commissions for the Examination of Witnesses, and to take their Depositions in certain Cases.

SECT. 1. **BE** IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That if a material witness in any action or suit in the court of chancery, or in the supreme court, or any of the inferior courts of common pleas of this state, reside out of this state, or if in this state, be ancient or very infirm, or be sick, or bound on a voyage, or about to go out of this state, it shall and may be lawful for the said court, in which such action or suit is depending, on affidavit or proof thereof to the satisfaction of the said court, and upon motion made by or in behalf of either party in open court, and on such terms as the said court shall direct, to award and issue, under the seal of the said court, a commission to such person or persons, as the said court may think fit, authorizing such person or persons, or any two or more of such persons, to examine *de bene esse* the said witness on oath or affirmation, upon the interrogatories annexed to the said commission, and to reduce such examination to writing, and to return the same, annexed to the said writ, unto the said court, with all convenient speed; and the name of every witness, to be so examined by virtue of such commission, shall be inserted in the said commission; and the interrogatories for the examination of such witness shall be drawn and signed by the parties or their counsel in the cause, in which the testimony is to be used, or such of them as shall request the said commission, and be approved of by the said court, or one of the judges thereof, and shall be annexed to the same commission; and each party shall be at liberty, with the approbation of the said court or judge, to insert in the said interrogatories such questions as he or she may think proper or necessary.

Comrs may if see commissions for the examination of witnesses upon interrogatories

Vide plac. Com. Vol. 3. Page 70.

2. *And be it enacted,* That the said commissioner or commissioners, or any two or more of them, shall and may on oath or affirmation, examine every witness named in the said commission, or such as can be met with, and cause the examination of the said witness to be reduced to writing, and signed by such witness, and the said commissioner or commissioners shall then also sign the same, and such examination, and all exhibits produced to the said commissioner or commissioners, and proved by such witness, shall be annexed to the said commission, and returned to the court out of which such commis-

Commission and examination. Ac. has to be returned

II. AND BE IT ENACTED, That when any judgment shall be had against any constable for any delinquency in his office, execution shall immediately be issued against him for debt and costs.

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On judgment against constable, execution to issue immediately.

III. AND BE IT ENACTED, That the twenty eighth section of the act, entitled, "An Act constituting courts for the trial of small causes," be, and the same is hereby repealed.

Section 28th of former act repealed.

An ACT making lands liable to be sold for the payment of debts.

Passed the 18th of February, 1799.

I. **BE** IT ENACTED *by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,* That all lands, tenements, hereditaments and real estate, shall be and hereby are made liable to be levied upon and sold by executions to be issued on judgments, which are or shall be obtained in any court of record of this State (except justices' courts constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money, and costs, so recovered or to be recovered.

Lands made liable to be taken and sold by executions.

II. AND BE IT ENACTED, That no judgment shall affect or bind any lands, tenements, hereditaments or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court.

Lands bound from the time of entering judgment.

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

Goods bound from the time of delivering execution to sheriff.

Time of such delivery to be endorsed on the execution.

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

The like rule of preference to obtain in executions against lands as in executions against goods, when delivered on the same day.

V. AND BE IT ENACTED, That upon judgment obtained or to be obtained for debt, damages, and costs, or other sum of money, in the supreme court, or any of the inferior courts of common pleas of this State, the party, obtaining the same, may have an execution against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of the party, against whom such judgment is or shall be awarded; but no execution shall be issued against the proper goods and chattels, lands, tenements, hereditaments and real estate of any executor, administrator, heir or devisee, unless he or she shall have made his or her estate liable for the money so recovered by false pleading or otherwise.

Execution may be issued against the body or estate of the party.

VI. AND BE IT ENACTED, That in every writ of execution, which shall be issued against lands, tenements, hereditaments and real estate, the sheriff or other officer, to whom the said writ may be directed, shall be commanded, that of the goods and chattels, in his county, of the party, against whom such execution issues, he cause to be made the debt, damages, and costs, or sum of money mentioned in the said execution; and if sufficient goods and chattels of the said party cannot be found in his county, that then he cause the whole or the residue, as

In what form and manner execution shall issue against lands and real estate.

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

Sum due to be endorsed on the execution.

VII. AND BE IT ENACTED, That the party, at whose instance any writ of execution shall issue against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of any person, shall endorse on the said writ, before it be sealed, the debt, damages, and costs, or sum of money, really due and to be made.

Executions against lands to be recorded.

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

Lands taken in execution to be advertised two months before the time of sale.

IX. AND BE IT ENACTED, That the sheriff or other officer, who, by virtue of such writ of execution, levies on any lands, tenements, hereditaments and real estate, shall give notice, by advertisements, signed by himself, and put up at five or more public places in the county, one whereof to be in the township, where the said lands, tenements, hereditaments and real estate do lie, of the time and place where they will be exposed to sale, at least two months before the time appointed for selling them; and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder.

The sheriff may adjourn the said sale twice, and no more, and then not exceeding one month each time.

X. AND BE IT ENACTED, That it shall be lawful for the said sheriff or other officer to make two adjournments, and no more, of the sale of lands, tenements, hereditaments and real estate, so by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftner, or for a longer time, without permission, in writing, previously obtained of the party, at whose instance the said writ of execution was issued, he shall be, and hereby is made liable to the amount of the debt, or damages and costs, or sum or sums of money, mentioned in the said writ, with interest; and for the recovery thereof may be amerced and proceeded against in the manner prescribed in and by the twenty second section of the act, entitled, "An Act concerning sheriffs." PROVIDED ALWAYS, That if the said sheriff or other officer shall, after two adjournments as aforesaid, sell the lands, tenements, hereditaments and real estate, and bring the whole amount of the product of such sale (after deducting his lawful fees) into the court, from whence such execution issued, at any time before the entry of such amercement against him as aforesaid, the said sheriff or other officer shall be exonerated from all liability to the said amercement.

But if the sheriff, after two adjournments, and before amercement, bring the money into court, he shall be exonerated.

The party, whose lands are taken in execution, may elect what part thereof shall be sold.

XI. AND BE IT ENACTED, That the person, whose lands, tenements, hereditaments and real estate are so taken in execution, may, if part of them be sufficient to satisfy such execution, elect what part thereof shall be sold; and thereupon it shall be the duty of the said sheriff or other officer to sell the part so elected, and no other, if it be sufficient: PROVIDED ALWAYS, That such election shall be made in writing, signed by such person, and delivered to the said sheriff or other officer, at least twenty days previous to the time appointed for the sale.

XII. AND

XII. AND BE IT ENACTED, That the sheriff or other officer, who, by virtue of such writ or writs of execution, shall sell as aforesaid the lands, tenements, hereditaments and real estate, or any part or parcel of them, so levied upon, shall make to the purchaser thereof as good and sufficient a deed or conveyance for the lands, tenements, hereditaments and real estate so sold, as the person, against whom the said writ or writs of execution were issued might or could have made for the same at or before the time of rendering judgment against him or her; which deed or conveyance shall transfer to and vest in the said purchaser, as good and perfect an estate to the premises therein mentioned, as the person, against whom the said writ or writs of execution were issued, was seised of or entitled to at or before the said judgment, and as fully, to all intents and purposes as if such person had sold the said lands, tenements, hereditaments and real estate to such purchaser, and had received the consideration money, and signed, sealed, and delivered a deed for the same: AND FURTHER, That the said deed or conveyance, so to be made by the said sheriff or officer, shall recite the writ or writs of execution, by virtue whereof the said lands, tenements, hereditaments, and real estate therein described, were sold as aforesaid.

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Sheriff to make deeds for lands by him sold in virtue of executions; which deeds shall be as good and effectual as if they had been made by the party.

XIII. AND WHEREAS other judgments, statutes, and recognizances, besides those, or some of those, by virtue whereof the sale aforesaid was made, might affect the lands, tenements, hereditaments and real estate so sold, if no provision be made to remedy the same; and whereas the persons, who have not taken, or will not take out executions upon their judgments, statutes, or recognizances, ought not to hinder or prevent such as do take out executions from having the proper effect and fruits thereof; THEREFORE, *Be it enacted*, That the purchaser, his heirs and assigns, shall hold the lands, tenements, hereditaments and real estate, by him or her purchased as aforesaid, free and clear of all other judgments, recognizances, statutes-merchant and statutes-staple whatsoever, on or by virtue of which no execution has been taken out and executed on the lands, tenements, hereditaments and real estate so purchased.

Land sold by sheriff to be clear of all judgments, on which executions have not been issued.

XIV. AND BE IT ENACTED, That if any judgment or execution (the said execution being recorded as aforesaid) by virtue whereof such sale as aforesaid shall be made of any lands, tenements, hereditaments and real estate, shall be reversed for error, such reversal shall not be given in evidence, or be of any force or avail against any bona fide purchaser under the said judgment or execution; but the said purchaser, his heirs and assigns, shall hold the said lands, so bona fide purchased, notwithstanding such reversal, if it be posterior to the said purchase; and further, such reversal shall only operate against the defendant in error, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the lands, tenements, hereditaments and real estate so sold as aforesaid.

Reversal of judgment for error not to affect lands sold prior to such reversal.

XV. AND BE IT ENACTED, That if any sheriff, who hath made or shall make sale of any lands, tenements, hereditaments and real estate, by virtue of an execution against the same, shall abscond, or depart from the State, or be disqualified by law, or rendered unable by death, or otherwise incapable, to make a deed or conveyance for the same, it shall be lawful for any succeeding sheriff of the county, on receiving a certificate from the inferior court of common pleas of such county, signed by the clerk by order of the said court, setting forth, that sufficient proof hath been made to the said court, that such sale was fairly and legally made, and on tender of the purchase money, or if the purchase money or any part of it has been paid, then on proof of such payment, and on tender of the residue, if any be, to sign, seal and deliver to the said purchaser, or his legal representative, a deed or conveyance of the lands, tenements, hereditaments and real estate so sold; which deed shall be as good and valid, and shall have the same force and effect, as if the sheriff, who made such sale, had signed, sealed, and delivered a deed of conveyance for the same in due form of law.

How and in what cases a succeeding sheriff may make deed for lands sold by his predecessor in office.

XVI. AND BE IT ENACTED, That if such succeeding sheriff receive any money by virtue of the preceding section of this act, he shall pay the same to the person thereunto entitled by law.

How to pay the money received thereon.

XVII. AND BE IT ENACTED, That all proprieties, rights, share and shares of propriety

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Proprietary rights may be levied on and sold by executions.

Judgment or execution against executors or administrators, not to affect lands of the testator or intestate.

If the personal estate of the testator or intestate be insufficient to pay his debts, the executor or administrator may make application to the orphan's court; whose duty it shall be to order all persons interested to appear before them on a certain day to shew cause, why the real estate should not be sold.

If the personal estate be inadequate to pay the debts of the testator or intestate, the orphan's court may direct the real estate to be sold.

Lands ordered to be sold by the orphan's court to be advertised two months before the time of sale.

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

XVIII. AND BE IT ENACTED, That no lands, tenements, hereditaments or real estate, of any testator or intestate, shall be sold or in any wise affected by any judgment or execution against executors or administrators.

XIX. AND BE IT ENACTED, That when any executor or administrator shall discover or believe, that the personal estate of his testator or intestate is insufficient to pay his debts, then it shall be the duty of such executor or administrator, as soon as conveniently may be, to make and exhibit, under oath, a just and true account of the said personal estate and debts, as far as he can discover the same, to the orphan's court of the county, where the lands, tenements, hereditaments and real estate, of which the said testator or intestate died or shall die seised, do lie, and request their aid in the premises; and the said court shall thereupon make an order, directing all persons interested in such lands, tenements, hereditaments and real estate to appear before them at a certain day and place, in the said order to be mentioned, not less than two nor more than three months after the day of making such order, to shew cause, why so much of the said lands, tenements, hereditaments and real estate of the said testator or intestate should not be sold, as will be sufficient to pay his debts, or the residue thereof, as the case may require; which order, signed by the surrogate or clerk of the said court, shall be immediately thereafter set up at three of the most public places in the said county for six weeks successively, and be published for the same time in one or more of the newspapers printed in this State.

XX. AND BE IT ENACTED, That the said orphan's court shall, at the time and place mentioned in the said order, or at such other time and place as they may then appoint, hear and examine the allegations and proofs of the said executor or administrator, and other persons interested; and if on full examination the said court shall find, that the personal estate of the said testator or intestate is not sufficient to pay his debts, the said court shall order and direct the executor or administrator to sell the whole, if necessary, of the lands, tenements, hereditaments and real estate of the said testator or intestate, for the payment of his debts, or so much thereof as will be sufficient for that purpose; and when a part only of the said lands, tenements, hereditaments and real estate is sufficient, such order shall specify the part to be sold: PROVIDED ALWAYS, That where any houses, and lots, or lands are so circumstanced, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the said court may, at their discretion, order the whole or a greater part, than is necessary to pay such debts, to be sold; and the surplus money arising from such sale shall be distributed among the heirs or devisees, according to the law of descents in the former, and the will of the testator in the latter case; and further, that the heir or devisee, whose lands, tenements, hereditaments and real estate, so descending or devised to him, have been sold as aforesaid, for the payment of the debts of his intestate or testator, may compel all others claiming or holding under such intestate or testator, to contribute in proportion to their respective interests, so as to equalise the burden or loss.

XXI. AND BE IT ENACTED, That the executor, or administrator, who may be ordered to sell any lands, tenements, hereditaments or real estate of any testator or intestate, shall give notice by advertisements, signed by himself, and set up at five or more public places in the county, of the time and place of selling the

the premises, at least two months before the time appointed for selling them, and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder; and the executor or administrator, making the said sale, shall report in writing all proceedings thereon to the next orphan's court, after such sale: PROVIDED ALWAYS, That the said executor or administrator may adjourn the said sale from time to time, not exceeding two months in the whole.

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XXII. AND BE IT ENACTED, That the said executor or administrator shall, and hereby is authorised to make a deed to the purchaser for the lands, tenements, hereditaments and real estate so sold; which deed shall set forth the said order at large, and shall vest in the said purchaser as good and perfect an estate in the premises therein mentioned, as the heirs or devisees of the said testator or intestate were seised of or entitled to, at the time of the making of the said order by such orphan's court.

For lands so sold the executor or administrator to make deed.

XXIII. AND BE IT ENACTED, That the monies, arising from such sale of the lands, tenements, hereditaments and real estate of such testator or intestate, shall be received by the said executor or administrator, and be considered as assets in his hands for the payment of debts, and the surplus, if any, shall be distributed among the heirs or devisees in the proportion and manner directed by the twentieth section of this act.

Monies received by executor or administrator from sale of lands, to be assets for the payment of debts.

XXIV. PROVIDED ALWAYS, and be it further enacted, That no part of the lands, tenements, hereditaments and real estate of any testator or intestate, shall be ordered by the said orphan's court to be sold as aforesaid, until the executor or administrator shall have applied the personal estate, or such part thereof as may have come to his hands, towards payment of the debts of such testator or intestate; and no more of the said lands, tenements, hereditaments and real estate, except as is excepted in the twentieth section of this act, shall be sold, than may be necessary to pay the residue of the said debts: PROVIDED ALSO, That nothing herein contained shall prevent or bar any person from bringing and maintaining any action against an executor or administrator, for or in respect of the personal estate of his testator or intestate, or for or in respect of any waste or misapplication thereof by such executor or administrator.

Lands of testator or intestate not to be sold till the personal estate be applied to the payment of debts.

XXV. AND BE IT ENACTED, That the act, entitled, "An Act subjecting real estates in the Province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon," passed the second day of December, in the year of our Lord, one thousand, seven hundred and forty three; and the act, entitled, "An Act to amend an act, entitled, "An Act subjecting real estates in the Province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon," passed the eighth day of June, in the year of our Lord, one thousand, seven hundred and seventy nine; and the act, entitled, "An Act directing the mode by which shares of propriety and rights to unlocated lands in the State of New-Jersey, may be sold for the payment of debts," passed the twenty third day of November, in the year of our Lord, one thousand, seven hundred and eighty five; and the eleventh and twelfth sections of the act, entitled, "An Act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphan's court in the several counties of the State," passed the sixteenth day of December, in the year of our Lord, one thousand, seven hundred, and eighty four, and all and every other act and acts, and part and parts of any act, within the purview of this act, be, and they are hereby repealed; but such repeal shall not extend to or affect any execution heretofore issued, out of any of the courts of record in this State, against lands, tenements, hereditaments and real estate, or against proprietary shares and rights to unlocated lands, or any order heretofore made by any orphan's court for the sale of real estate; but such execution and order shall be of the same validity, and be proceeded upon to effect in the like manner, as if this act had not been made.

This act not to prevent suits against executor or administrator for waste, &c.

Certain acts, &c. repealed.

But such repeal not to affect antecedent executions and orders.

Library References

Practice Series

Deed, see Walzer, 4A New Jersey Practice § 80.5 (4th ed.) Recital in a sheriff's deed, conveyances, see Celentano, 13 New Jersey Practice § 11.20.

Examination of officials' deeds, see Celentano, 13A New Jersey Practice § 31.29.

Texts and Treatises

30 Am Jur 2d, Executions §§404, 407.

Notes of Decisions

Sheriff's deed 1 _____ duced to show the adverse party's title. Morehouse v. Cotheal, 22 N.J.L. 521 (1850).

1. Sheriff's deed

Showing judgment and execution is not requisite, when sheriff's deed is intro-

2A:17-43. Amendments to cure variances considered made

Any court of this state in which the record or exemplification of any judgment or execution is offered in evidence in support of any deed or conveyance made by a sheriff or other officer pursuant to an execution directed to him, shall consider the judgment or execution as amended in any particulars as to which they could have been, by rules of law or practice, amended at any time by the court in which the judgment was rendered or out of which the execution was issued, and the judgment or execution shall have the same force and effect as if it had been so amended.

Historical and Statutory Notes

Source: R.S. 2:26-141.
Rev.1877, p. 1043, § 8 [C.S. p. 4675, § 8].

2A:17-44. Reversal of judgment or execution; effect as to purchaser of real estate sold

If any judgment or execution, the execution having been recorded as required by law, by virtue whereof a sale shall be made of real estate, shall be reversed, such reversal shall only operate against the respondent on review, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the real estate so sold, and shall not be given in evidence, or be of any force or avail against any bona fide purchaser under such judgment or execution; but such purchaser, his heirs and assigns,

shall hold the real estate so bona fide purchased, notwithstanding such reversal, if it be after such purchase.

Historical and Statutory Notes

Source: R.S. 2:26-142.
Rev.1877, p. 1044, § 10 [C.S. p. 4677, § 10].

American Law Reports

Execution sale as affected by modification of judgment, 32 ALR3d 1019. ment or restitution from judgment creditor, 33 ALR4th 1206.

Right of purchaser at execution sale, upon failure of title, to reimburse-

Library References

Texts and Treatises

30 Am Jur 2d, Executions §§437-442.

2A:17-45. Sale by sheriff or coroner for time being of property levied upon but not sold; special order

Whenever any sheriff or coroner, or other person to whom any writ of execution is directed levies on the goods and chattels or on the real estate of the party named therein, and such sheriff, coroner or other person dies or becomes disabled by law to discharge the duties of his office or appointment, or removes himself out of the jurisdiction of the state, and continues to reside thereout, without discharging the duties of his office or appointment, by a sale of the property or estate so levied on, then, or in either of such cases, the court, in which judgment is or shall be had, may proceed in a summary manner to order the sheriff or coroner, for the time being, of the county where the levy was made, to sell the property or estate so levied on, or so much thereof as may be sufficient to satisfy the whole or the residue of the moneys due on such execution. Thereupon the sheriff or coroner shall make the sale, and shall be entitled to the same fees for services done, and liable to all the penalties and consequences of law for neglect of duty, all as if the execution had been originally directed to him.

Historical and Statutory Notes

Source: R.S. 2:26-143.
Rev.1877, p. 1106, § 40 [C.S. p. 4850, § 40].

2:26-140. Variances between deed and execution or execution and judgment

The deed mentioned in section 2:26-138 of this title, shall be good and valid and received in evidence as such, notwithstanding any variance between the recitals in such deed and the execution or executions by virtue of which the real estate was sold, and notwithstanding any variance between such execution or executions and the judgment or judgments upon which the execution or executions were issued.

Historical Note

Source. Rev.1877, p. 1043, § 8 [C.S. p. 4675, § 8].

Notes of Decisions

1. Construction and application

The statute and supplement, P.L. 1869, p. 1238, now incorporated in this section, directing that the recitals in a deed given by a public officer shall be prima facie evidence of the truth of the facts recited, did not affect the title under the deed, but only changed the rule of evidence as to the manner of proving the facts required to constitute a valid sale, and applied where a deed given before the passage of the act was offered in evidence. *Campbell v. Dewick*, 20 N.J.Eq. 186.

The doctrine of variance between the judgment and the recital of it in a sheriff's deed applies as well to actions of tort as to those of contract. *Brookfield v. Morse*, 12 N.J.L. 331.

A variance between the recital of an execution in a sheriff's deed and the judgment on which it was issued was cured by Act of Nov. 28, 1831. *Arrow-smith v. Taylor*, 16 N.J.L. 532; *Newcomb v. Downam*, 13 N.J.L. 135.

In discussing the construction of the prior similar act of Nov. 28, 1831, the Supreme Court, in the case of *Arrow-smith v. Sayre*, 16 N.J.L. 532, said: "The only question is, whether or not the act of the 28th of November 1831, curing certain variances between the deed and execution, and the execution and judgment, can be fairly construed to cover the present case. My opinion is that it can and ought to be so construed. It will be recollected that the frequent difficulties growing out of these trifling variances, had become a source of general complaint: and the necessity for the adoption of the rule which rendered them fatal to

a sheriffs' deed, was a matter of general regret to the profession. The act in question was intended to correct the grievance, and protect purchasers in all such cases. There is no variance in this case, between the recital in the deed and the execution, but the execution varies materially from the judgment, still the words of the act are, that the deed shall be good "notwithstanding any variance between the said execution or executions, and the judgment or judgments, &c." This objection therefore is directly within the words and meaning of the act.

"But it may be alleged that the statute does not cure a variance between the deed and judgment. Nor does it in very words, but it does that which is tantamount to it; it cures a misrecital of the execution, in the deed, and a misrecital of the judgment, in the execution. Now, the judgment is never recited in the deed, except by way of reciting the execution. Suppose then, the judgment in this case had been correctly recited in the execution, but in reciting that part of the execution, in the deed, which sets out the amount of the judgment, it had been incorrectly stated; the variance would have been cured by the express terms of the act. Or in other words, the act would cure a variance between the deed and both the execution and the judgment as set out in that execution, but will not cure a variance between the deed and the judgment alone. This could never have been the intent of the legislature. The act in its nature is remedial; and it is our duty to give it such a construction, as will effect its intent, and advance the purposes of justice."

2:26-141. Amendments to cure variances considered made

Any court of this state in which the record or exemplification of any judgment or execution is offered in evidence in support of any deed or conveyance made by a sheriff or other officer pursuant to an execution directed to him, shall consider the judgment or execution as amended in any particulars as to which they could have been, by rules of law or practice, amended at any time by the court in which the judgment was rendered or out of which the execution was issued, and the judgment or execution shall have the same force and effect as if it had been so amended.

Historical Note

Source. Rev.1877, p. 1043, § 8 [C.S. p. 4675, § 8].

Notes of Decisions

1. Construction and application

Court would not determine whether sheriff's deed was improperly admitted on ground that recital in deed

varied from execution, in view of prior statute similar to this section. *Newcomb v. Dowam*, 13 N.J.L. 135.

2:26-142. Reversal of judgment or execution; effect as to purchaser of real estate sold

If any judgment or execution, the execution having been recorded as required by law, by virtue whereof a sale shall be made of real estate, shall be reversed for error, such reversal shall only operate against the respondent on review, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the real estate so sold, and shall not be given in evidence, or be of any force or avail against any bona fide purchaser under such judgment or execution; but such purchaser, his heirs and assigns, shall hold the real estate so bona fide purchased, notwithstanding such reversal, if it be after such purchase.

Historical Note

Source. Rev.1877, p. 1044, § 10 [C.S. p. 4677, § 10].

Notes of Decisions

1. Construction and application

A subsequent reversal of a judgment under which an execution sale was had does not divest the title of the ex-

ecution purchaser, unless he is plaintiff in execution. *Eisberg v. Shultz*, 38 N. J.Eq. 293; *Shultz v. Sanders*, 38 N.J. Eq. 154.

Lands sold clear of judgments, &c., on which executions have not issued.

R. S. 660, § 9.

Reversal of judgment or execution only to affect plaintiff in action.

Ib. § 10.

And not to operate against bona fide purchaser.

In case of death or disqualification of a sheriff after sale, his successor to make deed.

R. S. 660, §§ 11, 12. Amended.

On certificate from court of common pleas.

issued; and the said judgment or execution shall have the same force and effect as if it was amended accordingly. (a)

9. Whereas other judgments, and recognizances, besides those, or some of those, by virtue whereof the sale aforesaid was made, might affect the lands, tenements, hereditaments, and real estate so sold, if no provision be made to remedy the same; and whereas, the persons who have not taken, or will not take out executions upon their judgments, or recognizances, ought not to hinder or prevent such as do take out executions having the proper effect and fruits thereof—therefore be it enacted, that the purchaser, his heirs and assigns, shall hold the lands, tenements, hereditaments, and real estate by him or her purchased as aforesaid, free and clear of all other judgments and recognizances, whatsoever, on or by virtue of which no execution has been taken out and executed on the lands, tenements, hereditaments and real estate so purchased. (b)

10. If any judgment or execution (the said execution being recorded as required by the act respecting executions), by virtue whereof such sale as aforesaid shall be made of any lands, tenements, hereditaments and real estate, shall be reversed for error, such reversal shall only operate against the defendant in error, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the lands, tenements, hereditaments and real estate so sold as aforesaid, and shall not be given in evidence, or be of any force or avail against any bona fide purchaser under the said judgment or execution; but the said purchaser, his heirs and assigns, shall hold the said lands so bona fide purchased, notwithstanding such reversal, if it be after the said purchase.

11. If any sheriff or coroner who hath made or shall make sale of any lands, or real estate, by virtue of an execution against the same, shall abscond, or depart from the state, or be disqualified by law, or rendered unable by death, or be otherwise incapable to make a deed or conveyance for the same, it shall be lawful for any succeeding sheriff of the county, in which such lands or real estate are situate, on receiving a certificate from the court of common pleas of such county, signed by the clerk by order of the said court, setting forth that sufficient proof hath been made to the said court, that such sale was fairly and legally made, and on tender of the purchase money, or if the purchase money or any part of it has been paid, then on proof of such payment and on tender of the residue, if any there be, to sign, seal and deliver to the said purchaser or his legal representative, a deed or conveyance of the lands and real estate, so sold; which deed shall be as good and valid and shall have the same force and

(a) A sheriff has no estate or interest in lands levied upon and sold by him. He has a naked power to sell given by statute, and the validity of his deed depends upon the directions of the statute being complied with, and it must positively appear, either by recitals in the deed, or proof *aliunde*, that such directions as advertising, &c., have been complied with, *Den, Todd v. Philhower*, 4 Zab. 796, 804. A sheriff's deed as between the defendant and the purchaser, may be fairly considered as the defendant's own deed made by the sheriff as his legally constituted agent for that purpose, *Den v. Winans*, 2 Gr. 1. A variance between the recital of an execution, in a sheriff's deed and the judgment on which it was issued, is cured by the act of the 28th of November, 1831. *Den, Arrowsmith v. Taylor*, 1 Harr. 532. *Den v. Downam*, 1 Gr. 135. The statute and supplement (P. L. 1869, p. 1238), directing that the recitals in a deed given by a public officer shall be *prima facie* evidence of the truth of the facts recited, do not affect the title under the deed, but only change the rule of evidence as to the manner of proving the facts required to constitute a valid sale, and apply where a deed given before the passage of the act is offered in evidence, *Campbell v. Dewick*, 5 C. E. Gr. 186. A sheriff's deed may be admitted in evidence although it contains no recitals of advertisements, but the grantee must prove that due public notice was given, *Den v. Downam*, 1 Gr. 135. *Osborne v. Tunis*, 1 Dutch. 633, 662. *Den v. Thibault*, 1 Harr. 25, affirmed, Feb. 1838. A sheriff's deed takes full effect only from the time of delivery, and does not relate back to the time of sale, so as to sustain an intermediate sale and conveyance by the sheriff, of the lands therein mentioned, *Den v. Steelman*, 5 Hal. 193. A deed, executed and acknowledged by a sheriff in this state for lands sold by him under execution, may be delivered in another state, *Walker v. Hill*, 7 C. E. Gr. 513, affirming 6 C. E. Gr. 192. A refusal by the sheriff to deliver a deed to the purchaser at a sheriff's sale, when rightfully demanded, will not release the purchaser from his obligation to comply with his contract, if after such refusal the purchaser offer to accept the deed and upon a tender thereof he declines to receive it,

Ely v. Perrine, 1 Gr. Ch. 396. A defendant is not estopped by a sheriff's deed, from showing collusion between the sheriff and the purchaser, *Lot v. Thomas*, Pen. 407e, 412e. What defects in entering a judgment were formerly deemed sufficient to invalidate a sale, *Den, Pearson v. Hopkins*, Pen. 195, 203. The legal title of land is not affected by a sheriff's deed, where at the time of levy and sale the title was not in the defendant in execution, *Belford v. Crane*, 1 C. E. Gr. 265. (b) The word "executed" means "levied," *Den v. Young*, 7 Hal. 300. On a bill to foreclose a mortgage, it appeared that C., one of the defendants, recovered a judgment against K., the mortgagor, on the 23d of Jan. 1858, but took out no execution thereon until June 25th, 1862. Complainant's mortgage was recorded on the 26th of Dec., 1859, and in June, 1861, several other judgments were recovered against the mortgagor, on which executions were promptly taken out and levied on the mortgaged premises. On a dispute about the priority of these several encumbrances, *Held*, that C., by neglecting to issue an execution on his judgment until after executions had been issued on the junior judgments had lost his priority, not only over the younger judgments, but also over the complainant's mortgage, which was entitled to priority over the younger judgments, *Clement v. Kaighn*, 2 McCart. 47. The history of the legislation of this state regulating the priority of executions reviewed, *Ibid*. Although the statute in terms, relates merely to the title which a purchaser by virtue of a sheriff's sale under an execution at law shall acquire, yet the operation of it cannot be limited to the case of a sale under the junior judgment, where no execution has been sued out upon the senior judgment, and levied on the land, *Ibid*. The junior judgment creditor, by suing out and levying the first execution upon the land, acquires a priority of lien, which cannot be affected by any execution subsequently issued, nor by any mode in which the land may be sold. The issue of the execution upon the junior judgment, and its delivery, duly recorded, to the sheriff, destroys the priority which was enjoyed by the older judgment, and transfers it to the junior judgment, *Ibid*.

CHAPTER 15.

SALE, FOR PAYMENT OF DEBT'S.

- 1. Lands sold for debt.
- 2. Judgment to bind from entry.
- 3. Execution recorded, evidence.
- 4. Form of the writ.
- 5. Defendant may have land first sold.
- 6. Only two adjournments, unless consent.
- 7. Part of land may be sold.
- 8. Sheriff's deed for.
- 9. Sale, clear of what encumbrances.
- 10. Judgment reversed, purchaser not affected.
- 11. Sheriff's successor may make deed.
- 12. Pay over money.
- 13. Proprietary rights sold.
- 14. What judgment not to affect land.
- 15. Proceedings for order for sale.
- 16. When orphans' court to make order.
- 17. Report and confirmation of sale.
- 18. Deed, what to recite.
- 19. Of omissions and variances.
- 20. Proceeds of sale assets.
- 21. Personal estate first applied.
- 22. Bond, on order for sale.
- 23. Prosecution of, etc.
- 24. Removal of executors and administrators.
- 25. Sales of unlocated lands, etc.
- 26. How long lands liable.

REV. 430, 670,
794.
MAR. 51, 130,
368.
1837-8.
PAMPH. 30.
Lands sold
for debt.

An Act making lands liable to be sold for the payment of debts.

Revision.....Approved April 16, 1847.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey,* That all lands, tenements, hereditaments, and real estate, shall be and hereby are made liable to be levied upon and sold by executions to be issued on judgments, which are or shall be obtained in any court of record of this state (except justices courts constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money and costs so recovered or to be recovered.
2. *And be it enacted,* That no judgment shall affect or bind any lands, tenements, hereditaments, or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court.
3. *And be it enacted,* That every writ of execution which shall be sued forth against lands, tenements, hereditaments, and real estate, shall, before it be delivered to the sheriff or other officer, be recorded in a book by the clerk of the court out of which the same was issued; and the record of such writ, so made, shall be as good evidence as the writ itself.
4. *And be it enacted,* That in every writ of execution, which shall be issued against lands, tenements, hereditaments, and real estate, the sheriff or other officer to whom the said writ may be directed, shall be commanded, that of the goods and chattels in his county, of the party against whom such execution issues, he cause to be made the debt, damages, and costs, or sum of money mentioned in the said execution; and if sufficient goods and chattels of the said party cannot be found in his county, that then he cause the whole or the residue, as the case may require, of the said debt, damages, and costs or sum of money, to be made of the lands,

Judgment binds from entry.

Execution to be recorded, and record evidence.

Form of the writ.

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

5. *And be it enacted,* That in case a writ of fieri facias shall be issued against the goods and chattels, lands, tenements, hereditaments, and real estate of any person or persons, and such person or persons shall desire that the whole or a part of the said lands, tenements, hereditaments, and real estate, shall be sold before any of the said goods and chattels, and signify the same in writing, under his, her, or their hands, and deliver the same to the sheriff or other officer to whom the said writ of fieri facias shall be directed, within twenty days from the time of notice of said writ, and before the goods shall be sold, and enter into bond to the said sheriff or other officer, with good and sufficient sureties, that the goods and chattels levied on in virtue of the said writ, shall be forthcoming to answer the exigencies of said writ, at a day therein named, not exceeding three months from the date of said bond, then and in that case, it shall be the duty of the said sheriff or other officer to whom the said writ shall be directed, to suspend the sale of the said goods and chattels, and proceed to sell the said lands, tenements, hereditaments, and real estate, or such part thereof as the owner or owners thereof shall have desired to be sold as aforesaid, any thing contained in the fourth section of this act, the said writ of fieri facias, or any law to the contrary notwithstanding.
6. *And be it enacted,* That it shall be lawful for the said sheriff or other officer to make two adjournments, and no more, of the sale of lands, tenements, hereditaments, and real estate by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftener, or for a longer time, without permission in writing, previously obtained of the party at whose instance the said writ of execution was issued, he shall be and hereby is

Form, when against terre tenants, heirs or devisees.

How defendant may have lands first sold.

Two adjournments, only, allowed, unless by plaintiff's consent.

A FURTHER SUPPLEMENT to the act entitled "An act making lands liable to be sold for the payment of debts." passed the eighteenth February, seventeen hundred and ninety-nine.

Sheriff's deeds valid, notwithstanding variance between recital and execution,

Or variance between execution and judgment.

Record of judgment, or execution in evidence, may be considered as amended.

Deeds made by order of Orphans' Court, valid, notwithstanding variance between recital and order.

SEC. 1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That any deed or conveyance, heretofore made, or which may hereafter be made, by any Sheriff or other officer, for any lands, tenements, hereditaments or real estate, sold by virtue of any writ or writs of execution, issued or to be issued out of any of the courts of this State, by virtue of the act to which this is a supplement, shall be good and valid, and received in evidence as such by the said courts notwithstanding any variance between the recital in said deed, and the execution or executions by virtue of which the sale was made, and notwithstanding any variance between the said execution or executions, and the judgment or judgments upon which the said execution or executions were issued.

Sec. 2. And be it enacted, That it shall and may be lawful for any court in this State, in which the record or exemplification of any judgment or execution shall be offered in evidence in support of any deed or conveyance made by sheriff or other officer who may have sold any lands, tenements, hereditaments or real estate, by virtue of any writ or writs of execution issued as aforesaid, to consider the said judgment or execution as amended in any particulars in which the same might, by the rules of law and practice, have been at any time amended by the court in which the said judgment was rendered or out of which the said execution was issued, and the said judgment or execution shall have the same force and effect, as if it was amended accordingly.

Sec. 3. And be it enacted, That any deed or conveyance heretofore made, or which may hereafter be made, by any executor or executors, administrator or administrators, or surviving executor or executors, administrator or administrators for any lands, tenements, hereditaments or real estate, sold by virtue of any order of the Orphans' Court of any county in this State, by virtue of the acts to which this is a further supplement, shall be good and valid, and received in evidence as such in any court of this State, notwithstanding any variance in the recital in said deed of the order of such Orphans' Court, authorizing such sale, and the record of such order.

Passed November 28, 1831.

AN ACT to confirm the last will and testament of Joseph Holmes, late of the township of Upper Freehold, in the county of Monmouth, deceased.

Preamble.

WHEREAS, the said Joseph Holmes, being seized and possessed of considerable real and personal estate, in and by his last will and testament, in writing, signed and published in the presence of two subscribing witnesses, only, and bearing date the fifth day of May, in the year of our Lord one thousand eight hundred and thirteen, did give and dispose of all his said real and personal estate; AND WHEREAS, by reason of the informality in the execution of the said will, the same is valid only as to the disposition of the personal estate, and void as to the real estate, which would entirely defeat the intention of the testator, and produce manifest injustice to his children; AND WHEREAS, James Holmes, one of the devisees named in the will of the testator, in his life time, entered into the possession of the lands specifically devised to him, and held and enjoyed the same until his death; since which, the same hath been sold and applied to the payment of his debts; and as well the said James Holmes as the other children and devisees of the testator, were entirely satisfied with the said will, and intended to confirm the same; but the said James Holmes and Sarah Bruere, the wife of John H. Bruere, have died, leaving issue, infants of tender years: AND WHEREAS the surviving children and devisees of the said Joseph Holmes, and the natural guardians of the said infants, and the administrators of the deceased devisees and children of the said Joseph Holmes, as well as all others interested in the estate of the said Joseph Holmes and his deceased children and devisees, have united in praying that the Legislature would pass a law to confirm the said last will and testament, and to make the same as valid and effectual as if the same had been signed and published in the presence of three subscribing witnesses; which appearing to be just and equitable: Therefore,

SEC. 1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the last will and testament of the said Joseph Holmes, late of the township of Upper Freehold, in the county of Monmouth, bearing date the fifth day of May, in the year of our Lord one thousand eight hundred and thirteen, probate whereof has been granted by the Surrogate of the county of Monmouth, on the second day of August, in the year of our Lord eighteen hundred and fifteen, and the several bequests and devises therein contained, shall be, and the same is hereby declared to be, as good, valid, and effectual,

Will of Joseph Holmes to be effectual for devisees of lands.

Proviso. lars, then one per cent. on such excess: *Provided*, that in all cases where such execution shall be settled between the parties without actual sale, and such settlement is produced to the officer, such officer shall be allowed and paid, on any sum or portion of the debt, not exceeding one thousand dollars, at the rate of one per cent. by the plaintiff; and where, in such case, the debt exceeds one thousand dollars, then one half per cent. on such excess: *Provided also*, that the plaintiff, on such settlement, shall also pay the execution fees incurred before the settlement.

Duty of sheriffs, &c. in cases of sales. 7. *And be it enacted*, That in case of a sale on execution, made by a sheriff, under-sheriff, or coroner, he shall, within thirty days thereafter, file in the clerk's office of the county where such sale was made, a true statement and calculation, in order of time of the execution or executions in his hands, upon which such sale was made, and the amount due thereon, respectively, at the time of such sale, mentioning the time or times of sale, as also the amount of sales, certified under his hand, together with his bill of costs or execution fees, for which service he shall be entitled to one dollar, and on failure thereof he shall be liable to pay to the defendant or defendants whose property was sold, his, or their executors or administrators, the sum of fifty dollars, and to the plaintiff or plaintiffs, on every execution in his hands, or to his or their executors or administrators, the sum of fifty dollars: *Provided nevertheless*, that such statement, so filed, shall not be conclusive against any person other than such officer: *And provided*, that if there be more sales than one, such statement shall be made and filed within thirty days after the final sale.

Penalty. 8. *And be it enacted*, That every judge, clerk, or other person, who by law now is, or hereafter shall be directed or authorized to tax any bill of costs or fees, shall, in such bill, class and set together those which appertain and belong to the courts or justices, or judges, clerk, attorney and counsellor, sheriff, and other person or persons, distributively, by not intermingling the same, as heretofore.

Proviso. 9. *And be it enacted*, That so much and such parts of any act or acts of the legislature as come within the purview of the several provisions in this act made, and are contrary thereto, be, and the same are hereby repealed.

Taxation of bills of cost. C. Passed December 12, 1823.

Repealing clause.

AN additional Supplement to "An act establishing a Militia System."

1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That it shall be lawful for the respective brigade boards, at their discretion, upon application made to them, by any number of uniform companies competent to form a battalion, squadron, or regiment, to set off said uniform companies into an independent battalion, squadron, or regiment, as the case may be.

2. *And be it enacted*, That it shall be the duty of the respective brigade inspectors, in the annual returns required from them, to make a particular statement of the troops and companies in uniform, their arms and equipments; likewise the arms and equipments, if any, belonging to the state, which may have been loaned to the brigade, or to any troop or companies within the bounds thereof, or that may have been purchased with money arising from fines of exempts, or others, within the respective brigades.

3. *And be it enacted*, That all fines imposed upon the members of any uniform troop or company, under the provisions of the act to which this is a supplement, be, and they are hereby appropriated to the use of such uniform troop or company, and the battalion paymaster is hereby directed to pay the same, when collected, after deducting therefrom the expenses of the troop or company court, into the hands of the respective commanding officers, for that purpose.

C. & A. Passed December 11, 1823.

A further Supplement to an act, entitled "An act making lands liable to be sold for the payment of debts," passed the eighteenth of February, seventeen hundred and ninety-nine.

1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That when any Orphans' Court in this state shall order and direct any executor or administrator to sell any lands, tenements, hereditaments, or real estate of any testator or intestate, it shall and may be lawful for the said Orphans' Court, at their discretion, to take of the respective executor or executors, administrator or administrators, applying for such order, sufficient bonds, with two or more able and sufficient sureties, being resi-

dents in the county, to the ordinary of the state and his successors, in a penalty double the amount of the estimated value of the lands, tenements, hereditaments, or real estate ordered to be sold, with condition in form and manner following, to wit:— The condition of this obligation is such, that if the above bound A. B., executor of the last will and testament of C. D., deceased, (or administrator of all and singular the goods, chattels, and credits of C. D., deceased, as the case may be) shall well and truly administer the moneys arising from the sale of any lands, tenements, or real estate of the said C. D., directed by the order of the Orphans' Court of the county of M. to be sold according to law; and further do make, or cause to be made, a just and true account of his administration, within twelve months from the date of the above obligation; and the surplus of money which shall be found remaining upon the account of such sale or sales, the same being first examined and allowed of by the judges of the Orphans' Court of the county, or other competent authority, shall distribute and pay unto such person or persons respectively, as is, are, or shall be by law entitled to receive the same; then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue.

2. *And be it enacted*, That all bonds given by executors or administrators and their sureties, in pursuance of this act, shall be good, to all intents and purposes, and pleadable in any court of justice; and in case such bonds shall become forfeited, it shall and may be lawful for the ordinary to cause the same to be prosecuted in any court of record, at the request of any party grieved by such forfeiture; and the moneys recovered upon such bond shall be applied towards making good the damages sustained by the not performing the said condition, in such manner as the judge of the Prerogative Court shall, by his sentence or decree, direct; and further, that it shall and may be lawful to and for the judges of the Orphans' Court of the respective counties in this state, after such executors or administrators shall have legally accounted for and touching the sale or sales of the said lands, tenements, hereditaments, and real estate of the person so deceased, to order a just and equal distribution of the surplus, after debts and just expenses of every sort first allowed and deducted, among the heirs or devisees to whom the lands, tenements, hereditaments, and real estate so sold, descended, or were devised according to the law of descents, in the former, and the will of the testator in the latter case, and the same distribution to decree and settle; and the person entitled to such distribution shall have their remedy at law, in case of non-payment, for the recovery of the same against the executor or executors, administrator or administrators so accounting, saving to every one, supposing him, her, or themselves aggrieved, his, her, or their right of appeal.

3. *And be it enacted*, That where the Orphans' Court of the proper county has made an order to shew cause, as is mentioned in the nineteenth section of the act to which this is a supplement, either on the application of the said executor or administrator, or of a creditor or creditors, as is directed in the twentieth section of the act, entitled "An act to ascertain the powers and authority of the ordinary and his surrogates to regulate the jurisdiction of the Prerogative Court, and to establish an Orphans' Court in the several counties of this state," passed thirteenth June, eighteen hundred and twenty, if the said executor or administrator shall, at the term mentioned in the said order, neglect or refuse to give bonds, with sureties, as aforesaid, then, and in every such case, the said court shall forthwith, by sentence, revoke or repeal the letters testamentary or letters of administration of such executor or administrator neglecting or refusing, and thereupon the surrogate shall grant letters of administration or letters testamentary with the will annexed, to such person or persons having right thereunto, as will give bonds in manner and form aforesaid, who may have every lawful and proper action against such removed executor or administrator, to recover the amount of all moneys, assets, goods, or chattels received by such removed executor or administrator, and not applied according to law, as well as all damages done or committed by such executor or administrator, in respect of the estate in his hands: *Provided*, that this act shall not go into operation until the first day of July next.

A. Passed December 11, 1823.

AN ACT for arranging, repairing, and preserving the public arms and accoutrements.

1. **BE IT ENACTED** by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That it shall be the duty of the quartermaster general to cause to be constructed in the room of the state-house occupied as an arsenal, such additional racks as the same will conveniently contain, for the arrangement of the arms lately received from the United States; also to fit and prepare the adjoining room, upon the north side, for the same purpose, previously causing it to be lathed and plastered.

2. *And be it enacted*, That it shall be the duty of the quartermaster general to cause the arms heretofore in the arsenal to be repaired, cleaned, and oiled, in a workmanlike manner; and to clean and oil the accoutrements in the attic story, as far as the same may be necessary.

time he shall be sworn or affirmed into

acted, That there shall be paid to the vice-council, and the speaker of the House of Assembly three dollars and fifty cents; and to every Council and Assembly, the sum of three dollars and every day that they have respectively attended this or any future meeting of the House of Assembly, and to every member the additional sum of twenty cents for every twenty miles of the estimated distance usual road between his place of residence and the seat of government in going and returning, a certificate to be produced to the treasurer, expressing the number of days and miles, signed by the vice-president of Council, for the members of Council, and the speaker of the House of Assembly, for the House of Assembly, or by Ebenezer F. Smith, Asa Stiles, and Isaiah Toy, or any two members of Assembly.

acted, That there shall be paid to the secretary of Council, and to the clerk of Assembly, the sum of fifty cents, for every day they have respectively attended this, or may attend any future sitting of the House of Council and Assembly, and the joint-meeting, a certificate to be produced to the treasurer, on a certificate produced to the treasurer, signed by the president or vice president of Council, and by the president of the House of Assembly, for the day.

acted, That the treasurer pay to such persons as shall print the Law Reports, twenty dollars for every sheet; that the treasurer pay to such persons as shall print the Laws, the sum of sixteen hundred dollars for every sheet, and that sixteen hundred persons as shall be appointed by the House of Assembly to print the Votes and Proceedings of the Assembly, and such person or persons as shall be appointed to print the Journals of Council, and the Joint Meeting, the sum of twenty-two dollars for every sheet, and that thirteen hundred copies of the Laws be printed, and that the printer of the Laws be required to print public and private laws together in one pamphlet, with tables of contents showing the title of each public act in one table, and private acts in another table.

5. *And be it enacted*, That there shall be paid to the Sergeant-at-Arms for the time being, who shall attend the Council and the House of Assembly, and to the door keepers of Council and the House of Assembly, for the time being, the sum of two dollars by the day, for each day, on a certificate to be produced to the Treasurer, expressing the sum and the number of days they have respectively attended, signed by the president of Council, or the speaker of the House of Assembly.

6. *And be it enacted*, That there shall be paid to the secretary of Council, and to the clerk of Assembly, who shall severally engross the bills of Council and Assembly, this session of this Legislature, at the rate of eight cents by the sheet, on a certificate of the amount signed by the president or vice-president of Council, or by the speaker of Assembly.

7. *And be it enacted*, That this act be, and continue in force for one year from the twenty-fifth day of October, one thousand eight hundred and twenty-five, and no longer.

C. Passed December 12, 1825.

Laws of New Jersey

1823-1828

A FURTHER SUPPLEMENT to the act entitled, "An act making lands liable to be sold for the payment of debts," passed the eighteenth of February, seventeen hundred and ninety-nine.

BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the lands, tenements, hereditaments, and real estate of any person who shall die seized thereof, or entitled to the same, shall be and remain liable for the payment for his or her debts, for one year after his or her decease, and may be sold by virtue of an order of the Orphans' Court of the county where such lands, tenements, hereditaments, and real estate shall lie, if obtained within the said period of time, any alienation or incumbrance made, or attempted to be made, by his or her heir or heirs, devisee or devisees, to the contrary notwithstanding: *Provided always*, that nothing herein contained shall affect any right of dower in the said lands, tenements, and real estate.

C. & A. Passed December 12, 1825.

1823.

that may be brought on bond.

Orphans' Court to order distribution of the residue of the moneys.

this act, shall be good, to all intents and purposes, and pleadable in any court of justice; and in case such bonds shall become forfeited, it shall and may be lawful for the Ordinary to cause the same to be prosecuted in any court of record, at the request of any party grieved by such forfeiture; and the moneys recovered upon such bond, shall be applied towards making good the damages sustained by the not performing the said condition, in such manner as the judge of the Prerogative Court shall, by his sentence or decree, direct; and further, that it shall and may be lawful to and for the judges of the Orphans' Court of the respective counties in this state, after such executors or administrators shall have legally accounted for and touching the sale or sales of the said lands, tenements, hereditaments, and real estate of the person so deceased; to order a just and equal distribution of the surplus, after debts and just expenses of every sort first allowed and deducted, among the heirs or devisees to whom the lands, tenements, hereditaments, and real estate so sold, descended, or were devised, according to the law of descents in the former, and the will of the testator in the latter case; and the same distribution to decree and settle; and the persons entitled to such distribution, shall have their remedy at law, in case of non-payment, for the recovery of the same, against the executor or executors, administrator or administrators so accounting, saving to every one, supposing him, her, or themselves aggrieved, his, her, or their right of appeal.

On refusal to give bond as aforesaid, the letters testamentary or of administration, to be revoked and new ones granted.

Rev. 782.

3. *And be it enacted*, That where the Orphans' Court of the proper county, has made an order to shew cause, as is mentioned in the nineteenth section of the act to which this is a supplement, either on the application of the said executor or administrator, or of a creditor or creditors, as is directed in the twentieth section of the act, entitled "An act to ascertain the powers and authority of the Ordinary and his Surrogates, to regulate the jurisdiction of the Prerogative Court, and to establish an Orphans' Court in the several counties of this state," passed thirteenth June, eighteen hundred and twenty, if the said executor or administrator shall, at the term mentioned in the said order, neglect or refuse to give bonds, with sureties, as aforesaid, then, and in every such case, the said court shall forthwith by sentence, revoke or repeal the letters testamentary or letters of administration of such executor or administrator neglecting or refusing, and thereupon the Surrogate shall grant letters of administration or letters testamentary with the will annexed, to such person or persons having right thereunto, as will give bonds in manner and form aforesaid, who may have every lawful and proper action against such removed executor or administrator, to recover the amount of all moneys, assets, goods, or chattels received by such removed executor or administrator, and not applied according to law, as well as all damages done or committed by such executor

...od, to all intents and purposes, and
 ...rt of justice; and in case such bonds
 ...d, it shall and may be lawful for the
 ...e same to be prosecuted in any court of
 ...t of any party grieved by such forfeit-
 ...; recovered upon such bond, shall be ap-
 ...g good the damages sustained by the
 ...said condition, in such manner as the
 ...tive Court shall, by his sentence or de-
 ...ther, that it shall and may be lawful to
 ...f the Orphans' Court of the respective
 ...e, after such executors or administra-
 ...ly accounted for and touching the sale
 ...ands, tenements, hereditaments, and real
 ...so deceased; to order a just and equal
 ...urplus, after debts and just expenses of
 ...wed and deducted, among the heirs or
 ...e lands, tenements, hereditaments, and
 ...descended, or were devised, according to
 ...in the former, and the will of the testa-
 ...se; and the same distribution to decree
 ...e persons entitled to such distribution,
 ...edy at law, in case of non-payment, for
 ...same, against the executor or executors,
 ...dministrators so accounting, saving to
 ...ng him, her, or themselves aggrieved,
 ...ght of appeal.

acted, That where the Orphans' Court of
 ...has made an order to shew cause, as is
 ...neteenth section of the act to which this
 ...ther on the application of the said execu-
 ...r, or of a creditor or creditors, as is di-
 ...ieth section of the act, entitled "An act
 ...wers and authority of the Ordinary and
 ...regulate the jurisdiction of the Preroga-
 ...establish an Orphans' Court in the seve-
 ...state," passed thirteenth June, eighteen
 ...ty, if the said executor or administrator
 ...mentioned in the said order, neglect or
 ...s, with sureties, as aforesaid, then, and in
 ...e said court shall forthwith by sentence,
 ...e letters testamentary or letters of admi-
 ...executor or administrator neglecting or
 ...upon the Surrogate shall grant letters of
 ...letters testamentary with the will annex-
 ...or persons having right thereunto, as
 ...a manner and form aforesaid, who may
 ...and proper action against such removed
 ...istrator, to recover the amount of all mo-
 ...is, or chattels received by such removed
 ...istrator, and not applied according to law,
 ...ages done or committed by such executor

or administrator, in respect of the estate in his hands : 1823.
Provided, that this act shall not go into operation until the Proviso.
 first day of July next.

See further Supplement passed 12th Dec. 1825, Com. Fur. Sup.
 28th November, 1831, Com.

**AN ACT for arranging, repairing, and perserving the
 public arms and accoutrements.**

Passed the 11th of December, 1823.

Sections 1st, 2d, and 3d, executed.

4. *And be it enacted,* That it shall be the duty of the
 Quarter-Master General, hereafter, carefully to compare the
 returns made by the respective Brigade Inspectors, of the
 number and condition of public arms and equipments, in the
 respective regiments inspected, with the number actually
 loaned to such regiment; and if the number does not
 fully appear on the respective returns, or their good condi-
 tion is not manifested, the said Quarter-Master General
 shall, as soon as may be, cause the public arms and equip-
 ments of such regiment, to be returned to his care : he is
 also authorized to cause all such arms belonging to the state,
 deposited in any place, or in possession of any person or
 persons not under lawful responsibility, to be returned to
 the arsenal, and he is hereby required to keep any arms and
 equipments returned in pursuance of this act, separate from
 those now in the arsenal; and it shall be the duty of the
 Quarter-Master General, on the first week of every session
 of the Legislature, to lay before them a particular return of
 all the arms and equipments belonging to the state, the num-
 ber loaned out, in whose hands, and whether they remain
 under proper responsibilities, including in said return, all
 the camp equipage in his charge; and the Quarter-Master
 General is authorized to require, from the respective brig-
 ade inspectors, such particular returns, as may give
 every information requisite fully to carry this section into
 effect.

Duty of
 Quarter-
 Master Ge-
 neral.

See Act passed 28th December, 1824, Com.

5 *

1825. A further Supplement to the act, entitled "An act making
 Pat. 369. lands liable to be sold for the payment of debts," passed
 Rev. 430, the eighteenth of February, seventeen hundred and ninety-
 670, 782, nine.
 794.
 Com. 51. Passed the 12th of December, 1825.

BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the lands, tenements, hereditaments, and real estate of any person who shall die seized thereof, or entitled to the same, shall be and remain liable for the payment of his or her debts, for one year, after his or her decease, and may be sold by virtue of an order of the Orphans' Court of the county where such lands, tenements, hereditaments, and real estate shall lie, if obtained within the said period of time, any alienation or incumbrance made, or attempted to be made, by his or her heir or heirs, devisee or devisees, to the contrary notwithstanding: Provided always, that nothing herein contained, shall affect any right of dower in the said lands, tenements, and real estate.

Lands liable for debts one year after debtor's decease.

Proviso.

See further Supplement passed 28th Nov. 1831, Com.

AN ACT for the removal of certain Officers, for causes therein stated.

Passed the 12th December, 1825.

BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That in all cases, where any one of the surrogates of the several counties of this state is, or shall become incapacitated by mental derangement, insanity, or great debility of mind, from properly performing the duties of their respective offices, it shall be the duty of the Surrogate-General, upon information thereof in writing, signed by a majority of the judges of the Orphan's Court of the county for which such surrogate has or shall be appointed, supported by affidavit or affidavits, if the said Surrogate-General shall think it necessary; to appoint some fit person to perform the duties thereof during such incapacity, or until the next meeting of the legislature, as the case may require; which said person, so appointed, shall, before he enters upon the duties of the office, make oath or affirmation, and give bond for faithfully performing the duties thereof, in the manner required by the twenty-ninth section of the act entitled, "An act to ascertain the power and authority of the Ordinary and his surrogates, to regulate the jurisdiction of the Prerogative Court, and to establish an Orphans' Court in the several counties of this state," passed the thirteenth day of June, in the year of our Lord one thousand eight hundred and twenty.

Surrogate may be removed for insanity, &c.

Vacancy how filled.

Rev. 785.

1831. *3. And be it enacted,* That the inhabitants of the township of Camden, shall hold their town-meetings at the Court-House in the city of Camden, on the second Monday in March, annually.

4. And be it enacted, That the inhabitants of the township of Newton, shall hold their first annual town-meeting at the Friends School-House, in Haddonfield, on the second Wednesday in March next.

Section 5, executed.

Pat. 369,
Rev. 450,
670, 782,
794.
Com. 51,
130.

A Further Supplement to the act entitled "An act making lands liable to be sold for the payment of debts," passed eighteenth February, seventeen hundred and ninety-nine.

Passed the 28th of November, 1831.

1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same. That any deed or conveyance, heretofore made, or which may hereafter be made, by any sheriff or other officer, for any lands, tenements, hereditaments or real estate, sold by virtue of any writ or writs of execution, issued or to be issued out of any of the courts of this state, by virtue of the act to which this is a supplement, shall be good and valid, and received in evidence as such, by the said courts, notwithstanding any variance between the recital in said deed, and the execution or executions by virtue of which the sale was made, and notwithstanding any variance between the said execution or executions, and the judgment or judgments upon which the said execution or executions were issued.

Sheriff's deeds valid, notwithstanding variance between recital and execution,

Or variance between execution and judgment.

Record of judgment, or execution in evidence, may be considered as amended.

2. And be it enacted, That it shall and may be lawful for any court of this state, in which the record or exemplification of any judgment or execution shall be offered in evidence in support of any deed or conveyance made by a sheriff or other officer who may have sold any lands, tenements, hereditaments or real estate, by virtue of any writ or writs of execution issued as aforesaid, to consider the said judgment or execution as amended in any particulars in which the same might, by the rules of law and practice, have been at any time amended by the court in which the said judgment was rendered or out of which the said execution was issued, and the said judgment or execution shall have the same force and effect, as if it was amended accordingly.

at the inhabitants of the township
at town-meetings at the Court-
house, on the second Monday in

at the inhabitants of the township
at the first annual town-meeting at the
Haddonfield, on the second Wed-

nesday, executed.

the act entitled "An act making
provision for the payment of debts," passed
in the year seventeen hundred and ninety-

passed the 28th of November, 1831.

*the Council and General Assembly
by enacted by the authority of the
said Council, heretofore made, or
made, by any sheriff or other officer,
hereditaments or real estate, sold
under writs of execution, issued or to be
issued by the courts of this state, by virtue of
of a supplement, shall be good and
of force as such, by the said courts,
notwithstanding any variance between
the recital in said
deeds, and the judgment or judgment
of execution or executions were*

at it shall and may be lawful for
which the record or exemplifica-
tion shall be offered in evi-
dence or conveyance made by a
person who may have sold any lands,
or real estate, by virtue of any
deed issued as aforesaid, to consider
the same as amended in any particu-
lar, by the rules of law and prac-
tice, as amended by the court in which
the same is offered or out of which the said
deed was issued, the said judgment or execution
shall have the same force and effect, as if it was amended

3. *And be it enacted*, That any deed or conveyance hereto-
fore made, or which may hereafter be made, by any execu-
tor or executors, administrator or administrators, or sur-
viving executor or executors, administrator or administra-
tors, for any lands, tenements, hereditaments or real estate,
sold by virtue of any order of the Orphan's Court of any
county in this state, by virtue of the acts to which this is a
further supplement, shall be good and valid, and received in
evidence as such, in any court of this state, notwithstanding
any variance in the recital in said deed, of the order of such
Orphans' Court, authorizing such sale, and the record of
such order.

1831.
Deeds made
by order of
Orphan's
Court, valid,
notwith-
standing va-
riance be-
tween reci-
tal and or-
der.

A Further Supplement to the Act, entitled "An act for
erecting the town of Bordentown, in the county of Bur-
lington, into a borough," passed the ninth December,
eighteen hundred and twenty-five.

Com. 117.

Passed the 29th of November, 1831.

1. *BE IT ENACTED by the Council and General Assembly
of this State, and it is hereby enacted by the authority of the
same*, That from and after the passage of this act, the person
now holding the office of High Constable of the borough of
Bordentown, in virtue of any election held in pursuance of
the provisions of the act to which this is a supplement, and
every person who shall hereafter hold such office by virtue
of any future election, shall have the same power and autho-
rity, and be authorized to perform the same duties in all re-
spects, in civil, as well as criminal cases, and be entitled to
receive the same fees and compensation for his services, as
if he had been lawfully elected to the office of constable, at
an annual town-meeting of the inhabitants of the township
of Chesterfield, in the county of Burlington, and had taken
the oath or affirmation, and given the security required by
law: *Provided always*, that before any such High Constable
shall proceed to exercise the powers conferred upon him by
this act, he shall take and subscribe such oath or affirmation
for the due execution of his office, and enter into such bond
with sureties to be approved by the burgesses of the said
borough, as he would be by law required to take and enter
into, if he had been so elected to the office of constable, at an

High Con-
stable of
Bordentown,
to have the
same powers
as if elected
by the town-
ship.

Proviso.

1799.

firmation or declaration. And if such person shall choose to affirm, it shall be in the words following, to wit:

Form of affirmation.

I, affirm: do solemnly, sincerely and truly declare and

But if such person shall choose to declare, it shall be in the words following, to wit:

Form of declaration.

I, do declare, in the presence of Almighty God, the witness of the truth of what I say:

The validity of such affirmation or declaration.

Either of which forms shall be as good and effectual in law, as an oath taken in the usual form. In which affirmation or declaration, the words, "So help me God," at the close of the usual oath, shall be omitted.

Authority given to administer such affirmation or declaration.

6. And be it enacted, That every person, who is or shall be empowered and required to tender and administer an oath in the usual form, shall be, and hereby is empowered and required to tender and administer the affirmation or declaration aforesaid, when requested to that purpose by any such scrupulous person as aforesaid.

Such an affirmation or declaration may be taken in every case where an oath in usual form is or shall be required.

7. And be it enacted, That in all cases, where by any act of the legislature of this state, now in force or hereafter to be made, an oath is or shall be allowed or required, the affirmation or declaration, in the form above prescribed, of any such scrupulous person as aforesaid, shall be allowed and taken instead of an oath in the usual form, although no provision for that purpose is or shall be made in such act.

A false affirmation or declaration to be punished as perjury.

8. And be it enacted, That if any person, who shall make such affirmation or declaration, shall falsely, wilfully and corruptly affirm or declare any matter or thing which, if the same had been sworn or deposed in the usual form, would have amounted to wilful and corrupt perjury; then such person, so offending, shall be deemed and adjudged to be guilty of wilful and corrupt perjury, and, on being convicted thereof, shall be punished accordingly.

Former acts repealed.

9. And be it enacted, That all and every act and acts, and part and parts of any act, within the purview of this act, shall be, and they are hereby repealed.

PAT. 369.

AN ACT making lands liable to be sold for the payment of debts.

Passed the 18th of February, 1799.

Lands made liable to be taken and sold by executions.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That all lands, tenements, hereditaments and real estate, shall be, and hereby are made liable to be levied upon and sold by executions to be issued on judgments, which are or shall be obtained in any court of record of this state (except justices' courts constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money, and costs, so recovered or to be recovered.

2. And be it enacted, That no judgment shall affect or bind any lands, tenements, hereditaments or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court.

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

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

5. And be it enacted, That upon judgment obtained, or to be obtained, for debt, damages, and costs, or other sum of money, in the supreme court, or any of the inferior courts of common pleas of this state, the party obtaining the same may have an execution against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of the party, against whom such judgment is or shall be awarded; but no execution shall be issued against the proper goods and chattels, lands, tenements, hereditaments and real estate of any executor, administrator, heir or devisee, unless he or she shall have made his or her estate liable for the money so recovered by false pleading or otherwise.

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

1799.

Lands bound from the time of entering judgment.

Goods bound from the time of delivering execution to sheriff.

Time of such delivery to be endorsed on the execution.

The like rule of preference to obtain in executions against lands as in executions against goods, when delivered on the same day.

Execution may be issued against the body or estate of the party.

In what form and manner execution shall issue against lands and real estate.

1799. such debt, damages and costs, or sum of money, specifying the day particularly, or at any time afterwards, in whose hands soever the same may then be; but when such execution shall be issued against terretenants, or heirs, or devisees (unless they shall have made their estate liable by false pleading or otherwise) it shall only command the sheriff or other officer, that of the lands, tenements, hereditaments and real estate, whereof the ancestor, testator, or person deceased, was seized on the day, when the said lands, tenements, hereditaments and real estate, became liable as aforesaid, or at any time afterwards, or at the time of his or her death, as the case may require, he cause to be made the debt, damages, and costs, or sum of money, in the said writ mentioned.

Sum due to be endorsed on the execution.

7. *And be it enacted*, That the party, at whose instance any writ of execution shall issue against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of any person, shall endorse on the said writ, before it be sealed, the debt, damages, and costs, or sum of money, really due and to be made.

Executions against lands to be recorded.

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

Lands taken in execution to be advertised two months before the time of sale.

9. *And be it enacted*, That the sheriff or other officer, who, by virtue of such writ of execution, levies on any lands, tenements, hereditaments and real estate, shall give notice, by advertisements, signed by himself, and put up at five or more public places in the county, one whereof to be in the township, where the said lands, tenements, hereditaments and real estate do lie, of the time and place where they will be exposed to sale, at least two months before the time appointed for selling them; and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder.

The sheriff may adjourn the said sale twice, and no more, and then not exceeding one month each time.

10. *And be it enacted*, That it shall be lawful for the said sheriff or other officer to make two adjournments, and no more, of the sale of lands, tenements, hereditaments and real estate, so by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftener, or for a longer time, without permission, in writing, previously obtained of the party, at whose instance the said writ of execution was issued, he shall be, and hereby is made liable to the amount of the debt, or damages and costs, or sum or sums of money, mentioned in the said writ, with interest; and for the recovery thereof may be amerced and proceeded against in the manner prescribed in and by the twenty-second section of the act, entitled "An act concerning sheriffs." *Provided always*, That if the said sheriff or other officer, shall, after two adjournments as aforesaid, sell the lands, tene-

But if the sheriff, after two adjournments,

ments, hereditaments and real estate, and bring the whole amount of the product of such sale (after deducting his lawful fees) into the court, from whence such execution issued, at any time before the entry of such amercement against him as aforesaid, the said sheriff or other officer shall be exonerated from all liability to the said amercement.

and before amercement, bring the money into court, he shall be exonerated.

11. *And be it enacted*, That the person, whose lands, tenements, hereditaments and real estate are so taken in execution, may, if part of them be sufficient to satisfy such execution, elect what part thereof shall be sold; and thereupon it shall be the duty of the said sheriff or other officer to sell the part so elected, and no other, if it be sufficient: *Provided always*, That such election shall be made in writing, signed by such person, and delivered to the said sheriff or other officer, at least twenty days previous to the time appointed for the sale.

The party, whose lands are taken in execution, may elect what part thereof shall be sold.

12. *And be it enacted*, That the sheriff or other officer, who, by virtue of such writ or writs of execution, shall sell as aforesaid the lands, tenements, hereditaments and real estate, or any part or parcel of them, so levied upon, shall make to the purchaser thereof as good and sufficient a deed or conveyance for the lands, tenements, hereditaments and real estate so sold, as the person, against whom the said writ or writs of execution were issued might or could have made for the same at or before the time of rendering judgment against him or her; which deed or conveyance shall transfer to and vest in the said purchaser, as good and perfect an estate to the premises therein mentioned, as the person, against whom the said writ or writs of execution were issued, was seized of or entitled to at or before the said judgment, and as fully, to all intents and purposes as if such person had sold the said lands, tenements, hereditaments and real estate to such purchaser, and had received the consideration money, and signed, sealed, and delivered a deed for the same: *And further*, That the said deed or conveyance, so to be made by the said sheriff or officer, shall recite the writ or writs of execution, by virtue whereof of the said lands, tenements, hereditaments and real estate therein described, were sold as aforesaid.

Sheriff to make deeds for lands, by him sold in virtue of executions; which deeds shall be as good and effectual as if they had been made by the party.

13. *And whereas* other judgments, statutes, and recognizances, besides those, or some of those, by virtue whereof the sale aforesaid was made, might affect the lands, tenements, hereditaments and real estate so sold, if no provision be made to remedy the same; and whereas the persons, who have not taken, or will not take out executions upon their judgments, statutes, or recognizances, ought not to hinder or prevent such as do take out executions from having the proper effect and fruits thereof: *Therefore, be it enacted*, That the purchaser, his heirs and assigns, shall hold the lands, tenements, hereditaments and real estate, by him or her purchased as aforesaid, free and clear of all other judgments, recognizances, statutes-merchant and statutes-staple whatsoever, on or by virtue of which no execution has been taken out and executed on the lands, tenements, hereditaments, and real estate so purchased.

Land sold by sheriff to be clear of all judgments, on which executions have not been issued.

14. *And be it enacted*, That if any judgment or execution

Reversal of judgment, for error, not to affect lands sold prior to such reversal.

How and in what cases a succeeding sheriff may make deed for lands sold by his predecessor in office.

How to pay the money received thereon.

Proprietary rights may be levied on and sold by executions.

(the said execution being recorded as aforesaid) by virtue whereof such sale as aforesaid shall be made of any lands, tenements, hereditaments and real estate, shall be reversed for error, such reversal shall not be given in evidence, or be of any force or avail against any bona fide purchaser under the said judgment or execution; but the said purchaser, his heirs and assigns, shall hold the said lands, so bona fide purchased, notwithstanding such reversal, if it be posterior to the said purchase; and further, such reversal shall only operate against the defendant in error, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the lands, tenements, hereditaments and real estate so sold as aforesaid.

15. *And be it enacted*, That if any sheriff, who hath made or shall make sale of any lands, tenements hereditaments and real estate, by virtue of an execution against the same, shall abscond, or depart from the state, or be disqualified by law, or rendered unable by death, or otherwise incapable, to make a deed or conveyance for the same, it shall be lawful for any succeeding sheriff of the county, on receiving a certificate from the inferior court of common pleas of such county, signed by the clerk by order of the said court, setting forth, that sufficient proof hath been made to the said court, that such sale was fairly and legally made, and on tender of the purchase money, or if the purchase money or any part of it has been paid, then on proof of such payment, and on tender of the residue, if any be, to sign, seal and deliver to the said purchaser, or his legal representative, a deed or conveyance of the lands, tenements, hereditaments and real estate so sold; which deed shall be as good and valid, and shall have the same force and effect, as if the sheriff, who made such sale, had signed, sealed, and delivered a deed of conveyance for the same in due form of law.

16. *And be it enacted*, That if such succeeding sheriff receive any money by virtue of the preceding section of this act, he shall pay the same to the person thereunto entitled by law.

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

18. *And be it enacted*, That no lands, tenements, heredita-

ments or real estate, of any testator or intestate, shall be sold or in any wise affected by any judgment or execution against executors or administrators.

19. *And be it enacted*, That when any executor or administrator shall discover or believe, that the personal estate of his testator or intestate is insufficient to pay his debts, then it shall be the duty of such executor or administrator, as soon as conveniently may be, to make and exhibit, under oath, a just and true account of the said personal estate and debts, as far as he can discover the same, to the orphans' court of the county, where the lands, tenements, hereditaments and real estate, of which the said testator or intestate died or shall die seized, do lie, and request their aid in the premises; and the said court shall thereupon make an order, directing all persons interested in such lands, tenements, hereditaments and real estate to appear before them at a certain day and place, in the said order to be mentioned, not less than two nor more than three months after the day of making such order, to shew cause, why so much of the said lands, tenements, hereditaments and real estate of the said testator or intestate should not be sold, as will be sufficient to pay his debts, or the residue thereof, as the case may require; which order, signed by the surrogate or clerk of the said court, shall be immediately thereafter set up at three of the most public places in the said county for six weeks successively, and be published for the same time in one or more of the newspapers printed in this state.

20. *And be it enacted*, That the said orphans' court shall, at the time and place mentioned in the said order, or at such other time and place as they may then appoint, hear and examine the allegations and proofs of the said executor or administrator, and other persons interested; and if on full examination the said court shall find, that the personal estate of the said testator or intestate is not sufficient to pay his debts, the said court shall order and direct the executor or administrator to sell the whole, if necessary, of the lands, tenements, hereditaments and real estate of the said testator or intestate, for the payment of his debts, or so much thereof as will be sufficient for that purpose; and when a part only of the said lands, tenements, hereditaments and real estate is sufficient, such order shall specify the part to be sold: *Provided always*, That where any houses, and lots, or lands are so circumstanced, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the said court may, at their discretion, order the whole or a greater part, than is necessary to pay such debts, to be sold; and the surplus money arising from such sale shall be distributed among the heirs or devisees, according to the law of descents in the former, and the will of the testator in the latter case; and further, that the heir or devisee, whose lands, tenements, hereditaments and real estate, so descending or devised to him, have been sold as aforesaid, for the payment of the debts of his intestate or testator, may compel all others claiming or holding under such intestate or testator, to contribute in proportion to their respective interests, so as to equalize the burden or loss.

Judgment or execution against executors or administrators not to affect lands of the testator or intestate.

If the personal estate of the testator or intestate be insufficient to pay his debts, the executor or administrator may make application to the orphans' court; whose duty it shall be to order all persons interested to appear before them, on a certain day, to shew cause, why the real estate should not be sold.

If the personal estate be inadequate to pay the debts of the testator or intestate, the orphans' court may direct the real estate to be sold.

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Lands, ordered to be sold by the orphans' court, to be advertised 2 months before the time of sale.

21. And be it enacted, That the executor, or administrator, who may be ordered to sell any lands, tenements, hereditaments or real estate of any testator or intestate, shall give notice by advertisements, signed by himself, and set up at five or more public places in the county, of the time and place of selling the premises, at least two months before the time appointed for selling them, and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder; and the executor or administrator, making the said sale, shall report in writing all proceedings thereon to the next orphans' court, after such sale: *Provided always*, That the said executor or administrator may adjourn the said sale from time to time, not exceeding two months in the whole.

For lands so sold, the executor or administrator to make deed.

22. And be it enacted, That the said executor or administrator shall, and hereby is authorized to make a deed to the purchaser for the lands, tenements, hereditaments and real estate so sold; which deed shall set forth the said order at large, and shall vest in the said purchaser as good and perfect an estate in the premises therein mentioned, as the heirs or devisees of the said testator or intestate were seized of or entitled to, at the time of the making of the said order by such orphans' court.

Moneys received by executor or administrator from sale of lands, to be assets for the payment of debts.

23. And be it enacted, That the moneys arising from such sale of the lands, tenements, hereditaments and real estate of such testator or intestate, shall be received by the said executor or administrator, and be considered as assets in his hands for the payment of debts, and the surplus, if any, shall be distributed among the heirs or devisees in the proportion and manner directed by the twentieth section of this act.

Lands of testator or intestate not to be sold till the personal estate be applied to the payment of debts.

24. *Provided always, and be it further enacted*, That no part of the lands, tenements, hereditaments and real estate of any testator or intestate, shall be ordered by the said orphans' court to be sold as aforesaid, until the executor or administrator shall have applied the personal estate, or such part thereof as may have come to his hands, towards payment of the debts of such testator or intestate; and no more of the said lands, tenements, hereditaments and real estate, except as is excepted in the twentieth section of this act, shall be sold, than may be necessary to pay the residue of the said debts: *Provided also*, That nothing herein contained shall prevent or bar any person from bringing and maintaining any action against an executor or administrator, for or in respect of the personal estate of his testator or intestate, or for or in respect of any waste or misapplication thereof by such executor or administrator.

This act not to prevent suits against executor or administrator for waste, &c.

Certain acts, &c. repealed.

25. And be it enacted, That the act, entitled "An act subjecting real estates in the province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon," passed the second day of December, in the year of our Lord, one thousand seven hundred and forty-three; and the act, entitled "An act to amend an act, entitled an act subjecting real estates in the province of New-Jersey to the payment of

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debts, and directing the sheriff in his proceedings thereon," passed the eighth day of June, in the year of our Lord, one thousand seven hundred and seventy-nine; and the act, entitled "An act directing the mode by which shares of propriety and rights to unlocated lands in the state of New-Jersey, may be sold for the payment of debts," passed the twenty-third day of November, in the year of our Lord, one thousand seven hundred and eighty-five; and the eleventh and twelfth sections of the act, entitled "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the sixteenth day of December, in the year of our Lord, one thousand seven hundred and eighty-four, and all and every other act and acts, and part and parts of any act, within the purview of this act, be, and they are hereby repealed; but such repeal shall not extend to or affect any execution heretofore issued, out of any of the courts of record in this state, against lands, tenements, hereditaments and real estate, or against proprietary shares and rights to unlocated lands, or any order heretofore made by any orphans' court for the sale of real estate; but such execution and order shall be of the same validity, and be proceeded upon to effect in the like manner, as if this act had not been made.

But such repeal not to affect antecedent executions and orders.

See supplement, passed 21st February, 1820.

AN ACT to issue commissions for the examination of witnesses, and to take their depositions in certain cases. PAT. 374.

Passed the 18th of February, 1799.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That if a material witness in any action or suit in the court of chancery, or in the supreme court, or any of the inferior courts of common pleas of this state, reside out of this state, or, if in this state, be ancient or very infirm, or be sick, or bound on a voyage, or about to go out of this state, it shall and may be lawful for the said court, in which such action or suit is depending, on affidavit or proof thereof to the satisfaction of the said court, and upon motion made by or in behalf of either party in open court, at such terms as the said court shall direct, to award and issue, under the seal of the said court, a commission to such person or persons, as the said court may think fit, authorizing such person or persons, or any two or more of such persons, to examine de bene esse the said witness on oath or affirmation, upon the interrogatories annexed to the said commission, and to reduce such examination to writing, and to return the same annexed to the said writ, unto the said court, with all convenient speed; and the name of every witness, to be so examined by virtue of such commission, shall be inserted in the said commission; and the interrogatories for the examination of such wit-

In what cases the courts may grant commissions to examine material witnesses.

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1820. serve beyond the time at w^h said infant, if a male, shall have arrived at the age of two years, or, if a female, at the age eighteen years, the said indenture shall be void as against such infant, so for as the age inserted in said indenture shall exceed the age aforesaid: *Provided*, That nothing in this section, shall in any way impair the obligation of any covenant entered into by the parent or guardian of such infant, as to the age or time of service of such infant, nor shall it impair or affect any contracts, or indentures made with foreigners to serve for a term of years.

PAM. 46.
See ante 410.

A SUPPLEMENT to the act, entitled "An act for the limitation of actions," passed the seventh day of February, one thousand seven hundred and ninety-nine:

Passed the 21st of February, 1820.

1. *BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That if any person or persons, against whom there is or shall be any such cause of action as is specified in the first, second, third, fifth, sixth and seventh sections of the act to which this is a supplement, shall not be resident in this state when such cause of action accrues, or shall remove from this state after the same shall accrue and before the time of limitation mentioned in said sections is expired, then the time or times during which such person or persons shall not reside in this state as aforesaid, shall not be computed as part of the said limited period within which such action or actions are required to be brought as aforesaid; but the person or persons having, or who may have such cause of action as aforesaid, shall be entitled to all the time mentioned in the said several sections, for bringing their said actions after the cause thereof shall accrue, exclusive of the time or times during which the person or persons liable to such actions shall be not resident in this state as aforesaid.

2. *And be it enacted,* That the eighth section of the act to which this is a supplement, be, and the same is hereby repealed.

PAM. 47.
See ante 430.

A SUPPLEMENT to the act, entitled "An act making lands liable to be sold for the payment of debts."

Passed the 21st of February, 1820.

1. *BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That when any testator or intestate shall die possessed of any share or shares, or part or parts of a share of propriety of undivided rights, or warrant to locate any land, either in the eastern or western division of New-Jersey, and shall not leave other estate sufficient to pay all the just debts and maintain the children of such decedent, that then and in such case the executor or ex-

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ecutors, administrator or administrators, shall apply to the orphans' court of the county where such decedent last resided, and the said court shall make an order for the sale of such share or parts of shares, or warrants for unlocated rights, on the like exhibition and proof of the deficiency of the estate of such decedents, to pay the just debts that shall appear against the same, under the same restrictions, notice and publicity as is by law directed for the sale of real estates.

2. *And be it enacted,* That in case a writ of fieri facias shall be issued against the goods and chattels, lands, tenements, hereditaments and real estate, of any person or persons, and such person or persons shall desire that the whole or a part of the said lands, tenements, hereditaments and real estate, shall be sold before any of the said goods and chattels, and signify the same in writing, under his, her, or their hands, and deliver the same to the sheriff or other officer to whom the said writ of fieri facias shall be directed, within twenty days from the time of notice of said writ, and before the goods shall be sold, and enter into bond to the said sheriff or other officer, with good and sufficient sureties, that the goods and chattels levied on in virtue of the said writ, shall be forthcoming to answer the exigencies of said writ, at a day therein named, not exceeding three calendar months from the date of said bond, then and in that case it shall be the duty of the said sheriff or other officer, to whom the said writ shall be directed, to suspend the sale of the said goods and chattels, and proceed to sell the said lands, tenements, hereditaments and real estate, or such part thereof as the owner or owners thereof shall have desired to be sold as aforesaid, any thing contained in the sixth section of the act to which this is a supplement, the said writ of fieri facias, or any law to the contrary notwithstanding.

3. *And be it enacted,* That it shall be the duty of the sheriff or other officer, to whom a writ of fieri facias may be directed, against lands, tenements, hereditaments and real estate, in addition to the notice required by the ninth section of the act to which this is a supplement, to cause the time and place of the sale of said lands, tenements, hereditaments and real estate, levied on by virtue of said writ, to be published in one of the newspapers printed and published in this state, and circulated in the neighborhood of the said lands, tenements, hereditaments, and real estate, at least four weeks successively, once a week, next preceding the time appointed for selling the same, and that the said sheriff or other officer, advertising as aforesaid, shall be entitled, in addition to his other fees, to the sum of one dollar and fifty cents.

4. *And be it enacted,* That whenever any lands, tenements, hereditaments, and real estate, shall be directed to be sold by an order made by the orphans' court, in any of the counties of this state, it shall be the duty of the executor, administrator, or guardian, as the case may be, to advertise the time and place of the sale thereof, in the manner directed in the preceding section of this act, in addition to the provision already prescribed by law.

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In what cases orphans' court may direct propriety rights, &c. to be sold.

On writs of fieri facias, lands may be sold before goods.

Conditions to be performed.

In what manner notice of sale to be given.

Lands ordered to be sold by the orphans' court, to be advertised.

1820.

5. *And be it enacted*, That in all cases wherein an order hath heretofore been made, or shall hereafter be made, by the orphans' court of any county in this state, in which the said court hath ordered or directed, or may order or direct, two or more executors or administrators, to sell the whole or any part of the lands, tenements, hereditaments, and real estate of a testator or intestate, for the payment of debts, and one or more of the said executors, or administrators, shall or may have departed this life, before such sale shall have been made, or before a deed or deeds of conveyance may have been executed in pursuance thereof, that then and in such case, the survivor or survivors of such executors or administrators, shall be, and they are hereby authorized and empowered to sell the said lands, tenements, hereditaments, and real estate, and to make and execute good and sufficient deed or deeds of conveyance for the same, to the purchaser or purchasers, and in all respects to execute, carry into effect, and fulfil the said order as fully and effectually to all intents and purposes, as all the executors, or administrators, named in the same order, might, if living, execute and fulfil the same.

In what case surviving executors may convey lands.

6. *And be it enacted*, That the act, entitled "A supplement to the act, entitled an act making lands liable to be sold for the payment of debts," passed the eleventh day of November, one thousand eight hundred; and the act, entitled "An act to amend the act, entitled an act making lands liable for the payment of debts," passed the twenty-sixth day of November, one thousand eight hundred and four; and the act, entitled "A further supplement to the act, entitled an act making lands liable for the payment of debts," passed the sixth day of February, one thousand eight hundred and sixteen, be, and the same are hereby repealed: *Provided nevertheless*, That nothing in this repealing section shall in any way invalidate or render null any act, matter or thing, lawfully done or transacted under them, or any of them, or impair any right required under them or any of them, but the same shall be as good, valid and effectual, as though this repealing section had not been made.

See act, November 9th, 1820.

P.A.M. 65.
See ante 600.

A SUPPLEMENT to the act, entitled "An act relative to toll and chain bridges."

Passed the 21st of February, 1820.

BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That so much of the first section of the act to which this is a supplement, as relates to any kind of carriage, waggon, cart, sled, or sleigh, drawn by one horse, and also to single horses and mules, be, and the same is hereby repealed: *Provided nevertheless*, That nothing in this act contained, shall be construed to extend to or affect the toll-bridges already built over the river Delaware.

1820.

A SUPPLEMENT to an act, entitled "An act for the preservation of deer and other game, and to prevent trespassing with guns," passed December twenty-first, one thousand seven hundred and seventy-one.

P.A.M. 66.
See ante 25.

Passed the 21st of February, 1820.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That if any person or persons shall kill, destroy, hunt, or take any doe, buck, fawn, or any sort of deer whatsoever, at any other time or season, except only between the last day of August and the second day of January, yearly and every year, he, she or they, so offending, shall forfeit and pay the sum of twenty dollars, for each and every such offence, to be sued for and recovered with costs of suit, in an action of debt, by any person, before any justice of the peace of the county wherein such offence shall have been committed, one half of the forfeit money shall be for the benefit of the person prosecuting for the same, and the remainder paid to the collector of the township wherein the offence shall have been committed, for the use of the township: *Provided*, That nothing in this supplement shall be construed or taken to extend to restrain the owners of parks or tame deer, from killing, hunting, or driving their own deer.

When deer may be killed.

Penalty.

To whom forfeited.

Proviso.

2. *And be it enacted*, That if any person or persons shall hunt for the purpose of killing, or to destroy or take, or kill any moor-fowl, grouse, partridge, quail, or rabbit, except only between the first day of September and the first day of February, and any woodcock, except only between the twenty-fifth day of June and the first day of February, yearly and every year, he, she or they, so offending, shall forfeit and pay for each moor-fowl, grouse or partridge, two dollars, and for each woodcock, rabbit, or quail, one dollar, for each and every offence, to be sued for and recovered in an action of debt, with costs of suit, by any person who shall sue for the same; and any person or persons in whose hands or custody any moor-fowl, grouse, partridge, quail or rabbit, shall be found, that shall have been killed contrary to the provisions of this act, shall be deemed, taken and adjudged to be the killer or destroyer of such game, and liable to the penalties aforesaid, unless such person or persons shall make it appear who it was that killed the same, or from whom such person, so thereof possessed, received the same: *Provided nevertheless*, That no person shall be prohibited from gunning on his own land.

When certain fowl, &c. may be killed.

Penalty.

Possession of the game, evidence of the killing.

3. *And be it enacted*, That the fourth and sixth sections of the act to which this is a supplement, and so much of the fourteenth section of the same act, as makes it a duty of the justices of the general quarter-sessions of the peace, to cause the said act to be read and given in charge to the grand jury, at every quarter-sessions of the peace, and also the supplement to said act, passed the eleventh day of February, one thousand eight hundred and eighteen, be, and the same are hereby repealed.

Acts repealed.

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proclamation, offering a reward, as aforesaid, for apprehending and securing any person or persons, charged, on oath or affirmation as aforesaid, with aiding, abetting, comforting, harboring or concealing any person or persons, who hath or have committed any of the crimes above specified and described, knowing him, her or them to be guilty thereof; which reward, on conviction of the person so charged, shall be paid in the same manner as is above directed.

May offer a reward for apprehending the unknown perpetrators of certain offences.

3. *And be it enacted*, That when any murder, burglary, robbery or other offence, as aforesaid, hath been, or shall be committed by any person or persons unknown, it shall and may be lawful for the governor or person administering the government, for the time being, on the oath or affirmation of one or more credible witness or witnesses, setting forth the fact, and that the same was perpetrated by a person or persons unknown, to issue his proclamation, offering a reward as aforesaid, for apprehending and securing the person or persons who may have committed the same, and any person or persons who may have aided, abetted, comforted, harbored or concealed him, her, them or any of them, to be in such wise guilty; which reward shall, in every case, be paid on conviction of the party offending, as in manner aforesaid.

Acts repealed.

4. *And be it enacted*, That the act, entitled "An act to empower the governor to offer a reward for the apprehension of certain offenders," passed the fifth day of March, one thousand seven hundred and ninety-five, be, and the same is hereby repealed.

P.A.M. 180.

AN ACT to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state.

Passed the 13th of June, 1820.

WHEREAS it is necessary that the power and authority of the ordinary of the state, and his surrogates, should be defined, the jurisdiction of the prerogative court regulated, and an orphans' court established, in the several counties of this state; THEREFORE—

Authority of the ordinary, how far to extend.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That from and after the passing of this act, the authority of the ordinary shall extend only to the granting of probates of wills, letters of administration, letters of guardianship, and to the hearing and finally determining of all disputes that may arise thereon.

Prerogative court when and where to be held.

2. *And be it enacted*, That for the more regular hearing and determination of all causes cognizable before the ordinary, he shall, at stated periods, hold a prerogative court, at the times and places appointed, or that hereafter shall be appointed by him for holding the court of chancery, when he shall hear and finally de-

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termine all causes that shall come before him, either directly or by appeal from any of his surrogates, or the orphans' court hereinafter established.

3. *And be it enacted*, That the secretary of the state, for the time being, shall be register of the prerogative court, and besides the business heretofore done by him, shall attend the sitting of the court at the stated times, to register the decrees and proceedings of the court.

Secretary of state to be register.

4. *And be it enacted*, That the ordinary shall hereafter appoint but one deputy or surrogate in each county of the state, and that the power and authority of such surrogate shall be limited to the county for which he shall be appointed.

One surrogate in each county.

5. *And be it enacted*, That the judges of the court of common pleas, in the several counties of this state, or any three of them, shall be, and they hereby are, constituted and appointed judges of a court of record, to be held four times a year, in the same week that the courts of general quarter-sessions of the peace are, or hereafter shall be held, and also at such other times as the said judges shall see occasion to hold the same; which court shall be styled "The Orphans' Court," and that the surrogate of the county shall be clerk or register of said court.

Orphans' court established.

6. *And be it enacted*, That the orphans' court shall have full power and authority to hear and determine all disputes and controversies whatsoever, respecting the existence of wills, the fairness of inventories, the right of administration and guardianship, and the allowance of the accounts of executors, administrators, guardians or trustees, audited and stated by the surrogate, as hereinafter directed; and also, all other matters and things hereinafter submitted to their determination, and to award process, and cause to come before them, all and every person and persons interested or necessary to give evidence in any such cause, or who, as executors, administrators, guardians, trustees or otherwise, are or shall be entrusted with, or in anywise accountable for, any lands, tenements, goods, chattels or estate, belonging, or which shall belong, to any orphan or person under age; and the ordinary of the state, his register and surrogates, are hereby directed and required, upon application made for that purpose, and payment of reasonable fees, to transmit into the orphans' courts, true copies or duplicates of all bonds, inventories, accounts and proceedings whatsoever, now or hereafter remaining or being in their respective offices or possession, which do or shall relate to the estates of orphans, or any of them.

Jurisdiction of the orphans' court.

7. *And be it enacted*, That the said orphans' court shall have full power and authority, where letters of administration or guardianship shall have been granted upon insufficient security, to order and direct all such administrators or guardians, to give such further or other security to the ordinary, by bonds in the usual form, as the said court, after hearing the objection of creditors, or persons concerned, shall approve of; and if it appears, on examination, that any administrator or guardian hath embezzled, wasted, or misapplied all or any part of the decedent's estate, or shall

Orphans' court may order administrators or guardians to give further security, and may revoke letters of administration or guardianship.

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neglect or refuse to give bonds, with sureties as aforesaid, or the security taken shall have been insufficient, then, and in every such case, the said court shall forthwith, by sentence, revoke or repeal the letters of administration or guardianship, and thereupon the surrogate shall grant letters of administration or guardianship, to such person or persons having right thereunto, as will give bonds in manner and form aforesaid, who may have actions of trover, detinue, or on the case, for such goods or chattels as came to the possession of the former administrators or guardians, and shall be detained, wasted, embezzled, withheld or misapplied by any of them, and no satisfaction made for the same.

In what cases the orphans' court may order executors, guardians and trustees to give security.

8. *And be it enacted*, That when any complaint is made to any one of the judges of the orphans' court, that an executrix having a minor or minors of her own, or being concerned for others, is married, or like to be espoused to another husband, without securing the minors' portions or estates, or that an executor, guardian or other person having the care and trust of minors' estates, is likely to prove insolvent, or shall refuse or neglect to exhibit true and perfect inventories, or give full and just accounts of the said estates come to their hands or knowledge, then and in every such case, the said judge is hereby required, forthwith to call an orphans' court, which court shall order and direct all and every such executrix, executor, guardian or trustee, to give security to the orphans or minors, by mortgage or bonds, in such sums and with such sureties as the said court shall think reasonable, conditioned for the performance of their respective trusts; and for the true payment or delivery, to and for the use and behoof of such orphan or orphans as they are concerned for, or such as shall legally represent them, the legacies, portions, shares and dividends of estates, real and personal, belonging to such orphans or minors, so far as they have assets, as also for their maintenance and education, as the said court shall judge fit for the benefit and best advantage of such orphans.

May order an administrator or guardian, on application of a surety, to render an account, and proceedings thereon.

9. *And be it enacted*, That where the surety, in any bond given by an administrator or guardian, for the faithful execution of his office, shall discover or believe that such administrator or guardian is wasting or mismanaging the estate, whereby the said surety may become liable to loss or damage, the said orphans' court, upon application of such surety, and upon sufficient reason therefor, may order and direct every such administrator or guardian, to render an account of his or her administration or guardianship, to such surety, and if it shall appear that such administrator or guardian has embezzled, wasted, misapplied or mismanaged the estate, in every such case the said court shall direct the said administrator or guardian, to give separate security to his or her surety, for the true payment of the balance remaining in his or her hands, to creditors, representatives, or the ward of such guardian, and on neglect or refusal, it shall be lawful for the said court to revoke the letters of administration or guardianship, and grant the same to such person or persons having right thereto, as will give sufficient bonds, in the usual form, to the ordinary, and in such case it shall be the duty of the said newly appointed

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administrator or guardian, immediately to bring an action on the case against such removed administrator or guardian, and hold him or her to bail, and in such action to recover the amount of all moneys, assets, rents, issues and profits received by such removed administrator or guardian, and not applied according to law, as well as all damages done or committed by such administrator or guardian, in respect of the estate in his or her hands.

10. *And be it enacted*, That whenever there are two or more acting executors, guardians or administrators, the orphans' court shall or may, from time to time, on application of any one or more of them, upon sufficient reasons given to the court therefor, order and direct every such executor, guardian or administrator, to account with his or her co-executor or co-executors, administrator or administrators, guardian or guardians, for all assets which have severally come to the hand of such executor, guardian or administrator, and whenever the court shall judge it necessary, shall compel each executor, guardian or administrator, to give separate security to his co-executor or co-executors, administrator or administrators, guardian or guardians, for the true payment of the balance remaining in his or her hands, to wards, creditors, legatees or representatives of the testator or intestate, and on neglect or refusal in giving such account or security, it shall and may be lawful for the same court to authorize such co-executor or co-executors, administrator or administrators, guardian or guardians, to sue for such assets in the hands of such executor or executors, administrator or administrators, guardian or guardians so neglecting or refusing as aforesaid.

May direct an executor, administrator or guardian to account with, and give security to his co-executor, &c.

11. *And be it enacted*, That executors, administrators, trustees or guardians, may, by leave and direction of the orphans' court, put out their minors' money to interest, upon such security, and for such a length of time, as the said court shall allow of, and if such security so taken, bona fide and without fraud, shall happen to prove insufficient, it shall be the minors' loss, and it shall be the duty of executors, administrators, trustees and guardians, in cases where the minors' estates may be materially benefited thereby, to make application to the orphans' court for such leave and direction, and in case they shall neglect so to do, they shall be accountable for the interest that might have been made thereby: but if no persons who may be willing to take the said money at interest, giving such security, can be found by the said executors, administrators, trustees or guardians, nor by any other friend or friends of such minors, then the said executors, administrators, trustees or guardians, shall, in such cases, be accountable for the principal money only, until it can be put out at interest, as aforesaid: *Provided nevertheless*, That in any case where executors, administrators, trustees or guardians shall make use of the money of minors, which shall come to their hands, they shall be accountable not only for the principal but for the interest thereon.

The money of minors may be put out to interest, under the direction of the court.

12. *And be it enacted*, That where any person hath died, or shall die intestate, seized in fee-simple of any lands, tenements, or hereditaments, leaving two or more children, or other heirs, any of whom being under the age of twenty-one years, the or-

The real estates of intestates may be divided in certain cases.

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phans' court of the county in which such real estate is situate, upon application made by the said heirs, or any of them, or by any person duly authorized in their behalf, or claiming under them or any of them, shall and may order and direct a division of such real estate to be made in such shares and proportions between them as they may be entitled to under the laws of this state, or any of them, directing the descent of real estates; the metes and bounds of each child's or other heir's share, to be ascertained by three disinterested commissioners, to be appointed by the court, whose report, or the report of any two of them, made in writing, under their hands, to the next or any subsequent orphans' court, after such division shall be made and approved of by the court, shall be recorded in the records of said court, and be conclusive to all parties concerned.

Real estates, devised by will, may be divided.

13. *And be it enacted*, That where any person hath died or shall die seized of any lands, tenements or hereditaments, leaving a legal will and testament, devising his or her real estate to two or more devisees, and not ascertaining the metes and bounds of each devisee's share, any of whom being under the age of twenty-one years, and their shares remaining undivided, or any such devisee shall die, leaving any heir under the age of twenty-one years, entitled to the share, or a part of the share of such devisee, so dying, and no division shall have been made among the said devisees, the said orphans' court, upon application by any of the devisees, or any person claiming under them, or any of them, or duly authorized by them, or any of them, shall and may order and direct a division of such real estate to be made, agreeably to the true intent and meaning of the said testator's last will and testament; the metes and bounds of each devisee's share to be ascertained by three disinterested persons, commissioners, to be appointed by the court, whose report, or the report of any two of them, made in writing, under their hands, to the next or any subsequent orphans' court, after such division made and approved of by the court, shall be recorded in the records of the court, and be conclusive to all parties concerned.

Cases where a person dies intestate, in which the surrogate-general is authorized to direct a division.

14. *And be it enacted*, That where any person hath died, or shall die intestate, seized in fee-simple of any lands, tenements or hereditaments, situate in two or more counties, leaving two or more children or other heirs, any of whom being under the age of twenty-one years, the surrogate-general, on application made by the said heirs, or any of them, or by any person duly authorized in their behalf, or claiming under them or any of them, shall and may order and direct a division of such real estate to be made in such shares and proportions between them, as they may be entitled to under the laws of this state, or any of them, directing the descent of real estates, the metes and bounds of each child's or other heir's share, to be ascertained by three disinterested persons, commissioners, to be appointed by the said surrogate-general, whose report or the report of any two of them, made in writing, under their hands, to the next or any prerogative court held after such division made, and approved by the surrogate-general, shall be conclusive to all parties concerned.

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and shall be recorded in the clerk's office in each of the counties where the lands lie, for which the said surrogate-general and register of the prerogative court, commissioners and clerks, shall be entitled to the same fees as are allowed, by this act, to the orphans' court, commissioners and surrogate, for similar services.

15. *And be it enacted*, That where any person hath died, or shall die, seized of any lands, tenements or hereditaments, leaving a legal will and testament, devising real estate to two or more devisees, situate in two or more counties, and not ascertaining the metes and bounds of each devisee's share, any of whom being under the age of twenty-one years, and their shares remaining undivided, or any such devisee shall die, leaving any heir under the age of twenty-one years, entitled to the share or a part of the share of such devisee so dying, and no division shall have been made among the said devisees, upon application made by said devisees, or any of them, or any person claiming under them, or any of them, or duly authorized by them, to the said surrogate-general, he shall and may order and direct a division to be made of such real estate, agreeably to the said last will and testament, by three disinterested persons, commissioners, appointed by the said surrogate-general; and the proceedings on such application shall be in like manner, in all respects, as is prescribed in the foregoing section, and have the same force and effect, and the same fees be allowed.

Cases where he is authorized to direct a division among devisees.

16. *And be it enacted*, That the persons appointed by the orphans' court, or by the surrogate-general, to make partition in any of the cases aforesaid, shall, before they enter upon the duties of their appointment, take an oath or affirmation, to make a fair and just partition of such real estate, without partiality, favor or affection; which oath or affirmation may be administered by any judge of the orphans' court, surrogate or justice of the peace of the county or counties in which the said real estate is situate, or by the said surrogate-general.

Persons appointed to make partition of lands, to take an oath.

17. *And be it enacted*, That the necessary costs and expenses which shall arise under an order of the orphans' court or surrogate-general, in any of the cases aforesaid, shall be assessed by the said court or surrogate-general, upon each share, in proportion to the value divided to him or her, and may be recovered by a warrant from the said court or surrogate-general, directing distress and sale to be made of so much timber, wood or herbage, or other property belonging to such devisee or heir, as may be found on the part divided to him or her, as will be sufficient to pay the costs and expenses aforesaid, and costs of such distress and sale.

Expense of division, how assessed and recovered.

18. *And be it enacted*, That on a division made in any of the cases aforesaid, if any devisee or heir as aforesaid, or any person claiming under him or her, hath, after the death of the testator or intestate and before the division, cut off or made use of any timber, or committed any waste or destruction on the premises, the commissioners appointed to make the division shall estimate the damage done by such heir or devisee, or person claiming under him or her, and divide the premises so that such heir or devisee

In making a division, damage committed to be estimated.

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shall be charged with said damage, and have a share proportionably less in value than the other heirs or devisees who have done no waste or damage.

Manner of proceeding in case a division cannot be made without great prejudice to the owners.

19. And be it enacted, That wherever commissioners, appointed in any of the cases mentioned in this act to divide real estate, shall be of opinion that the tract or tracts of land or real estate is or are so circumstanced, that a partition thereof cannot be made without great prejudice to the owners of the same, they may proceed as is directed in such case by the act, entitled "An act for the more easy partition of lands held by coparceners, joint tenants and tenants in common," and by an act, entitled "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the seventh February, eighteen hundred and sixteen; and the fees of the commissioners in such case shall be the same as is allowed by this act to commissioners for dividing lands: *Provided*, That such fees and expenses shall not bar any claim which may be made by such commissioners for services which may be performed under the fifth and eighth sections of said act.

In what case a creditor may apply to the orphans' court to direct a sale of real property.

20. And be it enacted, That when any creditor shall have obtained judgment against an executor or administrator, and the execution issued on the same shall remain unsatisfied in whole or part, for defect of personal estate to be levied on and sold, and there is real estate, it shall be lawful for the creditor or his legal representative, if the executor or administrator, being thereto required, shall neglect or refuse to obtain a sale thereof, according to law, for the space of six months after being so required, to apply to the orphans' court of the proper county, to order such sale to be made; and the said court, upon due notice given to said executor or administrator, of such application, shall examine the circumstances of the case; and if it appears that the said debt, or any part thereof, is unpaid, and the personal estate deficient as aforesaid, and no sufficient cause being shewn to the contrary, the said court may make such order to shew cause as is mentioned in the nineteenth section of the act, entitled "An act making lands liable to be sold for the payment of debts," passed eighteenth of February, seventeen hundred and ninety-nine; and such further proceedings shall be had as is prescribed in the same act in relation to the sale of real estate, where the personal estate is insufficient to pay debts.

Surrogates to take the depositions to wills, inventories, administrations, &c.

Disputes relative to the same, when and how to be settled.

21. And be it enacted, That the surrogate of each county shall take the depositions to wills, administrations, inventories and administration bonds, in case of intestacy, and issue thereon letters testamentary and of administration; which several letters shall be in the form herein after mentioned; but in all cases whatsoever, where doubts arise on the face of a will, or a caveat is put in against proving a will, and wherever disputes happen respecting the existence of a will, the fairness of an inventory, or the right of administration, the surrogate shall issue citations to all persons concerned, to appear at the next orphans' court to be held in and for the county; which citations shall be served at

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least ten days before the sitting of the court, when the cause shall be heard in a summary way, and determined by the judges of the court, subject to an appeal to the prerogative court, if demanded by any of the parties within thirty days after the sentence or decree of the orphans' court; after which, if no appeal be demanded, the surrogate shall proceed thereon as the sentence of the orphans' court shall direct; and all proceedings of surrogates, not brought as aforesaid before the orphans' court, shall, in like manner, be subject to an appeal to the prerogative court by any persons interested, or other person legally representing them, provided such appeal be made within six months after any such proceedings; and upon all causes heard in a summary way, as aforesaid, upon citation by the orphans' court, the evidence and proceedings, upon the application of either party, shall be reduced to writing by the register of the court, and the court, upon just cause, may put off the hearing of the cause to another time, upon the application of either party: *Provided*, That no surrogate shall proceed to prove any will until ten days from the death of the testator.

22. And be it enacted, That each of the surrogates, in the several counties of this state, shall record, in books to be provided for that purpose, at the expense of the county for which they shall be used, all wills proved before them or the orphans' court, together with the proofs thereof, all letters of guardianship, letters testamentary and letters of administration, by him issued or granted, and all things concerning the same, and also all inventories proved before him; which records shall be of the same force, validity and effect as the like records in the prerogative office, and the transcript of such records, certified under the hand and seal of office of the surrogate, shall be received in evidence in every court of this state, and have the same validity and effect as transcripts certified by the register of the prerogative court.

Surrogates to record all wills, letters of administration, guardianship, &c.

23. And be it enacted, That each of the said surrogates shall issue letters testamentary in the following form:

I, surrogate of the county of do certify the annexed to be a true copy of the last will and testament of late of the county of deceased, and that the executors therein named, proved the same before me, and are duly authorized to take upon themselves the administration of the estate of the testator, agreeably to the said will. Witness my hand and seal of office, the day of in the year of our Lord, one thousand eight hundred

Letters testamentary.

And the said surrogate shall issue letters of administration in the following form:

I, surrogate of the county of do certify, that on the day of administration of the goods and chattels, rights and credits, which were of late of the county of who died intestate, was granted by me to of who are duly authorized to administer the same agreeably to law. Witness my hand and seal of office, the day of in the year of our Lord, &c.

Letters of administration.

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And the said probate of wills and letters of administration shall have the same validity and effect as probate of wills and letters of administration issued by the register of the prerogative office, in the name of the ordinary or surrogate-general, with the seal of office affixed.

Surrogates to make returns to the register.

24. *And be it enacted,* That it shall be the duty of every surrogate, on the first Mondays of February, May, August and November, in each year, to transmit to the register of the prerogative court, all wills and inventories proved by him, and a return of all letters of administration granted during the preceding three months, to be filed in the said register's office.

To file administration bonds &c.

25. *And be it enacted,* That every surrogate shall carefully file all administration and guardianship bonds by him taken, and all other instruments of writing required by law in conducting the business of his office, or which were heretofore used to be filed in the prerogative office.

The ordinary may direct guardianship bonds to be prosecuted.

26. *And be it enacted,* That it shall and may be lawful for the ordinary or surrogate-general, to cause any guardianship bond to be prosecuted in any court of record, at the request and expense of any person aggrieved by the said bond having become forfeited, and the moneys recovered upon such bond shall be applied towards making good the damages sustained by the not performing the condition thereof, in such manner as the ordinary or surrogate-general shall by his sentence or decree direct.

Orphans' court to admit guardians.

27. *And be it enacted,* That the powers and duties formerly exercised and performed by the ordinary, relative to the admission of guardians, for persons under the age of twenty-one years, shall hereafter be exercised and performed by the orphans' court of the county in which the minor applying for a guardian may reside, or shall have real or personal estate, subject, however, to an appeal to the prerogative court, and the letters of guardianship shall be issued under the direction of the orphans' court, by the surrogate of the county in which the application shall be made, which letters shall be in the following form :

Form of letters of guardianship.

I, surrogate of the county of do certify on the day of the orphans' court of the county of admitted of as guardian of the person and property of being a minor under the age of . Witness my hand and seal of office, &c.

Provided, That nothing in this act shall be construed to prevent the ordinary or surrogate-general, in person, from granting probates of wills, letters of administration and letters of guardianship, from the prerogative office, in cases where a convenience will arise from doing the same.

When, how, and to whom letters of guardianship may be granted.

28. *And be it enacted,* That where an orphan is of the age of fourteen years or upwards, letters of guardianship shall be granted, on petition to the orphans' court, signed by such orphan in presence of the surrogate, and on the guardian or guardians first entering into a bond to the governor or ordinary of the state, with good security, in a sufficient sum, for the faithful execution of his, her or their office; but where an orphan is under the age

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of fourteen years, the mother, or next of kin, of full age, and where there are several relations in equal degree of kindred, any one, giving due notice to the rest, may apply to the orphans' court for the guardianship of such orphan, who, upon inquiry into the circumstances of the case, may admit one or more of them, or a stranger willing to accept the trust, at their discretion, to be guardian or guardians of such orphan, until he or she attains the age of fourteen years, or other guardian or guardians be appointed in his stead, such guardian or guardians, giving good security by bond as aforesaid, as the said court shall direct, and until the said orphan, after arriving at the age of fourteen, shall choose another guardian or guardians, the person or persons so first appointed shall remain the lawful guardian or guardians of such orphan, under the said first letters of guardianship, and the bond given thereon shall continue in full force; but where the orphan, after arriving to the age of fourteen years, shall choose any other person or persons to be guardian or guardians, letters of guardianship shall be applied for, as before directed, and all proceedings thereon be had accordingly.

29. *And be it enacted,* That every surrogate, before he enters upon the execution of the duties of his office, shall enter into bond to the state of New-Jersey, in the sum of two thousand dollars, with at least two good and sufficient securities, being freeholders of the county for which such surrogate is appointed, to be approved of by two of the judges of the inferior court of common pleas of said county, which bond, with the condition thereof, shall be in the form hereinafter mentioned, and shall also take and subscribe the following oath, before one of the judges of the inferior court of common pleas aforesaid :

Surrogates to give bond and take oath.

I, being appointed surrogate of the county of do solemnly swear, (or affirm, as the case may be) that I will well, truly, faithfully and impartially, execute the office of surrogate of the said county, agreeably to law, according to the best of my skill and understanding. So help me God.

Form of oath.

Which oath or affirmation shall, by the judge before whom the same is taken, be delivered or safely transmitted to the secretary of this state, together with the bond aforesaid, to be filed among the public papers of his office; and the bond to be entered into, as aforesaid, shall be in the following form :

Know all men by these presents, that we, of the county of in the state of New-Jersey, are held and firmly bound unto the said state in the sum of two thousand dollars, to be paid to the said state, to which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of in the year of our Lord, one thousand eight hundred and . The condition of this obligation is such, that if the above bounden shall well and truly execute the office of surrogate of the county of and in all things touching and concerning the said office shall well and truly, faithfully and impartially, execute and perform the same

Form of bond.

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according to law, as well with respect to all persons whatsoever concerned, as to the said state of New-Jersey, and at the expiration of his said office, shall deliver the seal and all the books, records and papers remaining in said office or appertaining thereto, to his successor in office, then the above obligation to be void, otherwise to be and remain in full force and virtue.

Surrogates to state the accounts of executors, &c. and report the same.

30. *And be it enacted*, That the surrogate shall audit and state the accounts of executors and administrators exhibited to him, and report the same to the orphans' court, at the next sitting thereafter, the executor, in case of a will, or the administrator, in case of intestacy, giving at least two months' notice of his intention in five of the most public places in the county, as near as may be to the place of residence of the parties concerned, or some of them, where such account is to be allowed, which court, on due proof of notice as aforesaid, and no exception being made to the report of the surrogate, shall decree an allowance of the account as stated; but if any person or persons, interested in the settlement of said account, shall, by himself or attorney, appear and make exceptions to the report, the court shall either proceed to hear the proofs and allegations, and correct or amend any mistake or errors that may happen in the account as reported, or refer the same to auditors, who shall examine and restate the account, after hearing parties and witnesses, and make report to the next or some subsequent court, for confirmation and allowance as aforesaid: *Provided always*, That in all cases where it shall appear, that the executor or administrator hath not had sufficient assets in hand, of the testator or intestate, to satisfy all just debts and expenses, the court shall not proceed to decree an allowance of the account, until the next sitting after the report is made; and the accounts of guardians or trustees shall be audited and stated by the surrogate, and reported to, and finally settled and allowed by, the orphans' court, in manner aforesaid; but in cases of trustees and guardians, the surrogate shall issue citations to all persons concerned, to appear at the said orphans' court, which citations shall be served at least ten days before the sitting of the court; and the said court shall, upon application of an orphan or other person interested, from time to time order and direct the guardians to account, as aforesaid, for all moneys, goods and chattels they shall receive, and for the rents, issues and profits of any real estate in their possession, belonging to their wards.

In what manner errors are to be corrected.

Accounts of guardians and trustees to be audited and settled in like manner.

Executors, &c. exhibiting their accounts, may be examined on oath.

Allowance of their commissions.

31. *And be it enacted*, That it shall be lawful for the court to whom any account is reported for allowance, as aforesaid, or for the auditors to whom an account is referred, as aforesaid, at the instance of any party interested in the same, or by their own proper authority, to examine any executor, administrator, guardian or trustee exhibiting such account, on oath or affirmation, touching the truth and fairness of the same, or any part or item thereof, and the allowance of commissions to executors, administrators, guardians or trustees, shall be made with reference to their actual pains, trouble and risk, in settling such estate, rather than in respect to the quantum of estate; and where any difference arises between executors, administrators, guardians or trustees, in re-

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gard to the proportion of commissions between them, the orphans' court shall determine the same, having regard to their respective services.

32. *And be it enacted*, That the sentence or decree of the orphans' court, on the final settlement and allowance of the accounts of executors, administrators, guardians or trustees, shall be conclusive upon all parties, and shall exonerate and for ever discharge every such executor, administrator, guardian or trustee, from all demands of creditors, legatees or others, beyond the amount of such settlement, except for assets or moneys which may come to hand after settlement as aforesaid, excepting also in cases where a party applying for a re-settlement, shall prove some fraud or mistake therein, to the satisfaction of the said orphans' court.

Decree of the court, in the settlement of accounts, conclusive, except &c.

33. *And be it enacted*, That every person duly cited or summoned to appear at any of the said orphans' courts, ten days before the time appointed for appearance, who shall make default, shall be liable to attachment for contempt, and the said courts are hereby authorized and empowered to compel obedience to their process, orders and sentences, by imprisonment of body or distress and sale of lands and goods, as fully and amply as any other court of record in the state, and all final sentences or decrees of the orphans' courts, in the several counties of this state, where no appeal is given to the prerogative court, shall be subject to removal by certiorari into the supreme court: *Provided always*, That such certiorari be applied for by either of the parties, within ninety days after such final sentence or decree shall be made, and not afterwards.

Persons summoned to appear at court, and neglecting to attend, how punishable.

Certain decrees may be removed into the supreme court.

34. *And be it enacted*, That the sheriff and constables of the county shall be, and they hereby are, severally declared to be officers of the orphans' court, and shall attend the same as such, and serve all process and orders of the court or judges, directed to them, or any of them.

Sheriff and constables of officers of the orphans' court.

35. *And be it enacted*, That if it shall happen that an orphans' court shall not be held at the regular term or terms of said court, by reason of the non-attendance of a sufficient number of judges, the business and proceedings pending in said court and process returnable thereto, shall be considered continuing from term to term, until a regular court shall be held.

Court not held for want of judges, business pending continued.

36. *And be it enacted*, That the clerk of the orphans' court shall draw bills of costs on all litigated suits in said court, and present the same to the court, who shall adjudge and direct which of the parties shall pay the same, and examine and tax the said bill agreeably to the fees allowed by law, which bill of costs shall be filed by the surrogate, who is hereby authorized, if the same is not paid, to issue an execution against the goods and chattels, lands and tenements, of the party adjudged to pay the same, and the costs, when paid or levied, shall be received by the surrogate, who shall pay to the court, sheriff and cryer, each their fees, as the same shall be taxed, and the residue to the persons entitled thereto, and for issuing the said execution the surrogate shall be

Bills of costs, by whom drawn and taxed.

Manner of recovery.

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entitled to fifty cents, and the execution, before the same is delivered to the sheriff, shall be recorded by the clerk of the county, in the book by him kept for recording executions.

Surrogate to keep up, in his office, a list of fees, &c.

37. *And be it enacted*, That the surrogate shall cause to be affixed, and at all times kept up in his office, in some conspicuous place, a true list of all fees which may be lawfully demanded by him, as well in his capacity of clerk of the orphans' court as of surrogate of the county, and if he shall neglect to put up and keep in view such list of fees, or shall take other or greater fees than by law allowed, or shall take fees for services not performed, he shall, for every such offence, forfeit and pay the sum of thirty dollars, to be recovered in an action of debt, with costs of suit, before any court having cognizance thereof, by the party aggrieved.

Receipts and discharges given to the executor, &c., to be recorded by the surrogate.

38. *And be it enacted*, That it shall be lawful for every executor, administrator or guardian, who hath settled, or shall settle his or her account before the orphans' court, and who hath, or shall hereafter pay, any legacy or legacies, distributive share or shares, or sums of money, to any person or persons entitled by law to receive the same, his, her or their executors or administrators, to produce the receipts and discharges therefor, to the surrogate of the county in which letters testamentary, or of administration or guardianship have been or shall be granted, and the said surrogate shall immediately record the same in a book to be by him kept for that purpose: *Provided*, That the same be first proved and acknowledged, in the manner that deeds of conveyance of land are by law required to be proved and acknowledged, which proof or acknowledgment shall be recorded with such receipts or discharges, and the said surrogate shall endorse on such receipts and discharges, the book and page in which the same is recorded, with the time of recording the same, and sign his name thereto, and the said record, or a copy thereof, under the hand and seal of office of the surrogate, shall be received in evidence in any court of record in this state, if it shall be made appear to the satisfaction of said court, that the original receipt or discharge hath been lost, or that it is not in the power of the party offering the copy in evidence, to produce the same, and the surrogates of the several counties of this state, shall procure, at the expense of the county, a good bound book, in which they shall record such receipts and discharges, and be entitled to receive ten cents for recording each receipt or discharge.

How proved.

How special orphans' courts are to be appointed, and where held.

39. *And be it enacted*, That any special orphans' court, to be held in vacation, excepting in cases directed by the eighth section of this act, shall be appointed by the judges at a regular term, in open court, and be held at the place in the county, where the said court by law holds its regular terms.

Surrogate not to act as attorney &c. in certain courts.

40. *And be it enacted*, That no surrogate shall be allowed to appear or act as attorney, proctor or counsel, in the orphans' court of any of the counties of this state, and also that no surrogate of any county, being a judge of the court of common pleas of such county, shall sit as a judge of the orphans' court, on the hearing of any cause pending before said court.

41. *And be it enacted*, That upon the death, removal, or expiration of the office of surrogate, the minutes, papers, writings, documents and books of, and belonging to, such office, shall be delivered to his successor in office, on oath or affirmation of the preceding surrogate, or in case of his death, on the oath or affirmation of his executors or administrators, and if such surrogate, or the executors or administrators of a deceased surrogate, shall refuse or neglect to deliver the same on oath or affirmation, as aforesaid, being demanded by the successor in office, then every such person shall forfeit and pay five hundred dollars, to be recovered, with costs, by action of debt, in the name of the county collector, for the use of the state.

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Books and papers to be delivered over to the successor, on oath.

42. *And be it enacted*, That the transcript of any will or testament, registered or recorded in the prerogative office of this state, duly certified by the register of the said office to be a true transcript, shall be received in evidence in any court of this state, and shall be as good and effectual in law, as if the books in which the same are registered or recorded, were then and there produced and proved.

Transcripts of wills, certified by the register, to be received in evidence.

43. *And be it enacted*, That the judges, surrogates, and other officers of the orphans' court, shall be entitled to demand and receive, for the services hereinafter mentioned, the fees thereunto annexed, and no more, and that a sheet or folio shall contain one hundred words.

Fees of the officers of the orphans' court.

Fees to be divided among the judges who are present in court when the service is performed.

The first motion in every cause, (but no case to be deemed a cause in court, unless there be adverse parties to the same)

fifty cents.

Every rule in a cause

twenty cents.

The trial and argument of every cause

fifty cents.

Every judgment and decree,

eighty cents.

Every appointment of auditors, guardians, trustees or commissioners

eighty cents.

Taxing every bill of costs

fifty cents.

Fees of surrogate and clerk of the orphans' court.

For drawing and taking deposition on will, and inventory

one dollar thirty-three cents.

Engrossing a last will and testament, each sheet

twelve cents.

Recording proof

sixty cents.

Recording a last will and testament, each sheet

eight cents.

Granting probate

one dollar.

Engrossing probate

eight cents.

Recording probate

twelve cents.

In taking depositions to codicils

sixty-two and a half cents.

Recording proof

sixty cents.

Recording and engrossing codicil, the same as will.

1820. *Fees to be received by the surrogate, for services directed by law to be performed by the register of the prerogative court, and to be paid over to him.*

For recording the name of each testator, the year in which the will was proved, and filing the will twenty-five cents.

Recording the name of each intestate, where administration hath been granted, and the year when granted twelve cents.

Filing every inventory twelve cents.

Surrogate's fees.

Drawing administration bond, and taking deposition thereon one dollar thirty-three cents.

Granting letters of administration one dollar.

Recording ditto twelve cents.

Filing administration bond ten cents.

Recording inventory, each sheet eight cents.

Drawing bond and petition for guardianship one dollar thirty-three cents.

Reading do. do. ten cents.

Filing do. do. ten cents.

Granting letters of guardianship one dollar.

Recording do. twelve cents.

Entering rule of court on appointment of guardian twenty cents.

Recording inventories, made by guardians, each sheet eight cents.

Drawing petition, stating a list of debts and credits on application for the sale of real estate, entering rule, and making copies one dollar fifty-five cents.

Exhibiting proofs of advertising rule to shew cause, entering decree, copies thereof, and receiving, filing, and recording report of sales four dollars twenty cents.

For advertising the rule of court, when done by the surrogate one dollar.

For services enjoined by the act concerning contracts of real estate, made by testators and intestates, in their lifetime, the same fees as allowed for the sale of land.

Drawing petition, reading, filing and recording decree, appointing commissioners for the division of real estate, and a certified copy of such decree three dollars forty cents.

Recording report of commissioners, each sheet eight cents.

Recording drafts, for each and every course three cents.

Drawing petition on application for rule to limit time to creditor's demand, entering the rule, advertising, entering the decree, making the rule absolute, and a certified copy of the decree four dollars twenty cents.

Drawing every citation or other process thirty cents.

Sealing the same fourteen cents.

Entering every action eight cents.

Entering the return of a writ ten cents.

Entering every rule or order of court ten cents.

Copy of such rules or order eight cents.

Searching the records twelve cents.

Swearing each witness six cents.

Reading every petition or other writing given in evidence eight cents.

Filing every citation, exception, or other paper ten cents.

Entering every discontinuance eight cents.

Entering every judgment or decree ten cents.

Entering and filing appeal ten cents.

Copies of citations, exceptions, records, and other papers, each sheet twenty cents.

Seal and certificate eight cents.

Depositions taken in court, each sheet twenty-five cents.

Engrossing copy, when required twelve cents.

Recording certified copy of proceedings in cases of lunacy, eight cents.

Transmitted to the court, each sheet eight cents.

Transmitting bond of guardianship, in the above cases, or of trustees' bonds to the register's office twelve cents.

Recording discharges taken by executors and administrators on a final settlement, each sheet eight cents.

For auditing and stating the account of executors, administrators, guardians, or trustees, and reporting the same to the court, such fees as the court shall think reasonable.

Fees of sheriff.

Serving citation or other process one dollar fifty cents.

Returning every writ twelve cents.

Mileage, the same as allowed in serving writs issued out of the court of common pleas.

Fees of commissioners to divide land.

Each commissioner one dollar fifty cents per diem, for every day employed in the service, together with all actual expenses for surveying, chain-bearing, assistants, and other necessary charges.

Cryer's fees.

Making proclamation on application for the fulfilment of contracts eight cents.

Swearing a witness six cents.

44. *And be it enacted*, That the act, entitled "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the sixteenth day of December, one thousand seven hundred and eighty-four; and the act, entitled "A supplement to an act entitled an act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the twenty-second day of March, one thousand seven hundred and eighty six; and the act, entitled "An act to revive the orphans' court, and for other purposes therein mentioned," passed the twentieth day of November, one thousand seven hundred and ninety; and the act, entitled "An act concerning surrogates, and declaring what exemptions of

Acts repealed.

1820. wills and testaments shall be holden and received as good evidence," passed the seventh day of June, one thousand seven hundred and ninety-nine; and the act, entitled "An act concerning the surrogates in the several counties of this state," passed the eighteenth day of March, one thousand seven hundred and ninety-six, and the supplement thereto, passed the sixth day of March, one thousand seven hundred and ninety-seven; and the act, entitled "An act relative to the probate of wills, granting letters of administration and guardianship," passed the ninth day of November, one thousand eight hundred and three; and the act, entitled "An act relative to the mode of dividing real estates of intestates, situate in more counties than one," passed the sixth day of March, one thousand eight hundred and six; and the act, entitled "A supplement to the act concerning executors, and the administration and distribution of intestates' estates," passed the second day of March, one thousand seven hundred and ninety-five, which supplemental act was passed the fifth day of February, one thousand eight hundred and twelve; and the act, entitled "An act relative to the division of real estates of intestates," passed the sixth day of February, one thousand eight hundred and eighteen; and an act, entitled "An act to regulate fees of the judges, surrogates, clerks, and other officers of the orphans' court," passed the eighteenth day of February, one thousand eight hundred and nineteen, be, and the same are hereby repealed: *Provided nevertheless*, That nothing contained in this repealing section shall destroy, or any way impair any right acquired under the acts so repealed, nor invalidate or make void any proceedings legally had or done under the same.

See act concerning surrogate's office.

PAM. 203.
See ante 747.

AN ACT relative to commissioners for taking the acknowledgment and proof of deeds and conveyances.

Passed the 2d of November, 1820.

Former act explained.

BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That nothing in the repealing section of the act, entitled "A supplement to an act entitled an act respecting conveyances," passed June seventh, one thousand seven hundred and ninety-nine; and to an act, entitled "An act to register mortgages," passed June seventh, one thousand seven hundred and ninety-nine, which said supplemental act was passed the fifth day of June, one thousand eight hundred and twenty, shall be so construed, as to make void the appointment, or in any way affect the power of any commissioner appointed under the act passed the eighth of February, one thousand eight hundred and sixteen, or to render null, or in any way to invalidate or impair any act or proceeding of such commissioner, done or had by virtue of his appointment.

A further supplement to the act, entitled "An act for the punishment of crimes," passed the eighteenth day of March, one thousand seven hundred and ninety-six.

Passed the 3d of November, 1820.

1820.

PAM. 203.
See ante 244.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That when any slave shall hereafter be convicted of manslaughter, arson, burglary, rape or robbery, or of an assault and battery, with intent to commit murder, arson, burglary, rape, or robbery, or of a misdemeanor in poisoning, or attempting to poison, and so to endanger the life of any person whatsoever, and shall have judgment of imprisonment for the same, it shall be lawful for the governor of this state, at any time during the said imprisonment, by writing sealed with the great seal, to authorize and empower the owner of such slave to send him or her out of this state, and of the United States; and to direct the officer in whose custody such slave may be, to deliver him or her to such owner, for that purpose, accordingly: *Provided*, That such owner, before he shall obtain such authority, shall enter into bond to this state, with one or more surety or sureties, to be approved of by the governor, and filed in the secretary's office, in the penal sum of four hundred dollars; conditioned that such slave shall be sent so out of this state and of the United States, within ten days after such delivery by the said officer, and shall never return to this state without lawful permission: *And provided also*, That such owner, before the delivery of such slave by such officer, shall pay all the costs of the prosecution, imprisonment and maintenance of such slave, up to the time of such delivery.

Condemned criminal may be sent out of United States, &c.

2. *And be it enacted*, That the fifth and sixth sections of the act, entitled "A supplement to the act entitled an act for the punishment of crimes," passed the thirty-first day of March, one thousand eight hundred and twenty, be, and the same are hereby repealed.

AN ACT to repeal an act, entitled "A supplement to an act entitled an act for the relief of persons imprisoned for debt," passed the eighteenth day of March, one thousand seven hundred and ninety-five; and to an act, entitled "An act to repeal the several insolvent laws, passed since the eighteenth day of March, one thousand seven hundred and ninety-five;" and to revive the act, entitled "An act for the relief of persons imprisoned for debt."

PAM. 204.

Passed the 3d of November, 1820.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the act, entitled "A supplement to an act entitled an act for the relief of persons imprisoned for debt," passed the eighteenth day of March, one thousand seven hundred and ninety-five; and to an act, entitled "An act to repeal the several insol-

1820. vent laws passed since the eighteenth day of March, one thousand seven hundred and ninety-five; and to revive the act, entitled "An act for the relief of persons imprisoned for debt," passed the third day of March, one thousand eight hundred and twenty, be, and the same is hereby repealed.

2. *And be it enacted*, That in all cases where an inventory and bond shall have been given, agreeably to the provisions of the first section of the act hereby repealed, the same shall be valid; and all persons who have given such inventory and bond, shall be entitled to the benefit, and subject to the provisions of the said act, to all intents and purposes, as if this repealing act had not been passed.

PAM. 205.

AN ACT concerning the boundaries and jurisdiction of this state in the bay of Delaware.

Passed the 7th of November, 1820.

Commissioners to be appointed, &c.

1. **BE IT ENACTED** by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the governor be, and he hereby is, authorized, empowered and directed to appoint three commissioners on the part of this state, who shall be entitled to a reasonable compensation, to meet commissioners appointed by the competent authority of the state of Delaware, should the state of Delaware think proper to appoint such commissioners; which said commissioners of the state of New-Jersey and of the state of Delaware, when so met, shall have full power and authority to make and conclude an agreement between the said states of New-Jersey and Delaware, defining their respective boundaries, jurisdiction, rights to islands, subaqueous soil, fisheries and products of the river and bay of Delaware, southeasterly of the circular boundary between the states of Delaware and Pennsylvania.

2. *And be it enacted*, That the agreement so made by the commissioners, shall not be binding on the state of New-Jersey, until ratified and confirmed by the legislatures of the states of New-Jersey and Delaware, respectively.

3. *And be it enacted*, That the governor of this state transmit to the governor of the state of Delaware, a copy of this act, and request him to communicate it to the legislature of that state.

PAM. 205. See ante 430.

A further supplement to the act, entitled "An act making lands liable to be sold for the payment of debts," passed the eighteenth of February, seventeen hundred and ninety-nine.

Passed the 9th of November, 1820.

Application for order to orphans' court, &c.

BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That on any application hereafter made by the executor or ad-

ministrator of any testator or person dying intestate, to the orphans' court of any county in this state, for an order to shew cause, agreeably to the nineteenth section of the act to which this is a supplement, why so much of the said testator or intestate's real estate shall not be sold as will be sufficient to pay his debts, or the residue thereof, as the case may require, it shall be lawful for the said court to fix upon any day for the said hearing, not less than two months from the time of granting the order, any thing in the said nineteenth section to the contrary notwithstanding.

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No day for hearing to be fixed under two months.

A further supplement to an act, entitled "An act making provision for carrying into effect the act for the punishment of crimes," passed February fifteenth, one thousand seven hundred and ninety-eight.

PAM. 206. See ante 325.

Passed the 11th of November, 1820.

1. **BE IT ENACTED** by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That at the first joint-meeting after the accounts of the state-prison are settled, three suitable persons shall be chosen as inspectors of the state-prison, who shall continue in office until the next session of the legislature, and until others are chosen in their stead; and at the first joint-meeting which shall happen after every annual settlement of the accounts of the state-prison, the inspectors shall be re-elected or others chosen in their stead; and if any vacancy shall happen by the death, removal, resignation, refusal to act, or other inability of any of the inspectors, in the recess of the legislature, it shall and may be lawful for the person administering the government to appoint a person or persons to fill the vacancy.

Vacancies, how filled.

2. *And be it enacted*, That the tenth section of the act, entitled "A supplement to an act, entitled an act making provision for carrying into effect the act for the punishment of crimes," passed February fifteenth, one thousand seven hundred and ninety-eight, which said supplement was passed on the thirtieth day of May, one thousand eight hundred and twenty, be, and the same is hereby repealed.

Section repealed.

AN ACT to repeal two certain acts therein named.

PAM. 206.

Passed the 14th of November, 1820.

BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the act, entitled "An act for the more effectual administration of justice," passed February the second, eighteen hundred and eighteen, and the supplement thereto, passed the fourteenth of the same month, and every section and clause contained in the said act, be, and the same are hereby repealed: *Provided*, That nothing herein contained shall be so construed as to affect any judgment or process issued under or by virtue of the above recited acts.

CHAP. DCCLXX.

An Act to suspend the Operation of part of a certain Act therein mentioned, so far as the same relates to a certain Tract of Tide Swamps and Meadows in the County of Bergen.

SECT. 1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the owners of a certain tract of tide swamps and meadows, in the county of Bergen, and township of Bergen, lying between the fast land of Secaucus and the fast land of Bergen woods, which tract is already enclosed by banks, dams and other waterworks, to prevent the tide from overflowing the same, shall be and they hereby are empowered to proceed, in every respect, as is directed by the act, entitled, "An act to enable the owners of tide swamps and marshes to improve the same, and the owners of meadows already banked in and held by different persons, to keep the same in good repair," passed November the twenty-ninth, seventeen hundred and eighty-eight, to support and maintain the said banks, dams and waterworks, and to erect such others as may be necessary to complete the same; any thing in the last providing clause in the first section of the before recited act notwithstanding.

C. Passed at Trenton, February 16, 1799.

CHAP. DCCLXXI.

An Act supplementary to the Act concerning the Supreme and Circuit Courts.

SECT. 1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the circuit court in the county of Essex, from and after the first day of January next, shall be held annually on the second Tuesday in April, instead of the second Tuesday in January; and that the circuit court in the county of Salem, shall be held annually on the second Tuesday in June and the first Tuesday in December, instead of the first Tuesday in March and the third Tuesday in September.

Circuit courts in Essex and Salem when to be held.

Courts of general gaol delivery to be held as heretofore.

2. And be it further enacted, That courts of general gaol delivery, shall be held in the respective counties of this state, at

the times of holding the courts of oyer and terminer, whether the same be at the terms or times appointed by law, or at the times appointed by one of the justices of the supreme court, in pursuance of the act whereof mention is above made.

C. Passed at Trenton, February 16, 1799.

CHAP. DCCLXXII.

An Act making Lands liable to be sold for the Payment of Debts.

SECT. 1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That all lands, tenements, hereditaments and real estate, shall be and hereby are made liable to be levied upon and sold, by executions to be issued on judgments, which are or shall be obtained in any court of record of this state (except justices' courts constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money and costs, so recovered or to be recovered.

Lands liable to be sold for debts, &c.

2. And be it enacted, That no judgment shall affect or bind any lands, tenements, hereditaments or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court.

Lands to be bound from time of entering judgment.

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

Goods to be bound from the time of delivering execution to sheriff.

4. And be it enacted, That where sundry writs of execution shall be issued against the goods and chattels, lands, tenements, hereditaments and real estate of the same person, and sufficient cannot be found to satisfy all the sums commanded to be made, then the like priority and preference shall be given in such cases, as is given by the preceding section of this act, in writs of execution against the goods only, and all disputes respecting the same shall be adjudged and determined accord-

Of priority of executions.

ingly; and for that purpose the like endorsement as aforesaid, shall be made on the said writs by the proper officer, of the time that he shall have respectively received the same.

Of the form of execution.

5. *And be it enacted*, That upon judgment obtained or to be obtained for debt, damages and costs, or other sum of money, in the supreme court, or any of the inferior courts of common pleas of this state, the party obtaining the same, may have an execution against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of the party against whom such judgment is or shall be awarded; but no execution shall be issued against the proper goods and chattels, lands, tenements, hereditaments and real estate of any executor, administrator, heir or devisee, unless he or she shall have made his or her estate liable for the money so recovered by false pleading or otherwise.

Duty of sheriff upon execution.

6. *And be it enacted*, That in every writ of execution, which shall be issued against lands, tenements, hereditaments and real estate, the sheriff or other officer, to whom the said writ may be directed, shall be commanded, that of the goods and chattels, in his county, of the party against whom such execution issues, he cause to be made the debt, damages and costs, or sum of money mentioned in the said execution; and if sufficient goods and chattels of the said party cannot be found in his county, that then he cause the whole or the residue, as the case may require, of the said debt, damages and costs, or sum of money, to be made of the lands, tenements, hereditaments and real estate, whereof the said party was seised, on the day when the said lands, tenements, hereditaments and real estate became liable to such debt, damages and costs, or sum of money, specifying the day particularly, or at any time afterwards, in whose hands soever the same may then be: but when such execution shall be issued against tenants, or heirs or devisees (unless they shall have made their estate liable by false pleading or otherwise) it shall only command the sheriff or other officer, that of the lands, tenements, hereditaments and real estate, whereof the ancestor, testator or person deceased, was seised on the day when the said lands, tenements, hereditaments and real estate became liable as aforesaid, or at any time afterwards, or at the time of his or her death, as the case may require, he cause to be made the debt, damages and costs, or sum of money in the said writ mentioned.

Real debt, &c. to be endorsed.

7. *And be it enacted*, That the party, at whose instance any writ of execution shall issue against the body, or against the goods and chattels, or against the goods and chattels, lands,

tenements, hereditaments and real estate of any person, shall endorse on the said writ, before it be sealed, the debt, damages and costs, or sum of money really due and to be made.

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

9. *And be it enacted*, That the sheriff or other officer, who, by virtue of such writ of execution, levies on any lands, tenements, hereditaments and real estate, shall give notice, by advertisements, signed by himself, and put up at five or more public places in the county, one whereof to be in the township where the said lands, tenements, hereditaments and real estate do lie, of the time and place where they will be exposed to sale, at least two months before the time appointed for selling them; and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder.

10. *And be it enacted*, That it shall be lawful for the said sheriff or other officer to make two adjournments, and no more, of the sale of lands, tenements, hereditaments and real estate, so by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftener or for a longer time, without permission, in writing, previously obtained of the party, at whose instance the said writ of execution was issued, he shall be and hereby is made liable to the amount of the debt or damages and costs, or sum or sums of money, mentioned in the said writ, with interest; and for the recovery thereof may be amerced and proceeded against in the manner prescribed in and by the twenty-second section of the act, entitled, "An act concerning sheriffs:" *Provided always*, That if the said sheriff or other officer shall, after two adjournments as aforesaid, sell the lands, tenements, hereditaments and real estate, and bring the whole amount of the product of such sale (after deducting his lawful fees) into the court from whence such execution issued, at any time before the entry of such amercement against him as aforesaid, the said sheriff or other officer shall be exonerated from all liability to the said amercement.

11. *And be it enacted*, That the person whose lands, tenements, hereditaments and real estate are so taken in execution,

may, if part of them be sufficient to satisfy such execution, elect what part thereof shall be sold; and thereupon it shall be the duty of the said sheriff or other officer to sell the part so elected, and no other, if it be sufficient: *Provided always*, That such election shall be made in writing, signed by such person, and delivered to the said sheriff or other officer, at least twenty days previous to the time appointed for the sale.

Sheriff to make deeds.

12. *And be it enacted*, That the sheriff or other officer, who, by virtue of such writ or writs of execution, shall sell as aforesaid the lands, tenements, hereditaments and real estate, or any part or parcel of them so levied upon, shall make to the purchaser thereof as good and sufficient a deed or conveyance for the lands, tenements, hereditaments and real estate so sold, as the person against whom the said writ or writs of execution were issued, might or could have made for the same at or before the time of tendering judgment against him or her; which deed or conveyance shall transfer to and vest in the said purchaser, as good and perfect an estate to the premises therein mentioned, as the person against whom the said writ or writs of execution were issued, was seized of or entitled to at or before the said judgment, and as fully to all intents and purposes, as if such person had sold the said lands, tenements, hereditaments and real estate to such purchaser, and had received the consideration money, and signed, sealed and delivered a deed for the same: *And further*, That the said deed or conveyance, so to be made by the said sheriff or officer, shall recite the writ or writs of execution, by virtue whereof the said lands, tenements, hereditaments and real estate therein described, were sold as aforesaid.

13. And whereas other judgments, statutes and recognizances, besides those or some of those, by virtue whereof the sale aforesaid was made, might affect the lands, tenements, hereditaments and real estate so sold, if no provision be made to remedy the same; and whereas the persons who have not taken or will not take out executions upon their judgments, statutes or recognizances, ought not to hinder or prevent such as do take out executions, from having the proper effect and fruits thereof; Therefore, *Be it enacted*, That the purchaser, his heirs and assigns, shall hold the lands, tenements, hereditaments and real estate, by him or her purchased as aforesaid, free and clear of all other judgments, recognizances, statutes-merchant and statutes-staple whatsoever, on or by virtue of which no execution has been taken out and executed on the lands, tenements, hereditaments and real estate so purchased.

Purchaser to hold lands clear of judgments executed.

14. *And be it enacted*, That if any judgment or execution (the said execution being recorded as aforesaid) by virtue whereof

such sale as aforesaid shall be made of any lands, tenements, hereditaments and real estate, shall be reversed for error, such reversal shall not be given in evidence, or be of any force or avail against any *bona fide* purchaser under the said judgment or execution; but the said purchaser, his heirs and assigns, shall hold the said lands, so *bona fide* purchased, notwithstanding such reversal, if it be posterior to the said purchase; and further, such reversal shall only operate against the defendant in error, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the lands, tenements, hereditaments and real estate so sold as aforesaid.

Reversal of judgment for error not to affect bona fide purchaser.

15. *And be it enacted*, That if any sheriff, who hath made or shall make sale of any lands, tenements, hereditaments and real estate, by virtue of an execution against the same, shall abscond or depart from the state, or be disqualified by law, or rendered unable by death, or otherwise incapable, to make a deed or conveyance for the same, it shall be lawful for any succeeding sheriff of the county, on receiving a certificate from the inferior court of common pleas of such county, signed by the clerk by order of the said court, setting forth, that sufficient proof hath been made to the said court, that such sale was fairly and legally made; and on tender of the purchase-money, or if the purchase-money or any part of it has been paid, then on proof of such payment; and on tender of the residue, if any be, to sign, seal and deliver to the said purchaser or his legal representative, a deed or conveyance of the lands, tenements, hereditaments and real estate so sold; which deed shall be as good and valid, and shall have the same force and effect, as if the sheriff who made such sale, had signed, sealed and delivered a deed of conveyance for the same in due form of law.

Sheriff being incapable to make deed, succeeding sheriff may execute deed.

16. *And be it enacted*, That if such succeeding sheriff, receive any money by virtue of the preceding section of this act, he shall pay the same to the person thereunto entitled by law.

17. *And be it enacted*, That all proprietaries, rights, share and shares of propriety and rights to unlocated lands, shall be and hereby are made liable to be levied upon and sold by executions to be issued on judgments, for the payment of the debt or damages and costs, or sum of money thereby recovered, in the same manner as lands, tenements, hereditaments and real estate are made liable to be levied upon and sold by virtue of this act; but every such execution shall issue out of the supreme court; and if the said shares or rights be within the western division, shall be directed to the sheriff of the county

Proprietary rights may be levied on and sold.

of Burlington, and if within the eastern division, shall be directed to the sheriff of the county of Middlesex; and further, that the said sheriff shall give notice, by advertisements, signed by himself, and put up in five or more public places in the said county, and by an advertisement in one of the newspapers published in this state, of the time and place of exposing such shares or rights to sale, at least two months before the time appointed for selling the same.

To grant a final execution is not sufficient to affect lands of the deceased. 18. *And be it enacted*, That no lands, tenements, hereditaments or real estate, of any testator or intestate, shall be sold or in any wise affected by any judgment or execution against executors or administrators.

Time of execution, &c. where personal estate of deceased is not sufficient to pay debts. 19. *And be it enacted*, That when any executor or administrator shall discover or believe, that the personal estate of his testator or intestate is insufficient to pay his debts, then it shall be the duty of such executor or administrator, as soon as conveniently may be, to make and exhibit, under oath, a just and true account of the said personal estate and debts, as far as he can discover the same, to the orphan's court of the county, where the lands, tenements, hereditaments and real estate, of which the said testator or intestate died or shall die seised, do lie, and request their aid in the premises; and the said court shall thereupon make an order, directing all persons interested in such lands, tenements, hereditaments and real estate, to appear before them at a certain day and place, in the said order to be mentioned, not less than two nor more than three months after the day of making such order, to shew cause, why so much of the said lands, tenements, hereditaments and real estate of the said testator or intestate should not be sold, as will be sufficient to pay his debts or the residue thereof, as the case may require; which order, signed by the surrogate or clerk of the said court, shall be immediately thereafter set up at three of the most public places in the said county for six weeks successively, and be published for the same time in one or more of the newspapers printed in this state.

Orphan's court in such case, to direct lands to be sold for the payment of debts. 20. *And be it enacted*, That the said orphan's court shall, at the time and place mentioned in the said order, or at such other time and place as they may then appoint, hear and examine the allegations and proofs of the said executor or administrator, and other persons interested; and if on full examination the said court shall find, that the personal estate of the said testator or intestate is not sufficient to pay his debts, the said court shall order and direct the executor or administrator to sell the whole, if necessary, of the lands, tenements, hereditaments and real estate of the said testator or intestate, for the payment of his debts, or so much thereof as will be suffi-

cient for that purpose; and when a part only of the said lands, tenements, hereditaments and real estate is sufficient, such order shall specify the part to be sold: *Provided always*, That where any houses and lots, or lands are so circumstanced, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the said court may, at their discretion, order the whole or a greater part than is necessary to pay such debts, to be sold; and the surplus money arising from such sale, shall be distributed among the heirs or devisees, according to the law of descents in the former, and the will of the testator in the latter case; and further, that the heir or devisee, whose lands, tenements, hereditaments and real estate, so descending or devised to him have been sold as aforesaid, for the payment of the debts of his intestate or testator, may compel all others claiming or holding under such intestate or testator, to contribute, in proportion to their respective interests, so as to equalize the burthen or loss.

How to be substantiated and sold. 21. *And be it enacted*, That the executor or administrator, who may be ordered to sell any lands, tenements, hereditaments or real estate of any testator or intestate, shall give notice, by advertisements, signed by himself, and set up at five or more public places in the county, of the time and place of selling the premises, at least two months before the time appointed for selling them, and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder; and the executor or administrator making the said sale, shall report in writing all proceedings thereon to the next orphan's court after such sale: *Provided always*, That the said executor or administrator may adjourn the said sale from time to time, not exceeding two months in the whole.

Executors, &c. to make a deed. 22. *And be it enacted*, That the said executor or administrator shall and hereby is authorized to make a deed to the purchaser for the lands, tenements, hereditaments and real estate so sold; which deed shall set forth the said order at large, and shall vest in the said purchaser as good and perfect an estate in the premises therein mentioned, as the heirs or devisees of the said testator or intestate were seised of or entitled to, at the time of the making of the said order by such orphan's court.

Monies received from sale of lands after to pay debts. 23. *And be it enacted*, That the monies arising from such sale of the lands, tenements, hereditaments and real estate of such testator or intestate, shall be received by the said executor or administrator, and be considered as assets in his hands for the payment of debts, and the surplus, if any, shall be distributed among the heirs or devisees in the proportion and manner directed by the twentieth section of this act.

24: *Provident always, and be it further enacted,* That no part of the lands, tenements, hereditaments and real estate of any testator or intestate, shall be ordered by the said orphan's court to be sold as aforesaid, until the executor or administrator shall have applied the personal estate, or such part thereof as may have come to his hands, towards payment of the debts of such testator or intestate; and no more of the said lands, tenements, hereditaments and real estate, except as is excepted in the twentieth section of this act, shall be sold than may be necessary to pay the residue of the said debts: *Provided also,* That nothing herein contained shall prevent or bar any person from bringing and maintaining any action against an executor or administrator, for or in respect of the personal estate of his testator or intestate, or for or in respect of any waste or misapplication thereof by such executor or administrator.

Former acts repealed.

25. *And be it enacted,* That the act, entitled, "An act subjecting real estates in the province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon," passed the second day of December, in the year of our Lord, one thousand seven hundred and forty-three, and the act, entitled, "An act to amend an act, entitled, "An act subjecting real estates in the province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon," passed the eighth day of June, in the year of our Lord, one thousand seven hundred and seventy-nine, and the act, entitled, "An act directing the mode by which shares of property and rights to unlocated lands in the state of New-Jersey, may be sold for the payment of debts," passed the twenty-third day of November, in the year of our Lord, one thousand seven hundred and eighty-five, and the eleventh and twelfth sections of the act, entitled, "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphan's court in the several counties of the state," passed the sixteenth day of December, in the year of our Lord, one thousand seven hundred and eighty-four, and all and every other act and acts, and part and parts of any act within the purview of this act, be and they are hereby repealed; but such repeal shall not extend to or affect any execution heretofore issued out of any of the courts of record in this state, against lands, tenements, hereditaments and real estate, or against proprietary shares and rights to unlocated lands, or any order heretofore made by any orphan's court for the sale of real estate; but such execution and order shall be of the same validity, and be proceeded upon to effect, in the like manner as if this act had not been made.

A. Passed at Trenton, February 18, 1799.

C H A P. DCCLXXVIII.

An Act to issue Commissions for the Examination of Witnesses, and to take their Depositions in certain Cases.

SECT. 1. **BE** IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That if a material witness in any action or suit in the court of chancery, or in the supreme court, or any of the inferior courts of common pleas of this state, reside out of this state, or if in this state, be ancient or very infirm, or be sick, or bound on a voyage, or about to go out of this state, it shall and may be lawful for the said court, in which such action or suit is depending, on affidavit or proof thereof to the satisfaction of the said court, and upon motion made by or in behalf of either party in open court, and on such terms as the said court shall direct, to award and issue, under the seal of the said court, a commission to such person or persons, as the said court may think fit, authorizing such person or persons, or any two or more of such persons, to examine *de bene esse* the said witness on oath or affirmation, upon the interrogatories annexed to the said commission, and to reduce such examination to writing, and to return the same, annexed to the said writ, unto the said court, with all convenient speed; and the name of every witness, to be so examined by virtue of such commission, shall be inserted in the said commission; and the interrogatories for the examination of such witness shall be drawn and signed by the parties or their counsel in the cause, in which the testimony is to be used, or such of them as shall request the said commission, and be approved of by the said court, or one of the judges thereof, and shall be annexed to the same commission; and each party shall be at liberty, with the approbation of the said court or judge, to insert in the said interrogatories such questions as he or she may think proper or necessary.

Comrs may if see commissions for the examination of witnesses upon interrogatories

Vide plac. Com. Vol. 3. Page 70.

2. *And be it enacted,* That the said commissioner or commissioners, or any two or more of them, shall and may on oath or affirmation, examine every witness named in the said commission, or such as can be met with, and cause the examination of the said witness to be reduced to writing, and signed by such witness, and the said commissioner or commissioners shall then also sign the same, and such examination, and all exhibits produced to the said commissioner or commissioners, and proved by such witness, shall be annexed to the said commission, and returned to the court out of which such commis-

Commission and examination. Ac. has to be returned

II. AND BE IT ENACTED, That when any judgment shall be had against any constable for any delinquency in his office, execution shall immediately be issued against him for debt and costs.

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On judgment against constable, execution to issue immediately.

III. AND BE IT ENACTED, That the twenty eighth section of the act, entitled, "An Act constituting courts for the trial of small causes," be, and the same is hereby repealed.

Section 28th of former act repealed.

An ACT making lands liable to be sold for the payment of debts.

Passed the 18th of February, 1799.

I. **BE** IT ENACTED *by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,* That all lands, tenements, hereditaments and real estate, shall be and hereby are made liable to be levied upon and sold by executions to be issued on judgments, which are or shall be obtained in any court of record of this State (except justices' courts constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money, and costs, so recovered or to be recovered.

Lands made liable to be taken and sold by executions.

II. AND BE IT ENACTED, That no judgment shall affect or bind any lands, tenements, hereditaments or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court.

Lands bound from the time of entering judgment.

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

Goods bound from the time of delivering execution to sheriff.

Time of such delivery to be endorsed on the execution.

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

The like rule of preference to obtain in executions against lands as in executions against goods, when delivered on the same day.

V. AND BE IT ENACTED, That upon judgment obtained or to be obtained for debt, damages, and costs, or other sum of money, in the supreme court, or any of the inferior courts of common pleas of this State, the party, obtaining the same, may have an execution against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of the party, against whom such judgment is or shall be awarded; but no execution shall be issued against the proper goods and chattels, lands, tenements, hereditaments and real estate of any executor, administrator, heir or devisee, unless he or she shall have made his or her estate liable for the money so recovered by false pleading or otherwise.

Execution may be issued against the body or estate of the party.

VI. AND BE IT ENACTED, That in every writ of execution, which shall be issued against lands, tenements, hereditaments and real estate, the sheriff or other officer, to whom the said writ may be directed, shall be commanded, that of the goods and chattels, in his county, of the party, against whom such execution issues, he cause to be made the debt, damages, and costs, or sum of money mentioned in the said execution; and if sufficient goods and chattels of the said party cannot be found in his county, that then he cause the whole or the residue, as

In what form and manner execution shall issue against lands and real estate.

A. D. 1799.

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

Sum due to be endorsed on the execution.

VII. AND BE IT ENACTED, That the party, at whose instance any writ of execution shall issue against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of any person, shall endorse on the said writ, before it be sealed, the debt, damages, and costs, or sum of money, really due and to be made.

Executions against lands to be recorded.

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

Lands taken in execution to be advertised two months before the time of sale.

IX. AND BE IT ENACTED, That the sheriff or other officer, who, by virtue of such writ of execution, levies on any lands, tenements, hereditaments and real estate, shall give notice, by advertisements, signed by himself, and put up at five or more public places in the county, one whereof to be in the township, where the said lands, tenements, hereditaments and real estate do lie, of the time and place where they will be exposed to sale, at least two months before the time appointed for selling them; and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder.

The sheriff may adjourn the said sale twice, and no more, and then not exceeding one month each time.

X. AND BE IT ENACTED, That it shall be lawful for the said sheriff or other officer to make two adjournments, and no more, of the sale of lands, tenements, hereditaments and real estate, so by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftner, or for a longer time, without permission, in writing, previously obtained of the party, at whose instance the said writ of execution was issued, he shall be, and hereby is made liable to the amount of the debt, or damages and costs, or sum or sums of money, mentioned in the said writ, with interest; and for the recovery thereof may be amerced and proceeded against in the manner prescribed in and by the twenty second section of the act, entitled, "An Act concerning sheriffs." PROVIDED ALWAYS, That if the said sheriff or other officer shall, after two adjournments as aforesaid, sell the lands, tenements, hereditaments and real estate, and bring the whole amount of the product of such sale (after deducting his lawful fees) into the court, from whence such execution issued, at any time before the entry of such amercement against him as aforesaid, the said sheriff or other officer shall be exonerated from all liability to the said amercement.

But if the sheriff, after two adjournments, and before amercement, bring the money into court, he shall be exonerated.

The party, whose lands are taken in execution, may elect what part thereof shall be sold.

XI. AND BE IT ENACTED, That the person, whose lands, tenements, hereditaments and real estate are so taken in execution, may, if part of them be sufficient to satisfy such execution, elect what part thereof shall be sold; and thereupon it shall be the duty of the said sheriff or other officer to sell the part so elected, and no other, if it be sufficient: PROVIDED ALWAYS, That such election shall be made in writing, signed by such person, and delivered to the said sheriff or other officer, at least twenty days previous to the time appointed for the sale.

XII. AND

XII. AND BE IT ENACTED, That the sheriff or other officer, who, by virtue of such writ or writs of execution, shall sell as aforesaid the lands, tenements, hereditaments and real estate, or any part or parcel of them, so levied upon, shall make to the purchaser thereof as good and sufficient a deed or conveyance for the lands, tenements, hereditaments and real estate so sold, as the person, against whom the said writ or writs of execution were issued might or could have made for the same at or before the time of rendering judgment against him or her; which deed or conveyance shall transfer to and vest in the said purchaser, as good and perfect an estate to the premises therein mentioned, as the person, against whom the said writ or writs of execution were issued, was seised of or entitled to at or before the said judgment, and as fully, to all intents and purposes as if such person had sold the said lands, tenements, hereditaments and real estate to such purchaser, and had received the consideration money, and signed, sealed, and delivered a deed for the same: AND FURTHER, That the said deed or conveyance, so to be made by the said sheriff or officer, shall recite the writ or writs of execution, by virtue whereof the said lands, tenements, hereditaments, and real estate therein described, were sold as aforesaid.

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Sheriff to make deeds for lands by him sold in virtue of executions; which deeds shall be as good and effectual as if they had been made by the party.

XIII. AND WHEREAS other judgments, statutes, and recognizances, besides those, or some of those, by virtue whereof the sale aforesaid was made, might affect the lands, tenements, hereditaments and real estate so sold, if no provision be made to remedy the same; and whereas the persons, who have not taken, or will not take out executions upon their judgments, statutes, or recognizances, ought not to hinder or prevent such as do take out executions from having the proper effect and fruits thereof; THEREFORE, *Be it enacted*, That the purchaser, his heirs and assigns, shall hold the lands, tenements, hereditaments and real estate, by him or her purchased as aforesaid, free and clear of all other judgments, recognizances, statutes-merchant and statutes-staple whatsoever, on or by virtue of which no execution has been taken out and executed on the lands, tenements, hereditaments and real estate so purchased.

Land sold by sheriff to be clear of all judgments, on which executions have not been issued.

XIV. AND BE IT ENACTED, That if any judgment or execution (the said execution being recorded as aforesaid) by virtue whereof such sale as aforesaid shall be made of any lands, tenements, hereditaments and real estate, shall be reversed for error, such reversal shall not be given in evidence, or be of any force or avail against any bona fide purchaser under the said judgment or execution; but the said purchaser, his heirs and assigns, shall hold the said lands, so bona fide purchased, notwithstanding such reversal, if it be posterior to the said purchase; and further, such reversal shall only operate against the defendant in error, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the lands, tenements, hereditaments and real estate so sold as aforesaid.

Reversal of judgment for error not to affect lands sold prior to such reversal.

XV. AND BE IT ENACTED, That if any sheriff, who hath made or shall make sale of any lands, tenements, hereditaments and real estate, by virtue of an execution against the same, shall abscond, or depart from the State, or be disqualified by law, or rendered unable by death, or otherwise incapable, to make a deed or conveyance for the same, it shall be lawful for any succeeding sheriff of the county, on receiving a certificate from the inferior court of common pleas of such county, signed by the clerk by order of the said court, setting forth, that sufficient proof hath been made to the said court, that such sale was fairly and legally made, and on tender of the purchase money, or if the purchase money or any part of it has been paid, then on proof of such payment, and on tender of the residue, if any be, to sign, seal and deliver to the said purchaser, or his legal representative, a deed or conveyance of the lands, tenements, hereditaments and real estate so sold; which deed shall be as good and valid, and shall have the same force and effect, as if the sheriff, who made such sale, had signed, sealed, and delivered a deed of conveyance for the same in due form of law.

How and in what cases a succeeding sheriff may make deed for lands sold by his predecessor in office.

XVI. AND BE IT ENACTED, That if such succeeding sheriff receive any money by virtue of the preceding section of this act, he shall pay the same to the person thereunto entitled by law.

How to pay the money received thereon.

XVII. AND BE IT ENACTED, That all proprieties, rights, share and shares of propriety

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Proprietary rights may be levied on and sold by executions.

Judgment or execution against executors or administrators, not to affect lands of the testator or intestate.

If the personal estate of the testator or intestate be insufficient to pay his debts, the executor or administrator may make application to the orphan's court; whose duty it shall be to order all persons interested to appear before them on a certain day to shew cause, why the real estate should not be sold.

If the personal estate be inadequate to pay the debts of the testator or intestate, the orphan's court may direct the real estate to be sold.

Lands ordered to be sold by the orphan's court to be advertised two months before the time of sale.

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

XVIII. AND BE IT ENACTED, That no lands, tenements, hereditaments or real estate, of any testator or intestate, shall be sold or in any wise affected by any judgment or execution against executors or administrators.

XIX. AND BE IT ENACTED, That when any executor or administrator shall discover or believe, that the personal estate of his testator or intestate is insufficient to pay his debts, then it shall be the duty of such executor or administrator, as soon as conveniently may be, to make and exhibit, under oath, a just and true account of the said personal estate and debts, as far as he can discover the same, to the orphan's court of the county, where the lands, tenements, hereditaments and real estate, of which the said testator or intestate died or shall die seised, do lie, and request their aid in the premises; and the said court shall thereupon make an order, directing all persons interested in such lands, tenements, hereditaments and real estate to appear before them at a certain day and place, in the said order to be mentioned, not less than two nor more than three months after the day of making such order, to shew cause, why so much of the said lands, tenements, hereditaments and real estate of the said testator or intestate should not be sold, as will be sufficient to pay his debts, or the residue thereof, as the case may require; which order, signed by the surrogate or clerk of the said court, shall be immediately thereafter set up at three of the most public places in the said county for six weeks successively, and be published for the same time in one or more of the newspapers printed in this State.

XX. AND BE IT ENACTED, That the said orphan's court shall, at the time and place mentioned in the said order, or at such other time and place as they may then appoint, hear and examine the allegations and proofs of the said executor or administrator, and other persons interested; and if on full examination the said court shall find, that the personal estate of the said testator or intestate is not sufficient to pay his debts, the said court shall order and direct the executor or administrator to sell the whole, if necessary, of the lands, tenements, hereditaments and real estate of the said testator or intestate, for the payment of his debts, or so much thereof as will be sufficient for that purpose; and when a part only of the said lands, tenements, hereditaments and real estate is sufficient, such order shall specify the part to be sold: PROVIDED ALWAYS, That where any houses, and lots, or lands are so circumstanced, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the said court may, at their discretion, order the whole or a greater part, than is necessary to pay such debts, to be sold; and the surplus money arising from such sale shall be distributed among the heirs or devisees, according to the law of descents in the former, and the will of the testator in the latter case; and further, that the heir or devisee, whose lands, tenements, hereditaments and real estate, so descending or devised to him, have been sold as aforesaid, for the payment of the debts of his intestate or testator, may compel all others claiming or holding under such intestate or testator, to contribute in proportion to their respective interests, so as to equalise the burden or loss.

XXI. AND BE IT ENACTED, That the executor, or administrator, who may be ordered to sell any lands, tenements, hereditaments or real estate of any testator or intestate, shall give notice by advertisements, signed by himself, and set up at five or more public places in the county, of the time and place of selling the

the premises, at least two months before the time appointed for selling them, and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder; and the executor or administrator, making the said sale, shall report in writing all proceedings thereon to the next orphan's court, after such sale: PROVIDED ALWAYS, That the said executor or administrator may adjourn the said sale from time to time, not exceeding two months in the whole.

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XXII. AND BE IT ENACTED, That the said executor or administrator shall, and hereby is authorised to make a deed to the purchaser for the lands, tenements, hereditaments and real estate so sold; which deed shall set forth the said order at large, and shall vest in the said purchaser as good and perfect an estate in the premises therein mentioned, as the heirs or devisees of the said testator or intestate were seised of or entitled to, at the time of the making of the said order by such orphan's court.

For lands so sold the executor or administrator to make deed.

XXIII. AND BE IT ENACTED, That the monies, arising from such sale of the lands, tenements, hereditaments and real estate of such testator or intestate, shall be received by the said executor or administrator, and be considered as assets in his hands for the payment of debts, and the surplus, if any, shall be distributed among the heirs or devisees in the proportion and manner directed by the twentieth section of this act.

Monies received by executor or administrator from sale of lands, to be assets for the payment of debts.

XXIV. PROVIDED ALWAYS, and be it further enacted, That no part of the lands, tenements, hereditaments and real estate of any testator or intestate, shall be ordered by the said orphan's court to be sold as aforesaid, until the executor or administrator shall have applied the personal estate, or such part thereof as may have come to his hands, towards payment of the debts of such testator or intestate; and no more of the said lands, tenements, hereditaments and real estate, except as is excepted in the twentieth section of this act, shall be sold, than may be necessary to pay the residue of the said debts: PROVIDED ALSO, That nothing herein contained shall prevent or bar any person from bringing and maintaining any action against an executor or administrator, for or in respect of the personal estate of his testator or intestate, or for or in respect of any waste or misapplication thereof by such executor or administrator.

Lands of testator or intestate not to be sold till the personal estate be applied to the payment of debts.

This act not to prevent suits against executor or administrator for waste, &c.

XXV. AND BE IT ENACTED, That the act, entitled, "An Act subjecting real estates in the Province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon," passed the second day of December, in the year of our Lord, one thousand, seven hundred and forty three; and the act, entitled, "An Act to amend an act, entitled, "An Act subjecting real estates in the Province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon," passed the eighth day of June, in the year of our Lord, one thousand, seven hundred and seventy nine; and the act, entitled, "An Act directing the mode by which shares of propriety and rights to unlocated lands in the State of New-Jersey, may be sold for the payment of debts," passed the twenty third day of November, in the year of our Lord, one thousand, seven hundred and eighty five; and the eleventh and twelfth sections of the act, entitled, "An Act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphan's court in the several counties of the State," passed the sixteenth day of December, in the year of our Lord, one thousand, seven hundred, and eighty four, and all and every other act and acts, and part and parts of any act, within the purview of this act, be, and they are hereby repealed; but such repeal shall not extend to or affect any execution heretofore issued, out of any of the courts of record in this State, against lands, tenements, hereditaments and real estate, or against proprietary shares and rights to unlocated lands, or any order heretofore made by any orphan's court for the sale of real estate; but such execution and order shall be of the same validity, and be proceeded upon to effect in the like manner, as if this act had not been made.

Certain acts, &c. repealed.

But such repeal not to affect antecedent executions and orders.

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firmation or declaration. And if such person shall choose to affirm, it shall be in the words following, to wit:

Form of affirmation.

I, affirm: do solemnly, sincerely and truly declare and

But if such person shall choose to declare, it shall be in the words following, to wit:

Form of declaration.

I, do declare, in the presence of Almighty God, the witness of the truth of what I say:

The validity of such affirmation or declaration.

Either of which forms shall be as good and effectual in law, as an oath taken in the usual form. In which affirmation or declaration, the words, "So help me God," at the close of the usual oath, shall be omitted.

Authority given to administer such affirmation or declaration.

6. And be it enacted, That every person, who is or shall be empowered and required to tender and administer an oath in the usual form, shall be, and hereby is empowered and required to tender and administer the affirmation or declaration aforesaid, when requested to that purpose by any such scrupulous person as aforesaid.

Such an affirmation or declaration may be taken in every case where an oath in usual form is or shall be required.

7. And be it enacted, That in all cases, where by any act of the legislature of this state, now in force or hereafter to be made, an oath is or shall be allowed or required, the affirmation or declaration, in the form above prescribed, of any such scrupulous person as aforesaid, shall be allowed and taken instead of an oath in the usual form, although no provision for that purpose is or shall be made in such act.

A false affirmation or declaration to be punished as perjury.

8. And be it enacted, That if any person, who shall make such affirmation or declaration, shall falsely, wilfully and corruptly affirm or declare any matter or thing which, if the same had been sworn or deposed in the usual form, would have amounted to wilful and corrupt perjury; then such person, so offending, shall be deemed and adjudged to be guilty of wilful and corrupt perjury, and, on being convicted thereof, shall be punished accordingly.

Former acts repealed.

9. And be it enacted, That all and every act and acts, and part and parts of any act, within the purview of this act, shall be, and they are hereby repealed.

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AN ACT making lands liable to be sold for the payment of debts.

Passed the 18th of February, 1799.

Lands made liable to be taken and sold by executions.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That all lands, tenements, hereditaments and real estate, shall be, and hereby are made liable to be levied upon and sold by executions to be issued on judgments, which are or shall be obtained in any court of record of this state (except justices' courts constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money, and costs, so recovered or to be recovered.

2. And be it enacted, That no judgment shall affect or bind any lands, tenements, hereditaments or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court.

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

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

5. And be it enacted, That upon judgment obtained, or to be obtained, for debt, damages, and costs, or other sum of money, in the supreme court, or any of the inferior courts of common pleas of this state, the party obtaining the same may have an execution against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of the party, against whom such judgment is or shall be awarded; but no execution shall be issued against the proper goods and chattels, lands, tenements, hereditaments and real estate of any executor, administrator, heir or devisee, unless he or she shall have made his or her estate liable for the money so recovered by false pleading or otherwise.

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

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Lands bound from the time of entering judgment.

Goods bound from the time of delivering execution to sheriff.

Time of such delivery to be endorsed on the execution.

The like rule of preference to obtain in executions against lands as in executions against goods, when delivered on the same day.

Execution may be issued against the body or estate of the party.

In what form and manner execution shall issue against lands and real estate.

1799. such debt, damages and costs, or sum of money, specifying the day particularly, or at any time afterwards, in whose hands soever the same may then be; but when such execution shall be issued against terretenants, or heirs, or devisees (unless they shall have made their estate liable by false pleading or otherwise) it shall only command the sheriff or other officer, that of the lands, tenements, hereditaments and real estate, whereof the ancestor, testator, or person deceased, was seized on the day, when the said lands, tenements, hereditaments and real estate, became liable as aforesaid, or at any time afterwards, or at the time of his or her death, as the case may require, he cause to be made the debt, damages, and costs, or sum of money, in the said writ mentioned.

Sum due to be endorsed on the execution.

7. *And be it enacted*, That the party, at whose instance any writ of execution shall issue against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of any person, shall endorse on the said writ, before it be sealed, the debt, damages, and costs, or sum of money, really due and to be made.

Executions against lands to be recorded.

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

Lands taken in execution to be advertised two months before the time of sale.

9. *And be it enacted*, That the sheriff or other officer, who, by virtue of such writ of execution, levies on any lands, tenements, hereditaments and real estate, shall give notice, by advertisements, signed by himself, and put up at five or more public places in the county, one whereof to be in the township, where the said lands, tenements, hereditaments and real estate do lie, of the time and place where they will be exposed to sale, at least two months before the time appointed for selling them; and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder.

The sheriff may adjourn the said sale twice, and no more, and then not exceeding one month each time.

10. *And be it enacted*, That it shall be lawful for the said sheriff or other officer to make two adjournments, and no more, of the sale of lands, tenements, hereditaments and real estate, so by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftener, or for a longer time, without permission, in writing, previously obtained of the party, at whose instance the said writ of execution was issued, he shall be, and hereby is made liable to the amount of the debt, or damages and costs, or sum or sums of money, mentioned in the said writ, with interest; and for the recovery thereof may be amerced and proceeded against in the manner prescribed in and by the twenty-second section of the act, entitled "An act concerning sheriffs." *Provided always*, That if the said sheriff or other officer, shall, after two adjournments as aforesaid, sell the lands, tene-

But if the sheriff, after two adjournments,

ments, hereditaments and real estate, and bring the whole amount of the product of such sale (after deducting his lawful fees) into the court, from whence such execution issued, at any time before the entry of such amercement against him as aforesaid, the said sheriff or other officer shall be exonerated from all liability to the said amercement.

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and before amercement, bring the money into court, he shall be exonerated.

11. *And be it enacted*, That the person, whose lands, tenements, hereditaments and real estate are so taken in execution, may, if part of them be sufficient to satisfy such execution, elect what part thereof shall be sold; and thereupon it shall be the duty of the said sheriff or other officer to sell the part so elected, and no other, if it be sufficient: *Provided always*, That such election shall be made in writing, signed by such person, and delivered to the said sheriff or other officer, at least twenty days previous to the time appointed for the sale.

The party, whose lands are taken in execution, may elect what part thereof shall be sold.

12. *And be it enacted*, That the sheriff or other officer, who, by virtue of such writ or writs of execution, shall sell as aforesaid the lands, tenements, hereditaments and real estate, or any part or parcel of them, so levied upon, shall make to the purchaser thereof as good and sufficient a deed or conveyance for the lands, tenements, hereditaments and real estate so sold, as the person, against whom the said writ or writs of execution were issued might or could have made for the same at or before the time of rendering judgment against him or her; which deed or conveyance shall transfer to and vest in the said purchaser, as good and perfect an estate to the premises therein mentioned, as the person, against whom the said writ or writs of execution were issued, was seized of or entitled to at or before the said judgment, and as fully, to all intents and purposes as if such person had sold the said lands, tenements, hereditaments and real estate to such purchaser, and had received the consideration money, and signed, sealed, and delivered a deed for the same: *And further*, That the said deed or conveyance, so to be made by the said sheriff or officer, shall recite the writ or writs of execution, by virtue whereof of the said lands, tenements, hereditaments and real estate therein described, were sold as aforesaid.

Sheriff to make deeds for lands, by him sold in virtue of executions; which deeds shall be as good and effectual as if they had been made by the party.

13. *And whereas* other judgments, statutes, and recognizances, besides those, or some of those, by virtue whereof the sale aforesaid was made, might affect the lands, tenements, hereditaments and real estate so sold, if no provision be made to remedy the same; and whereas the persons, who have not taken, or will not take out executions upon their judgments, statutes, or recognizances, ought not to hinder or prevent such as do take out executions from having the proper effect and fruits thereof: *Therefore, be it enacted*, That the purchaser, his heirs and assigns, shall hold the lands, tenements, hereditaments and real estate, by him or her purchased as aforesaid, free and clear of all other judgments, recognizances, statutes-merchant and statutes-staple whatsoever, on or by virtue of which no execution has been taken out and executed on the lands, tenements, hereditaments, and real estate so purchased.

Land sold by sheriff to be clear of all judgments, on which executions have not been issued.

14. *And be it enacted*, That if any judgment or execution

Reversal of judgment, for error, not to affect lands sold prior to such reversal.

How and in what cases a succeeding sheriff may make deed for lands sold by his predecessor in office.

How to pay the money received thereon.

Proprietary rights may be levied on and sold by executions.

(the said execution being recorded as aforesaid) by virtue whereof such sale as aforesaid shall be made of any lands, tenements, hereditaments and real estate, shall be reversed for error, such reversal shall not be given in evidence, or be of any force or avail against any bona fide purchaser under the said judgment or execution; but the said purchaser, his heirs and assigns, shall hold the said lands, so bona fide purchased, notwithstanding such reversal, if it be posterior to the said purchase; and further, such reversal shall only operate against the defendant in error, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the lands, tenements, hereditaments and real estate so sold as aforesaid.

15. *And be it enacted*, That if any sheriff, who hath made or shall make sale of any lands, tenements hereditaments and real estate, by virtue of an execution against the same, shall abscond, or depart from the state, or be disqualified by law, or rendered unable by death, or otherwise incapable, to make a deed or conveyance for the same, it shall be lawful for any succeeding sheriff of the county, on receiving a certificate from the inferior court of common pleas of such county, signed by the clerk by order of the said court, setting forth, that sufficient proof hath been made to the said court, that such sale was fairly and legally made, and on tender of the purchase money, or if the purchase money or any part of it has been paid, then on proof of such payment, and on tender of the residue, if any be, to sign, seal and deliver to the said purchaser, or his legal representative, a deed or conveyance of the lands, tenements, hereditaments and real estate so sold; which deed shall be as good and valid, and shall have the same force and effect, as if the sheriff, who made such sale, had signed, sealed, and delivered a deed of conveyance for the same in due form of law.

16. *And be it enacted*, That if such succeeding sheriff receive any money by virtue of the preceding section of this act, he shall pay the same to the person thereunto entitled by law.

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

18. *And be it enacted*, That no lands, tenements, heredita-

ments or real estate, of any testator or intestate, shall be sold or in any wise affected by any judgment or execution against executors or administrators.

19. *And be it enacted*, That when any executor or administrator shall discover or believe, that the personal estate of his testator or intestate is insufficient to pay his debts, then it shall be the duty of such executor or administrator, as soon as conveniently may be, to make and exhibit, under oath, a just and true account of the said personal estate and debts, as far as he can discover the same, to the orphans' court of the county, where the lands, tenements, hereditaments and real estate, of which the said testator or intestate died or shall die seized, do lie, and request their aid in the premises; and the said court shall thereupon make an order, directing all persons interested in such lands, tenements, hereditaments and real estate to appear before them at a certain day and place, in the said order to be mentioned, not less than two nor more than three months after the day of making such order, to shew cause, why so much of the said lands, tenements, hereditaments and real estate of the said testator or intestate should not be sold, as will be sufficient to pay his debts, or the residue thereof, as the case may require; which order, signed by the surrogate or clerk of the said court, shall be immediately thereafter set up at three of the most public places in the said county for six weeks successively, and be published for the same time in one or more of the newspapers printed in this state.

20. *And be it enacted*, That the said orphans' court shall, at the time and place mentioned in the said order, or at such other time and place as they may then appoint, hear and examine the allegations and proofs of the said executor or administrator, and other persons interested; and if on full examination the said court shall find, that the personal estate of the said testator or intestate is not sufficient to pay his debts, the said court shall order and direct the executor or administrator to sell the whole, if necessary, of the lands, tenements, hereditaments and real estate of the said testator or intestate, for the payment of his debts, or so much thereof as will be sufficient for that purpose; and when a part only of the said lands, tenements, hereditaments and real estate is sufficient, such order shall specify the part to be sold: *Provided always*, That where any houses, and lots, or lands are so circumstanced, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the said court may, at their discretion, order the whole or a greater part, than is necessary to pay such debts, to be sold; and the surplus money arising from such sale shall be distributed among the heirs or devisees, according to the law of descents in the former, and the will of the testator in the latter case; and further, that the heir or devisee, whose lands, tenements, hereditaments and real estate, so descending or devised to him, have been sold as aforesaid, for the payment of the debts of his intestate or testator, may compel all others claiming or holding under such intestate or testator, to contribute in proportion to their respective interests, so as to equalize the burden or loss.

Judgment or execution against executors or administrators not to affect lands of the testator or intestate.

If the personal estate of the testator or intestate be insufficient to pay his debts, the executor or administrator may make application to the orphans' court; whose duty it shall be to order all persons interested to appear before them, on a certain day, to shew cause, why the real estate should not be sold.

If the personal estate be inadequate to pay the debts of the testator or intestate, the orphans' court may direct the real estate to be sold.

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Lands, ordered to be sold by the orphans' court, to be advertised 2 months before the time of sale.

21. And be it enacted, That the executor, or administrator, who may be ordered to sell any lands, tenements, hereditaments or real estate of any testator or intestate, shall give notice by advertisements, signed by himself, and set up at five or more public places in the county, of the time and place of selling the premises, at least two months before the time appointed for selling them, and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder; and the executor or administrator, making the said sale, shall report in writing all proceedings thereon to the next orphans' court, after such sale: Provided always, That the said executor or administrator may adjourn the said sale from time to time, not exceeding two months in the whole.

For lands so sold, the executor or administrator to make deed.

22. And be it enacted, That the said executor or administrator shall, and hereby is authorized to make a deed to the purchaser for the lands, tenements, hereditaments and real estate so sold; which deed shall set forth the said order at large, and shall vest in the said purchaser as good and perfect an estate in the premises therein mentioned, as the heirs or devisees of the said testator or intestate were seized of or entitled to, at the time of the making of the said order by such orphans' court.

Moneys received by executor or administrator from sale of lands, to be assets for the payment of debts.

23. And be it enacted, That the moneys arising from such sale of the lands, tenements, hereditaments and real estate of such testator or intestate, shall be received by the said executor or administrator, and be considered as assets in his hands for the payment of debts, and the surplus, if any, shall be distributed among the heirs or devisees in the proportion and manner directed by the twentieth section of this act.

Lands of testator or intestate not to be sold till the personal estate be applied to the payment of debts.

24. Provided always, and be it further enacted, That no part of the lands, tenements, hereditaments and real estate of any testator or intestate, shall be ordered by the said orphans' court to be sold as aforesaid, until the executor or administrator shall have applied the personal estate, or such part thereof as may have come to his hands, towards payment of the debts of such testator or intestate; and no more of the said lands, tenements, hereditaments and real estate, except as is excepted in the twentieth section of this act, shall be sold, than may be necessary to pay the residue of the said debts: Provided also, That nothing herein contained shall prevent or bar any person from bringing and maintaining any action against an executor or administrator, for or in respect of the personal estate of his testator or intestate, or for or in respect of any waste or misapplication thereof by such executor or administrator.

This act not to prevent suits against executor or administrator for waste, &c.

Certain acts, &c. repealed.

25. And be it enacted, That the act, entitled "An act subjecting real estates in the province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon," passed the second day of December, in the year of our Lord, one thousand seven hundred and forty-three; and the act, entitled "An act to amend an act, entitled an act subjecting real estates in the province of New-Jersey to the payment of

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debts, and directing the sheriff in his proceedings thereon," passed the eighth day of June, in the year of our Lord, one thousand seven hundred and seventy-nine; and the act, entitled "An act directing the mode by which shares of propriety and rights to unlocated lands in the state of New-Jersey, may be sold for the payment of debts," passed the twenty-third day of November, in the year of our Lord, one thousand seven hundred and eighty-five; and the eleventh and twelfth sections of the act, entitled "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the sixteenth day of December, in the year of our Lord, one thousand seven hundred and eighty-four, and all and every other act and acts, and part and parts of any act, within the purview of this act, be, and they are hereby repealed; but such repeal shall not extend to or affect any execution heretofore issued, out of any of the courts of record in this state, against lands, tenements, hereditaments and real estate, or against proprietary shares and rights to unlocated lands, or any order heretofore made by any orphans' court for the sale of real estate; but such execution and order shall be of the same validity, and be proceeded upon to effect in the like manner, as if this act had not been made.

But such repeal not to affect antecedent executions and orders.

See supplement, passed 21st February, 1820.

AN ACT to issue commissions for the examination of witnesses, and to take their depositions in certain cases. PAT. 374.

Passed the 18th of February, 1799.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That if a material witness in any action or suit in the court of chancery, or in the supreme court, or any of the inferior courts of common pleas of this state, reside out of this state, or, if in this state, be ancient or very infirm, or be sick, or bound on a voyage, or about to go out of this state, it shall and may be lawful for the said court, in which such action or suit is depending, on affidavit or proof thereof to the satisfaction of the said court, and upon motion made by or in behalf of either party in open court, at such terms as the said court shall direct, to award and issue, under the seal of the said court, a commission to such person or persons, as the said court may think fit, authorizing such person or persons, or any two or more of such persons, to examine de bene esse the said witness on oath or affirmation, upon the interrogatories annexed to the said commission, and to reduce such examination to writing, and to return the same annexed to the said writ, unto the said court, with all convenient speed; and the name of every witness, to be so examined by virtue of such commission, shall be inserted in the said commission; and the interrogatories for the examination of such wit-

In what cases the courts may grant commissions to examine material witnesses.

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1820. serve beyond the time at which said infant, if a male, shall have arrived at the age of two years, or, if a female, at the age eighteen years, the said indenture shall be void as against such infant, so far as the age inserted in said indenture shall exceed the age aforesaid: *Provided*, That nothing in this section, shall in any way impair the obligation of any covenant entered into by the parent or guardian of such infant, as to the age or time of service of such infant, nor shall it impair or affect any contracts, or indentures made with foreigners to serve for a term of years.

PAM. 46.
See ante 410.

A SUPPLEMENT to the act, entitled "An act for the limitation of actions," passed the seventh day of February, one thousand seven hundred and ninety-nine:

Passed the 21st of February, 1820.

1. *BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That if any person or persons, against whom there is or shall be any such cause of action as is specified in the first, second, third, fifth, sixth and seventh sections of the act to which this is a supplement, shall not be resident in this state when such cause of action accrues, or shall remove from this state after the same shall accrue and before the time of limitation mentioned in said sections is expired, then the time or times during which such person or persons shall not reside in this state as aforesaid, shall not be computed as part of the said limited period within which such action or actions are required to be brought as aforesaid; but the person or persons having, or who may have such cause of action as aforesaid, shall be entitled to all the time mentioned in the said several sections, for bringing their said actions after the cause thereof shall accrue, exclusive of the time or times during which the person or persons liable to such actions shall be not resident in this state as aforesaid.

2. *And be it enacted,* That the eighth section of the act to which this is a supplement, be, and the same is hereby repealed.

PAM. 47.
See ante 430.

A SUPPLEMENT to the act, entitled "An act making lands liable to be sold for the payment of debts."

Passed the 21st of February, 1820.

1. *BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That when any testator or intestate shall die possessed of any share or shares, or part or parts of a share of propriety of undivided rights, or warrant to locate any land, either in the eastern or western division of New-Jersey, and shall not leave other estate sufficient to pay all the just debts and maintain the children of such decedent, that then and in such case the executor or ex-

ecutors, administrator or administrators, shall apply to the orphans' court of the county where such decedent last resided, and the said court shall make an order for the sale of such share or parts of shares, or warrants for unlocated rights, on the like exhibition and proof of the deficiency of the estate of such decedents, to pay the just debts that shall appear against the same, under the same restrictions, notice and publicity as is by law directed for the sale of real estates.

2. *And be it enacted,* That in case a writ of fieri facias shall be issued against the goods and chattels, lands, tenements, hereditaments and real estate, of any person or persons, and such person or persons shall desire that the whole or a part of the said lands, tenements, hereditaments and real estate, shall be sold before any of the said goods and chattels, and signify the same in writing, under his, her, or their hands, and deliver the same to the sheriff or other officer to whom the said writ of fieri facias shall be directed, within twenty days from the time of notice of said writ, and before the goods shall be sold, and enter into bond to the said sheriff or other officer, with good and sufficient sureties, that the goods and chattels levied on in virtue of the said writ, shall be forthcoming to answer the exigencies of said writ, at a day therein named, not exceeding three calendar months from the date of said bond, then and in that case it shall be the duty of the said sheriff or other officer, to whom the said writ shall be directed, to suspend the sale of the said goods and chattels, and proceed to sell the said lands, tenements, hereditaments and real estate, or such part thereof as the owner or owners thereof shall have desired to be sold as aforesaid, any thing contained in the sixth section of the act to which this is a supplement, the said writ of fieri facias, or any law to the contrary notwithstanding.

3. *And be it enacted,* That it shall be the duty of the sheriff or other officer, to whom a writ of fieri facias may be directed, against lands, tenements, hereditaments and real estate, in addition to the notice required by the ninth section of the act to which this is a supplement, to cause the time and place of the sale of said lands, tenements, hereditaments and real estate, levied on by virtue of said writ, to be published in one of the newspapers printed and published in this state, and circulated in the neighborhood of the said lands, tenements, hereditaments, and real estate, at least four weeks successively, once a week, next preceding the time appointed for selling the same, and that the said sheriff or other officer, advertising as aforesaid, shall be entitled, in addition to his other fees, to the sum of one dollar and fifty cents.

4. *And be it enacted,* That whenever any lands, tenements, hereditaments, and real estate, shall be directed to be sold by an order made by the orphans' court, in any of the counties of this state, it shall be the duty of the executor, administrator, or guardian, as the case may be, to advertise the time and place of the sale thereof, in the manner directed in the preceding section of this act, in addition to the provision already prescribed by law.

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In what cases orphans' court may direct propriety rights, &c. to be sold.

On writs of fieri facias, lands may be sold before goods.

Conditions to be performed.

In what manner notice of sale to be given.

Lands ordered to be sold by the orphans' court, to be advertised.

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5. *And be it enacted*, That in all cases wherein an order hath heretofore been made, or shall hereafter be made, by the orphans' court of any county in this state, in which the said court hath ordered or directed, or may order or direct, two or more executors or administrators, to sell the whole or any part of the lands, tenements, hereditaments, and real estate of a testator or intestate, for the payment of debts, and one or more of the said executors, or administrators, shall or may have departed this life, before such sale shall have been made, or before a deed or deeds of conveyance may have been executed in pursuance thereof, that then and in such case, the survivor or survivors of such executors or administrators, shall be, and they are hereby authorized and empowered to sell the said lands, tenements, hereditaments, and real estate, and to make and execute good and sufficient deed or deeds of conveyance for the same, to the purchaser or purchasers, and in all respects to execute, carry into effect, and fulfil the said order as fully and effectually to all intents and purposes, as all the executors, or administrators, named in the same order, might, if living, execute and fulfil the same.

In what case surviving executors may convey lands.

6. *And be it enacted*, That the act, entitled "A supplement to the act, entitled an act making lands liable to be sold for the payment of debts," passed the eleventh day of November, one thousand eight hundred; and the act, entitled "An act to amend the act, entitled an act making lands liable for the payment of debts," passed the twenty-sixth day of November, one thousand eight hundred and four; and the act, entitled "A further supplement to the act, entitled an act making lands liable for the payment of debts," passed the sixth day of February, one thousand eight hundred and sixteen, be, and the same are hereby repealed: *Provided nevertheless*, That nothing in this repealing section shall in any way invalidate or render null any act, matter or thing, lawfully done or transacted under them, or any of them, or impair any right required under them or any of them, but the same shall be as good, valid and effectual, as though this repealing section had not been made.

See act, November 9th, 1820.

PAM. 65.
See ante 600.

A SUPPLEMENT to the act, entitled "An act relative to toll and chain bridges."

Passed the 21st of February, 1820.

BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That so much of the first section of the act to which this is a supplement, as relates to any kind of carriage, waggon, cart, sled, or sleigh, drawn by one horse, and also to single horses and mules, be, and the same is hereby repealed: *Provided nevertheless*, That nothing in this act contained, shall be construed to extend to or affect the toll-bridges already built over the river Delaware.

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A SUPPLEMENT to an act, entitled "An act for the preservation of deer and other game, and to prevent trespassing with guns," passed December twenty-first, one thousand seven hundred and seventy-one.

PAM. 66.
See ante 25.

Passed the 21st of February, 1820.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That if any person or persons shall kill, destroy, hunt, or take any doe, buck, fawn, or any sort of deer whatsoever, at any other time or season, except only between the last day of August and the second day of January, yearly and every year, he, she or they, so offending, shall forfeit and pay the sum of twenty dollars, for each and every such offence, to be sued for and recovered with costs of suit, in an action of debt, by any person, before any justice of the peace of the county wherein such offence shall have been committed, one half of the forfeit money shall be for the benefit of the person prosecuting for the same, and the remainder paid to the collector of the township wherein the offence shall have been committed, for the use of the township: *Provided*, That nothing in this supplement shall be construed or taken to extend to restrain the owners of parks or tame deer, from killing, hunting, or driving their own deer.

When deer may be killed.

Penalty.

To whom forfeited.

Proviso.

2. *And be it enacted*, That if any person or persons shall hunt for the purpose of killing, or to destroy or take, or kill any moor-fowl, grouse, partridge, quail, or rabbit, except only between the first day of September and the first day of February, and any woodcock, except only between the twenty-fifth day of June and the first day of February, yearly and every year, he, she or they, so offending, shall forfeit and pay for each moor-fowl, grouse or partridge, two dollars, and for each woodcock, rabbit, or quail, one dollar, for each and every offence, to be sued for and recovered in an action of debt, with costs of suit, by any person who shall sue for the same; and any person or persons in whose hands or custody any moor-fowl, grouse, partridge, quail or rabbit, shall be found, that shall have been killed contrary to the provisions of this act, shall be deemed, taken and adjudged to be the killer or destroyer of such game, and liable to the penalties aforesaid, unless such person or persons shall make it appear who it was that killed the same, or from whom such person, so thereof possessed, received the same: *Provided nevertheless*, That no person shall be prohibited from gunning on his own land.

When certain fowl, &c. may be killed.

Penalty.

Possession of the game, evidence of the killing.

3. *And be it enacted*, That the fourth and sixth sections of the act to which this is a supplement, and so much of the fourteenth section of the same act, as makes it a duty of the justices of the general quarter-sessions of the peace, to cause the said act to be read and given in charge to the grand jury, at every quarter-sessions of the peace, and also the supplement to said act, passed the eleventh day of February, one thousand eight hundred and eighteen, be, and the same are hereby repealed.

Acts repealed.

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proclamation, offering a reward, as aforesaid, for apprehending and securing any person or persons, charged, on oath or affirmation as aforesaid, with aiding, abetting, comforting, harboring or concealing any person or persons, who hath or have committed any of the crimes above specified and described, knowing him, her or them to be guilty thereof; which reward, on conviction of the person so charged, shall be paid in the same manner as is above directed.

May offer a reward for apprehending the unknown perpetrators of certain offences.

3. *And be it enacted*, That when any murder, burglary, robbery or other offence, as aforesaid, hath been, or shall be committed by any person or persons unknown, it shall and may be lawful for the governor or person administering the government, for the time being, on the oath or affirmation of one or more credible witness or witnesses, setting forth the fact, and that the same was perpetrated by a person or persons unknown, to issue his proclamation, offering a reward as aforesaid, for apprehending and securing the person or persons who may have committed the same, and any person or persons who may have aided, abetted, comforted, harbored or concealed him, her, them or any of them, to be in such wise guilty; which reward shall, in every case, be paid on conviction of the party offending, as in manner aforesaid.

Acts repealed.

4. *And be it enacted*, That the act, entitled "An act to empower the governor to offer a reward for the apprehension of certain offenders," passed the fifth day of March, one thousand seven hundred and ninety-five, be, and the same is hereby repealed.

P.A.M. 180.

AN ACT to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state.

Passed the 13th of June, 1820.

WHEREAS it is necessary that the power and authority of the ordinary of the state, and his surrogates, should be defined, the jurisdiction of the prerogative court regulated, and an orphans' court established, in the several counties of this state;
THEREFORE—

Authority of the ordinary, how far to extend.

1. *BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That from and after the passing of this act, the authority of the ordinary shall extend only to the granting of probates of wills, letters of administration, letters of guardianship, and to the hearing and finally determining of all disputes that may arise thereon.

Prerogative court when and where to be held.

2. *And be it enacted*, That for the more regular hearing and determination of all causes cognizable before the ordinary, he shall, at stated periods, hold a prerogative court, at the times and places appointed, or that hereafter shall be appointed by him for holding the court of chancery, when he shall hear and finally de-

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termine all causes that shall come before him, either directly or by appeal from any of his surrogates, or the orphans' court hereinafter established.

3. *And be it enacted*, That the secretary of the state, for the time being, shall be register of the prerogative court, and besides the business heretofore done by him, shall attend the sitting of the court at the stated times, to register the decrees and proceedings of the court.

Secretary of state to be register.

4. *And be it enacted*, That the ordinary shall hereafter appoint but one deputy or surrogate in each county of the state, and that the power and authority of such surrogate shall be limited to the county for which he shall be appointed.

One surrogate in each county.

5. *And be it enacted*, That the judges of the court of common pleas, in the several counties of this state, or any three of them, shall be, and they hereby are, constituted and appointed judges of a court of record, to be held four times a year, in the same week that the courts of general quarter-sessions of the peace are, or hereafter shall be held, and also at such other times as the said judges shall see occasion to hold the same; which court shall be styled "The Orphans' Court," and that the surrogate of the county shall be clerk or register of said court.

Orphans' court established.

6. *And be it enacted*, That the orphans' court shall have full power and authority to hear and determine all disputes and controversies whatsoever, respecting the existence of wills, the fairness of inventories, the right of administration and guardianship, and the allowance of the accounts of executors, administrators, guardians or trustees, audited and stated by the surrogate, as hereinafter directed; and also, all other matters and things hereinafter submitted to their determination, and to award process, and cause to come before them, all and every person and persons interested or necessary to give evidence in any such cause, or who, as executors, administrators, guardians, trustees or otherwise, are or shall be entrusted with, or in anywise accountable for, any lands, tenements, goods, chattels or estate, belonging, or which shall belong, to any orphan or person under age; and the ordinary of the state, his register and surrogates, are hereby directed and required, upon application made for that purpose, and payment of reasonable fees, to transmit into the orphans' courts, true copies or duplicates of all bonds, inventories, accounts and proceedings whatsoever, now or hereafter remaining or being in their respective offices or possession, which do or shall relate to the estates of orphans, or any of them.

Jurisdiction of the orphans' court.

7. *And be it enacted*, That the said orphans' court shall have full power and authority, where letters of administration or guardianship shall have been granted upon insufficient security, to order and direct all such administrators or guardians, to give such further or other security to the ordinary, by bonds in the usual form, as the said court, after hearing the objection of creditors, or persons concerned, shall approve of; and if it appears, on examination, that any administrator or guardian hath embezzled, wasted, or misapplied all or any part of the decedent's estate, or shall

Orphans' court may order administrators or guardians to give further security, and may revoke letters of administration or guardianship.

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neglect or refuse to give bonds, with sureties as aforesaid, or the security taken shall have been insufficient, then, and in every such case, the said court shall forthwith, by sentence, revoke or repeal the letters of administration or guardianship, and thereupon the surrogate shall grant letters of administration or guardianship, to such person or persons having right thereunto, as will give bonds in manner and form aforesaid, who may have actions of trover, detinue, or on the case, for such goods or chattels as came to the possession of the former administrators or guardians, and shall be detained, wasted, embezzled, withheld or misapplied by any of them, and no satisfaction made for the same.

In what cases the orphans' court may order executors, guardians and trustees to give security.

8. *And be it enacted*, That when any complaint is made to any one of the judges of the orphans' court, that an executrix having a minor or minors of her own, or being concerned for others, is married, or like to be espoused to another husband, without securing the minors' portions or estates, or that an executor, guardian or other person having the care and trust of minors' estates, is likely to prove insolvent, or shall refuse or neglect to exhibit true and perfect inventories, or give full and just accounts of the said estates come to their hands or knowledge, then and in every such case, the said judge is hereby required, forthwith to call an orphans' court, which court shall order and direct all and every such executrix, executor, guardian or trustee, to give security to the orphans or minors, by mortgage or bonds, in such sums and with such sureties as the said court shall think reasonable, conditioned for the performance of their respective trusts; and for the true payment or delivery, to and for the use and behoof of such orphan or orphans as they are concerned for, or such as shall legally represent them, the legacies, portions, shares and dividends of estates, real and personal, belonging to such orphans or minors, so far as they have assets, as also for their maintenance and education, as the said court shall judge fit for the benefit and best advantage of such orphans.

May order an administrator or guardian, on application of a surety, to render an account, and proceedings thereon.

9. *And be it enacted*, That where the surety, in any bond given by an administrator or guardian, for the faithful execution of his office, shall discover or believe that such administrator or guardian is wasting or mismanaging the estate, whereby the said surety may become liable to loss or damage, the said orphans' court, upon application of such surety, and upon sufficient reason therefor, may order and direct every such administrator or guardian, to render an account of his or her administration or guardianship, to such surety, and if it shall appear that such administrator or guardian has embezzled, wasted, misapplied or mismanaged the estate, in every such case the said court shall direct the said administrator or guardian, to give separate security to his or her surety, for the true payment of the balance remaining in his or her hands, to creditors, representatives, or the ward of such guardian, and on neglect or refusal, it shall be lawful for the said court to revoke the letters of administration or guardianship, and grant the same to such person or persons having right thereto, as will give sufficient bonds, in the usual form, to the ordinary, and in such case it shall be the duty of the said newly appointed

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administrator or guardian, immediately to bring an action on the case against such removed administrator or guardian, and hold him or her to bail, and in such action to recover the amount of all moneys, assets, rents, issues and profits received by such removed administrator or guardian, and not applied according to law, as well as all damages done or committed by such administrator or guardian, in respect of the estate in his or her hands.

10. *And be it enacted*, That whenever there are two or more acting executors, guardians or administrators, the orphans' court shall or may, from time to time, on application of any one or more of them, upon sufficient reasons given to the court therefor, order and direct every such executor, guardian or administrator, to account with his or her co-executor or co-executors, administrator or administrators, guardian or guardians, for all assets which have severally come to the hand of such executor, guardian or administrator, and whenever the court shall judge it necessary, shall compel each executor, guardian or administrator, to give separate security to his co-executor or co-executors, administrator or administrators, guardian or guardians, for the true payment of the balance remaining in his or her hands, to wards, creditors, legatees or representatives of the testator or intestate, and on neglect or refusal in giving such account or security, it shall and may be lawful for the same court to authorize such co-executor or co-executors, administrator or administrators, guardian or guardians, to sue for such assets in the hands of such executor or executors, administrator or administrators, guardian or guardians so neglecting or refusing as aforesaid.

May direct an executor, administrator or guardian to account with, and give security to his co-executor, &c.

11. *And be it enacted*, That executors, administrators, trustees or guardians, may, by leave and direction of the orphans' court, put out their minors' money to interest, upon such security, and for such a length of time, as the said court shall allow of, and if such security so taken, bona fide and without fraud, shall happen to prove insufficient, it shall be the minors' loss, and it shall be the duty of executors, administrators, trustees and guardians, in cases where the minors' estates may be materially benefited thereby, to make application to the orphans' court for such leave and direction, and in case they shall neglect so to do, they shall be accountable for the interest that might have been made thereby: but if no persons who may be willing to take the said money at interest, giving such security, can be found by the said executors, administrators, trustees or guardians, nor by any other friend or friends of such minors, then the said executors, administrators, trustees or guardians, shall, in such cases, be accountable for the principal money only, until it can be put out at interest, as aforesaid: *Provided nevertheless*, That in any case where executors, administrators, trustees or guardians shall make use of the money of minors, which shall come to their hands, they shall be accountable not only for the principal but for the interest thereon.

The money of minors may be put out to interest, under the direction of the court.

12. *And be it enacted*, That where any person hath died, or shall die intestate, seized in fee-simple of any lands, tenements, or hereditaments, leaving two or more children, or other heirs, any of whom being under the age of twenty-one years, the or-

The real estates of intestates may be divided in certain cases.

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phans' court of the county in which such real estate is situate, upon application made by the said heirs, or any of them, or by any person duly authorized in their behalf, or claiming under them or any of them, shall and may order and direct a division of such real estate to be made in such shares and proportions between them as they may be entitled to under the laws of this state, or any of them, directing the descent of real estates; the metes and bounds of each child's or other heir's share, to be ascertained by three disinterested commissioners, to be appointed by the court, whose report, or the report of any two of them, made in writing, under their hands, to the next or any subsequent orphans' court, after such division shall be made and approved of by the court, shall be recorded in the records of said court, and be conclusive to all parties concerned.

Real estates, devised by will, may be divided.

13. *And be it enacted*, That where any person hath died or shall die seized of any lands, tenements or hereditaments, leaving a legal will and testament, devising his or her real estate to two or more devisees, and not ascertaining the metes and bounds of each devisee's share, any of whom being under the age of twenty-one years, and their shares remaining undivided, or any such devisee shall die, leaving any heir under the age of twenty-one years, entitled to the share, or a part of the share of such devisee, so dying, and no division shall have been made among the said devisees, the said orphans' court, upon application by any of the devisees, or any person claiming under them, or any of them, or duly authorized by them, or any of them, shall and may order and direct a division of such real estate to be made, agreeably to the true intent and meaning of the said testator's last will and testament; the metes and bounds of each devisee's share to be ascertained by three disinterested persons, commissioners, to be appointed by the court, whose report, or the report of any two of them, made in writing, under their hands, to the next or any subsequent orphans' court, after such division made and approved of by the court, shall be recorded in the records of the court, and be conclusive to all parties concerned.

Cases where a person dies intestate, in which the surrogate-general is authorized to direct a division.

14. *And be it enacted*, That where any person hath died, or shall die intestate, seized in fee-simple of any lands, tenements or hereditaments, situate in two or more counties, leaving two or more children or other heirs, any of whom being under the age of twenty-one years, the surrogate-general, on application made by the said heirs, or any of them, or by any person duly authorized in their behalf, or claiming under them or any of them, shall and may order and direct a division of such real estate to be made in such shares and proportions between them, as they may be entitled to under the laws of this state, or any of them, directing the descent of real estates, the metes and bounds of each child's or other heir's share, to be ascertained by three disinterested persons, commissioners, to be appointed by the said surrogate-general, whose report or the report of any two of them, made in writing, under their hands, to the next or any prerogative court held after such division made, and approved by the surrogate-general, shall be conclusive to all parties concerned.

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and shall be recorded in the clerk's office in each of the counties where the lands lie, for which the said surrogate-general and register of the prerogative court, commissioners and clerks, shall be entitled to the same fees as are allowed, by this act, to the orphans' court, commissioners and surrogate, for similar services.

15. *And be it enacted*, That where any person hath died, or shall die, seized of any lands, tenements or hereditaments, leaving a legal will and testament, devising real estate to two or more devisees, situate in two or more counties, and not ascertaining the metes and bounds of each devisee's share, any of whom being under the age of twenty-one years, and their shares remaining undivided, or any such devisee shall die, leaving any heir under the age of twenty-one years, entitled to the share or a part of the share of such devisee so dying, and no division shall have been made among the said devisees, upon application made by said devisees, or any of them, or any person claiming under them, or any of them, or duly authorized by them, to the said surrogate-general, he shall and may order and direct a division to be made of such real estate, agreeably to the said last will and testament, by three disinterested persons, commissioners, appointed by the said surrogate-general; and the proceedings on such application shall be in like manner, in all respects, as is prescribed in the foregoing section, and have the same force and effect, and the same fees be allowed.

Cases where he is authorized to direct a division among devisees.

16. *And be it enacted*, That the persons appointed by the orphans' court, or by the surrogate-general, to make partition in any of the cases aforesaid, shall, before they enter upon the duties of their appointment, take an oath or affirmation, to make a fair and just partition of such real estate, without partiality, favor or affection; which oath or affirmation may be administered by any judge of the orphans' court, surrogate or justice of the peace of the county or counties in which the said real estate is situate, or by the said surrogate-general.

Persons appointed to make partition of lands, to take an oath.

17. *And be it enacted*, That the necessary costs and expenses which shall arise under an order of the orphans' court or surrogate-general, in any of the cases aforesaid, shall be assessed by the said court or surrogate-general, upon each share, in proportion to the value divided to him or her, and may be recovered by a warrant from the said court or surrogate-general, directing distress and sale to be made of so much timber, wood or herbage, or other property belonging to such devisee or heir, as may be found on the part divided to him or her, as will be sufficient to pay the costs and expenses aforesaid, and costs of such distress and sale.

Expense of division, how assessed and recovered.

18. *And be it enacted*, That on a division made in any of the cases aforesaid, if any devisee or heir as aforesaid, or any person claiming under him or her, hath, after the death of the testator or intestate and before the division, cut off or made use of any timber, or committed any waste or destruction on the premises, the commissioners appointed to make the division shall estimate the damage done by such heir or devisee, or person claiming under him or her, and divide the premises so that such heir or devisee

In making a division, damage committed to be estimated.

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shall be charged with said damage, and have a share proportionably less in value than the other heirs or devisees who have done no waste or damage.

Manner of proceeding in case a division cannot be made without great prejudice to the owners.

19. And be it enacted, That wherever commissioners, appointed in any of the cases mentioned in this act to divide real estate, shall be of opinion that the tract or tracts of land or real estate is or are so circumstanced, that a partition thereof cannot be made without great prejudice to the owners of the same, they may proceed as is directed in such case by the act, entitled "An act for the more easy partition of lands held by coparceners, joint tenants and tenants in common," and by an act, entitled "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the seventh February, eighteen hundred and sixteen; and the fees of the commissioners in such case shall be the same as is allowed by this act to commissioners for dividing lands: *Provided*, That such fees and expenses shall not bar any claim which may be made by such commissioners for services which may be performed under the fifth and eighth sections of said act.

In what case a creditor may apply to the orphans' court to direct a sale of real property.

20. And be it enacted, That when any creditor shall have obtained judgment against an executor or administrator, and the execution issued on the same shall remain unsatisfied in whole or part, for defect of personal estate to be levied on and sold, and there is real estate, it shall be lawful for the creditor or his legal representative, if the executor or administrator, being thereto required, shall neglect or refuse to obtain a sale thereof, according to law, for the space of six months after being so required, to apply to the orphans' court of the proper county, to order such sale to be made; and the said court, upon due notice given to said executor or administrator, of such application, shall examine the circumstances of the case; and if it appears that the said debt, or any part thereof, is unpaid, and the personal estate deficient as aforesaid, and no sufficient cause being shewn to the contrary, the said court may make such order to shew cause as is mentioned in the nineteenth section of the act, entitled "An act making lands liable to be sold for the payment of debts," passed eighteenth of February, seventeen hundred and ninety-nine; and such further proceedings shall be had as is prescribed in the same act in relation to the sale of real estate, where the personal estate is insufficient to pay debts.

Surrogates to take the depositions to wills, inventories, administrations, &c.

Disputes relative to the same, when and how to be settled.

21. And be it enacted, That the surrogate of each county shall take the depositions to wills, administrations, inventories and administration bonds, in case of intestacy, and issue thereon letters testamentary and of administration; which several letters shall be in the form herein after mentioned; but in all cases whatsoever, where doubts arise on the face of a will, or a caveat is put in against proving a will, and wherever disputes happen respecting the existence of a will, the fairness of an inventory, or the right of administration, the surrogate shall issue citations to all persons concerned, to appear at the next orphans' court to be held in and for the county; which citations shall be served at

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least ten days before the sitting of the court, when the cause shall be heard in a summary way, and determined by the judges of the court, subject to an appeal to the prerogative court, if demanded by any of the parties within thirty days after the sentence or decree of the orphans' court; after which, if no appeal be demanded, the surrogate shall proceed thereon as the sentence of the orphans' court shall direct; and all proceedings of surrogates, not brought as aforesaid before the orphans' court, shall, in like manner, be subject to an appeal to the prerogative court by any persons interested, or other person legally representing them, provided such appeal be made within six months after any such proceedings; and upon all causes heard in a summary way, as aforesaid, upon citation by the orphans' court, the evidence and proceedings, upon the application of either party, shall be reduced to writing by the register of the court, and the court, upon just cause, may put off the hearing of the cause to another time, upon the application of either party: *Provided*, That no surrogate shall proceed to prove any will until ten days from the death of the testator.

22. And be it enacted, That each of the surrogates, in the several counties of this state, shall record, in books to be provided for that purpose, at the expense of the county for which they shall be used, all wills proved before them or the orphans' court, together with the proofs thereof, all letters of guardianship, letters testamentary and letters of administration, by him issued or granted, and all things concerning the same, and also all inventories proved before him; which records shall be of the same force, validity and effect as the like records in the prerogative office, and the transcript of such records, certified under the hand and seal of office of the surrogate, shall be received in evidence in every court of this state, and have the same validity and effect as transcripts certified by the register of the prerogative court.

Surrogates to record all wills, letters of administration, guardianship, &c.

23. And be it enacted, That each of the said surrogates shall issue letters testamentary in the following form:

I, surrogate of the county of do certify the annexed to be a true copy of the last will and testament of late of the county of deceased, and that the executors therein named, proved the same before me, and are duly authorized to take upon themselves the administration of the estate of the testator, agreeably to the said will. Witness my hand and seal of office, the day of in the year of our Lord, one thousand eight hundred

Letters testamentary.

And the said surrogate shall issue letters of administration in the following form:

I, surrogate of the county of do certify, that on the day of administration of the goods and chattels, rights and credits, which were of late of the county of who died intestate, was granted by me to of who are duly authorized to administer the same agreeably to law. Witness my hand and seal of office, the day of in the year of our Lord, &c.

Letters of administration.

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And the said probate of wills and letters of administration shall have the same validity and effect as probate of wills and letters of administration issued by the register of the prerogative office, in the name of the ordinary or surrogate-general, with the seal of office affixed.

Surrogates to make returns to the register.

24. *And be it enacted,* That it shall be the duty of every surrogate, on the first Mondays of February, May, August and November, in each year, to transmit to the register of the prerogative court, all wills and inventories proved by him, and a return of all letters of administration granted during the preceding three months, to be filed in the said register's office.

To file administration bonds &c.

25. *And be it enacted,* That every surrogate shall carefully file all administration and guardianship bonds by him taken, and all other instruments of writing required by law in conducting the business of his office, or which were heretofore used to be filed in the prerogative office.

The ordinary may direct guardianship bonds to be prosecuted.

26. *And be it enacted,* That it shall and may be lawful for the ordinary or surrogate-general, to cause any guardianship bond to be prosecuted in any court of record, at the request and expense of any person aggrieved by the said bond having become forfeited, and the moneys recovered upon such bond shall be applied towards making good the damages sustained by the not performing the condition thereof, in such manner as the ordinary or surrogate-general shall by his sentence or decree direct.

Orphans' court to admit guardians.

27. *And be it enacted,* That the powers and duties formerly exercised and performed by the ordinary, relative to the admission of guardians, for persons under the age of twenty-one years, shall hereafter be exercised and performed by the orphans' court of the county in which the minor applying for a guardian may reside, or shall have real or personal estate, subject, however, to an appeal to the prerogative court, and the letters of guardianship shall be issued under the direction of the orphans' court, by the surrogate of the county in which the application shall be made, which letters shall be in the following form :

Form of letters of guardianship.

I, surrogate of the county of do certify on the day of the orphans' court of the county of admitted of as guardian of the person and property of being a minor under the age of . Witness my hand and seal of office, &c.

Provided, That nothing in this act shall be construed to prevent the ordinary or surrogate-general, in person, from granting probates of wills, letters of administration and letters of guardianship, from the prerogative office, in cases where a convenience will arise from doing the same.

When, how, and to whom letters of guardianship may be granted.

28. *And be it enacted,* That where an orphan is of the age of fourteen years or upwards, letters of guardianship shall be granted, on petition to the orphans' court, signed by such orphan in presence of the surrogate, and on the guardian or guardians first entering into a bond to the governor or ordinary of the state, with good security, in a sufficient sum, for the faithful execution of his, her or their office; but where an orphan is under the age

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of fourteen years, the mother, or next of kin, of full age, and where there are several relations in equal degree of kindred, any one, giving due notice to the rest, may apply to the orphans' court for the guardianship of such orphan, who, upon inquiry into the circumstances of the case, may admit one or more of them, or a stranger willing to accept the trust, at their discretion, to be guardian or guardians of such orphan, until he or she attains the age of fourteen years, or other guardian or guardians be appointed in his stead, such guardian or guardians, giving good security by bond as aforesaid, as the said court shall direct, and until the said orphan, after arriving at the age of fourteen, shall choose another guardian or guardians, the person or persons so first appointed shall remain the lawful guardian or guardians of such orphan, under the said first letters of guardianship, and the bond given thereon shall continue in full force; but where the orphan, after arriving to the age of fourteen years, shall choose any other person or persons to be guardian or guardians, letters of guardianship shall be applied for, as before directed, and all proceedings thereon be had accordingly.

29. *And be it enacted,* That every surrogate, before he enters upon the execution of the duties of his office, shall enter into bond to the state of New-Jersey, in the sum of two thousand dollars, with at least two good and sufficient securities, being freeholders of the county for which such surrogate is appointed, to be approved of by two of the judges of the inferior court of common pleas of said county, which bond, with the condition thereof, shall be in the form hereinafter mentioned, and shall also take and subscribe the following oath, before one of the judges of the inferior court of common pleas aforesaid :

Surrogates to give bond and take oath.

I, being appointed surrogate of the county of do solemnly swear, (or affirm, as the case may be) that I will well, truly, faithfully and impartially, execute the office of surrogate of the said county, agreeably to law, according to the best of my skill and understanding. So help me God.

Form of oath.

Which oath or affirmation shall, by the judge before whom the same is taken, be delivered or safely transmitted to the secretary of this state, together with the bond aforesaid, to be filed among the public papers of his office; and the bond to be entered into, as aforesaid, shall be in the following form :

Know all men by these presents, that we, of the county of in the state of New-Jersey, are held and firmly bound unto the said state in the sum of two thousand dollars, to be paid to the said state, to which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of in the year of our Lord, one thousand eight hundred and . The condition of this obligation is such, that if the above bounden shall well and truly execute the office of surrogate of the county of and in all things touching and concerning the said office shall well and truly, faithfully and impartially, execute and perform the same

Form of bond.

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according to law, as well with respect to all persons whatsoever concerned, as to the said state of New-Jersey, and at the expiration of his said office, shall deliver the seal and all the books, records and papers remaining in said office or appertaining thereto, to his successor in office, then the above obligation to be void, otherwise to be and remain in full force and virtue.

Surrogates to state the accounts of executors, &c. and report the same.

30. *And be it enacted*, That the surrogate shall audit and state the accounts of executors and administrators exhibited to him, and report the same to the orphans' court, at the next sitting thereafter, the executor, in case of a will, or the administrator, in case of intestacy, giving at least two months' notice of his intention in five of the most public places in the county, as near as may be to the place of residence of the parties concerned, or some of them, where such account is to be allowed, which court, on due proof of notice as aforesaid, and no exception being made to the report of the surrogate, shall decree an allowance of the account as stated; but if any person or persons, interested in the settlement of said account, shall, by himself or attorney, appear and make exceptions to the report, the court shall either proceed to hear the proofs and allegations, and correct or amend any mistake or errors that may happen in the account as reported, or refer the same to auditors, who shall examine and restate the account, after hearing parties and witnesses, and make report to the next or some subsequent court, for confirmation and allowance as aforesaid: *Provided always*, That in all cases where it shall appear, that the executor or administrator hath not had sufficient assets in hand, of the testator or intestate, to satisfy all just debts and expenses, the court shall not proceed to decree an allowance of the account, until the next sitting after the report is made; and the accounts of guardians or trustees shall be audited and stated by the surrogate, and reported to, and finally settled and allowed by, the orphans' court, in manner aforesaid; but in cases of trustees and guardians, the surrogate shall issue citations to all persons concerned, to appear at the said orphans' court, which citations shall be served at least ten days before the sitting of the court; and the said court shall, upon application of an orphan or other person interested, from time to time order and direct the guardians to account, as aforesaid, for all moneys, goods and chattels they shall receive, and for the rents, issues and profits of any real estate in their possession, belonging to their wards.

In what manner errors are to be corrected.

Accounts of guardians and trustees to be audited and settled in like manner.

Executors, &c. exhibiting their accounts, may be examined on oath.

Allowance of their commissions.

31. *And be it enacted*, That it shall be lawful for the court to whom any account is reported for allowance, as aforesaid, or for the auditors to whom an account is referred, as aforesaid, at the instance of any party interested in the same, or by their own proper authority, to examine any executor, administrator, guardian or trustee exhibiting such account, on oath or affirmation, touching the truth and fairness of the same, or any part or item thereof, and the allowance of commissions to executors, administrators, guardians or trustees, shall be made with reference to their actual pains, trouble and risk, in settling such estate, rather than in respect to the quantum of estate; and where any difference arises between executors, administrators, guardians or trustees, in re-

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gard to the proportion of commissions between them, the orphans' court shall determine the same, having regard to their respective services.

32. *And be it enacted*, That the sentence or decree of the orphans' court, on the final settlement and allowance of the accounts of executors, administrators, guardians or trustees, shall be conclusive upon all parties, and shall exonerate and for ever discharge every such executor, administrator, guardian or trustee, from all demands of creditors, legatees or others, beyond the amount of such settlement, except for assets or moneys which may come to hand after settlement as aforesaid, excepting also in cases where a party applying for a re-settlement, shall prove some fraud or mistake therein, to the satisfaction of the said orphans' court.

Decree of the court, in the settlement of accounts, conclusive, except &c.

33. *And be it enacted*, That every person duly cited or summoned to appear at any of the said orphans' courts, ten days before the time appointed for appearance, who shall make default, shall be liable to attachment for contempt, and the said courts are hereby authorized and empowered to compel obedience to their process, orders and sentences, by imprisonment of body or distress and sale of lands and goods, as fully and amply as any other court of record in the state, and all final sentences or decrees of the orphans' courts, in the several counties of this state, where no appeal is given to the prerogative court, shall be subject to removal by certiorari into the supreme court: *Provided always*, That such certiorari be applied for by either of the parties, within ninety days after such final sentence or decree shall be made, and not afterwards.

Persons summoned to appear at court, and neglecting to attend, how punishable.

Certain decrees may be removed into the supreme court.

34. *And be it enacted*, That the sheriff and constables of the county shall be, and they hereby are, severally declared to be officers of the orphans' court, and shall attend the same as such, and serve all process and orders of the court or judges, directed to them, or any of them.

Sheriff and constables of officers of the orphans' court.

35. *And be it enacted*, That if it shall happen that an orphans' court shall not be held at the regular term or terms of said court, by reason of the non-attendance of a sufficient number of judges, the business and proceedings pending in said court and process returnable thereto, shall be considered continuing from term to term, until a regular court shall be held.

Court not held for want of judges, business pending continued.

36. *And be it enacted*, That the clerk of the orphans' court shall draw bills of costs on all litigated suits in said court, and present the same to the court, who shall adjudge and direct which of the parties shall pay the same, and examine and tax the said bill agreeably to the fees allowed by law, which bill of costs shall be filed by the surrogate, who is hereby authorized, if the same is not paid, to issue an execution against the goods and chattels, lands and tenements, of the party adjudged to pay the same, and the costs, when paid or levied, shall be received by the surrogate, who shall pay to the court, sheriff and cryer, each their fees, as the same shall be taxed, and the residue to the persons entitled thereto, and for issuing the said execution the surrogate shall be

Bills of costs, by whom drawn and taxed.

Manner of recovery.

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entitled to fifty cents, and the execution, before the same is delivered to the sheriff, shall be recorded by the clerk of the county, in the book by him kept for recording executions.

Surrogate to keep up, in his office, a list of fees, &c.

37. *And be it enacted*, That the surrogate shall cause to be affixed, and at all times kept up in his office, in some conspicuous place, a true list of all fees which may be lawfully demanded by him, as well in his capacity of clerk of the orphans' court as of surrogate of the county, and if he shall neglect to put up and keep in view such list of fees, or shall take other or greater fees than by law allowed, or shall take fees for services not performed, he shall, for every such offence, forfeit and pay the sum of thirty dollars, to be recovered in an action of debt, with costs of suit, before any court having cognizance thereof, by the party aggrieved.

Receipts and discharges given to the executor, &c., to be recorded by the surrogate.

38. *And be it enacted*, That it shall be lawful for every executor, administrator or guardian, who hath settled, or shall settle his or her account before the orphans' court, and who hath, or shall hereafter pay, any legacy or legacies, distributive share or shares, or sums of money, to any person or persons entitled by law to receive the same, his, her or their executors or administrators, to produce the receipts and discharges therefor, to the surrogate of the county in which letters testamentary, or of administration or guardianship have been or shall be granted, and the said surrogate shall immediately record the same in a book to be by him kept for that purpose: *Provided*, That the same be first proved and acknowledged, in the manner that deeds of conveyance of land are by law required to be proved and acknowledged, which proof or acknowledgment shall be recorded with such receipts or discharges, and the said surrogate shall endorse on such receipts and discharges, the book and page in which the same is recorded, with the time of recording the same, and sign his name thereto, and the said record, or a copy thereof, under the hand and seal of office of the surrogate, shall be received in evidence in any court of record in this state, if it shall be made appear to the satisfaction of said court, that the original receipt or discharge hath been lost, or that it is not in the power of the party offering the copy in evidence, to produce the same, and the surrogates of the several counties of this state, shall procure, at the expense of the county, a good bound book, in which they shall record such receipts and discharges, and be entitled to receive ten cents for recording each receipt or discharge.

How proved.

How special orphans' courts are to be appointed, and where held.

39. *And be it enacted*, That any special orphans' court, to be held in vacation, excepting in cases directed by the eighth section of this act, shall be appointed by the judges at a regular term, in open court, and be held at the place in the county, where the said court by law holds its regular terms.

Surrogate not to act as attorney &c. in certain courts.

40. *And be it enacted*, That no surrogate shall be allowed to appear or act as attorney, proctor or counsel, in the orphans' court of any of the counties of this state, and also that no surrogate of any county, being a judge of the court of common pleas of such county, shall sit as a judge of the orphans' court, on the hearing of any cause pending before said court.

41. *And be it enacted*, That upon the death, removal, or expiration of the office of surrogate, the minutes, papers, writings, documents and books of, and belonging to, such office, shall be delivered to his successor in office, on oath or affirmation of the preceding surrogate, or in case of his death, on the oath or affirmation of his executors or administrators, and if such surrogate, or the executors or administrators of a deceased surrogate, shall refuse or neglect to deliver the same on oath or affirmation, as aforesaid, being demanded by the successor in office, then every such person shall forfeit and pay five hundred dollars, to be recovered, with costs, by action of debt, in the name of the county collector, for the use of the state.

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Books and papers to be delivered over to the successor, on oath.

42. *And be it enacted*, That the transcript of any will or testament, registered or recorded in the prerogative office of this state, duly certified by the register of the said office to be a true transcript, shall be received in evidence in any court of this state, and shall be as good and effectual in law, as if the books in which the same are registered or recorded, were then and there produced and proved.

Transcripts of wills, certified by the register, to be received in evidence.

43. *And be it enacted*, That the judges, surrogates, and other officers of the orphans' court, shall be entitled to demand and receive, for the services hereinafter mentioned, the fees thereunto annexed, and no more, and that a sheet or folio shall contain one hundred words.

Fees of the officers of the orphans' court.

Fees to be divided among the judges who are present in court when the service is performed.

The first motion in every cause, (but no case to be deemed a cause in court, unless there be adverse parties to the same)

fifty cents.

Every rule in a cause

twenty cents.

The trial and argument of every cause

fifty cents.

Every judgment and decree,

eighty cents.

Every appointment of auditors, guardians, trustees or commissioners

eighty cents.

Taxing every bill of costs

fifty cents.

Fees of surrogate and clerk of the orphans' court.

For drawing and taking deposition on will, and inventory

one dollar thirty-three cents.

Engrossing a last will and testament, each sheet

twelve cents.

Recording proof

sixty cents.

Recording a last will and testament, each sheet

eight cents.

Granting probate

one dollar.

Engrossing probate

eight cents.

Recording probate

twelve cents.

In taking depositions to codicils

sixty-two and a half cents.

Recording proof

sixty cents.

Recording and engrossing codicil, the same as will.

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For recording the name of each testator, the year in which the will was proved, and filing the will twenty-five cents.
Recording the name of each intestate, where administration hath been granted, and the year when granted twelve cents.
Filing every inventory twelve cents.

Surrogate's fees.

Drawing administration bond, and taking deposition thereon one dollar thirty-three cents.
Granting letters of administration one dollar.
Recording ditto twelve cents.
Filing administration bond ten cents.
Recording inventory, each sheet eight cents.
Drawing bond and petition for guardianship one dollar thirty-three cents.
Reading do. do. ten cents.
Filing do. do. ten cents.
Granting letters of guardianship one dollar.
Recording do. twelve cents.
Entering rule of court on appointment of guardian twenty cents.

Recording inventories, made by guardians, each sheet eight cents.

Drawing petition, stating a list of debts and credits on application for the sale of real estate, entering rule, and making copies one dollar fifty-five cents.

Exhibiting proofs of advertising rule to shew cause, entering decree, copies thereof, and receiving, filing, and recording report of sales four dollars twenty cents.

For advertising the rule of court, when done by the surrogate one dollar.

For services enjoined by the act concerning contracts of real estate, made by testators and intestates, in their lifetime, the same fees as allowed for the sale of land.

Drawing petition, reading, filing and recording decree, appointing commissioners for the division of real estate, and a certified copy of such decree three dollars forty cents.

Recording report of commissioners, each sheet eight cents.

Recording drafts, for each and every course three cents.
Drawing petition on application for rule to limit time to creditor's demand, entering the rule, advertising, entering the decree, making the rule absolute, and a certified copy of the decree four dollars twenty cents.

Drawing every citation or other process thirty cents.
Sealing the same fourteen cents.
Entering every action eight cents.
Entering the return of a writ ten cents.
Entering every rule or order of court ten cents.
Copy of such rules or order eight cents.
Searching the records twelve cents.

Swearing each witness six cents.
Reading every petition or other writing given in evidence ten cents.
Filing every citation, exception, or other paper eight cents.
Entering every discontinuance ten cents.
Entering every judgment or decree ten cents.
Entering and filing appeal twenty cents.
Copies of citations, exceptions, records, and other papers, each sheet eight cents.
Seal and certificate twenty-five cents.
Depositions taken in court, each sheet twelve cents.
Engrossing copy, when required eight cents.
Recording certified copy of proceedings in cases of lunacy, transmitted to the court, each sheet eight cents.
Transmitting bond of guardianship, in the above cases, or of trustees' bonds to the register's office twelve cents.
Recording discharges taken by executors and administrators on a final settlement, each sheet eight cents.
For auditing and stating the account of executors, administrators, guardians, or trustees, and reporting the same to the court, such fees as the court shall think reasonable.

Fees of sheriff.

Serving citation or other process one dollar fifty cents.
Returning every writ twelve cents.
Mileage, the same as allowed in serving writs issued out of the court of common pleas.

Fees of commissioners to divide land.

Each commissioner one dollar fifty cents per diem, for every day employed in the service, together with all actual expenses for surveying, chain-bearing, assistants, and other necessary charges.

Cryer's fees.

Making proclamation on application for the fulfilment of contracts eight cents.
Swearing a witness six cents.

44. *And be it enacted*, That the act, entitled "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the sixteenth day of December, one thousand seven hundred and eighty-four; and the act, entitled "A supplement to an act entitled an act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the twenty-second day of March, one thousand seven hundred and eighty six; and the act, entitled "An act to revive the orphans' court, and for other purposes therein mentioned," passed the twentieth day of November, one thousand seven hundred and ninety; and the act, entitled "An act concerning surrogates, and declaring what exemptions of

Acts repealed.

1820. wills and testaments shall be holden and received as good evidence," passed the seventh day of June, one thousand seven hundred and ninety-nine; and the act, entitled "An act concerning the surrogates in the several counties of this state," passed the eighteenth day of March, one thousand seven hundred and ninety-six, and the supplement thereto, passed the sixth day of March, one thousand seven hundred and ninety-seven; and the act, entitled "An act relative to the probate of wills, granting letters of administration and guardianship," passed the ninth day of November, one thousand eight hundred and three; and the act, entitled "An act relative to the mode of dividing real estates of intestates, situate in more counties than one," passed the sixth day of March, one thousand eight hundred and six; and the act, entitled "A supplement to the act concerning executors, and the administration and distribution of intestates' estates," passed the second day of March, one thousand seven hundred and ninety-five, which supplemental act was passed the fifth day of February, one thousand eight hundred and twelve; and the act, entitled "An act relative to the division of real estates of intestates," passed the sixth day of February, one thousand eight hundred and eighteen; and an act, entitled "An act to regulate fees of the judges, surrogates, clerks, and other officers of the orphans' court," passed the eighteenth day of February, one thousand eight hundred and nineteen, be, and the same are hereby repealed: *Provided nevertheless*, That nothing contained in this repealing section shall destroy, or any way impair any right acquired under the acts so repealed, nor invalidate or make void any proceedings legally had or done under the same.

See act concerning surrogate's office.

PAM. 203.
See ante 747.

AN ACT relative to commissioners for taking the acknowledgment and proof of deeds and conveyances.

Passed the 2d of November, 1820.

Former act explained.

BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That nothing in the repealing section of the act, entitled "A supplement to an act entitled an act respecting conveyances," passed June seventh, one thousand seven hundred and ninety-nine; and to an act, entitled "An act to register mortgages," passed June seventh, one thousand seven hundred and ninety-nine, which said supplemental act was passed the fifth day of June, one thousand eight hundred and twenty, shall be so construed, as to make void the appointment, or in any way affect the power of any commissioner appointed under the act passed the eighth of February, one thousand eight hundred and sixteen, or to render null, or in any way to invalidate or impair any act or proceeding of such commissioner, done or had by virtue of his appointment.

A further supplement to the act, entitled "An act for the punishment of crimes," passed the eighteenth day of March, one thousand seven hundred and ninety-six.

Passed the 3d of November, 1820.

1820.

PAM. 203.
See ante 244.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That when any slave shall hereafter be convicted of manslaughter, arson, burglary, rape or robbery, or of an assault and battery, with intent to commit murder, arson, burglary, rape, or robbery, or of a misdemeanor in poisoning, or attempting to poison, and so to endanger the life of any person whatsoever, and shall have judgment of imprisonment for the same, it shall be lawful for the governor of this state, at any time during the said imprisonment, by writing sealed with the great seal, to authorize and empower the owner of such slave to send him or her out of this state, and of the United States; and to direct the officer in whose custody such slave may be, to deliver him or her to such owner, for that purpose, accordingly: *Provided*, That such owner, before he shall obtain such authority, shall enter into bond to this state, with one or more surety or sureties, to be approved of by the governor, and filed in the secretary's office, in the penal sum of four hundred dollars; conditioned that such slave shall be sent so out of this state and of the United States, within ten days after such delivery by the said officer, and shall never return to this state without lawful permission: *And provided also*, That such owner, before the delivery of such slave by such officer, shall pay all the costs of the prosecution, imprisonment and maintenance of such slave, up to the time of such delivery.

Condemned criminal may be sent out of United States, &c.

2. *And be it enacted*, That the fifth and sixth sections of the act, entitled "A supplement to the act entitled an act for the punishment of crimes," passed the thirty-first day of March, one thousand eight hundred and twenty, be, and the same are hereby repealed.

AN ACT to repeal an act, entitled "A supplement to an act entitled an act for the relief of persons imprisoned for debt," passed the eighteenth day of March, one thousand seven hundred and ninety-five; and to an act, entitled "An act to repeal the several insolvent laws, passed since the eighteenth day of March, one thousand seven hundred and ninety-five;" and to revive the act, entitled "An act for the relief of persons imprisoned for debt."

PAM. 204.

Passed the 3d of November, 1820.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the act, entitled "A supplement to an act entitled an act for the relief of persons imprisoned for debt," passed the eighteenth day of March, one thousand seven hundred and ninety-five; and to an act, entitled "An act to repeal the several insol-

1820. vent laws passed since the eighteenth day of March, one thousand seven hundred and ninety-five; and to revive the act, entitled "An act for the relief of persons imprisoned for debt," passed the third day of March, one thousand eight hundred and twenty, be, and the same is hereby repealed.

2. *And be it enacted*, That in all cases where an inventory and bond shall have been given, agreeably to the provisions of the first section of the act hereby repealed, the same shall be valid; and all persons who have given such inventory and bond, shall be entitled to the benefit, and subject to the provisions of the said act, to all intents and purposes, as if this repealing act had not been passed.

PAM. 205.

AN ACT concerning the boundaries and jurisdiction of this state in the bay of Delaware.

Passed the 7th of November, 1820.

Commissioners to be appointed, &c.

1. **BE IT ENACTED** by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the governor be, and he hereby is, authorized, empowered and directed to appoint three commissioners on the part of this state, who shall be entitled to a reasonable compensation, to meet commissioners appointed by the competent authority of the state of Delaware, should the state of Delaware think proper to appoint such commissioners; which said commissioners of the state of New-Jersey and of the state of Delaware, when so met, shall have full power and authority to make and conclude an agreement between the said states of New-Jersey and Delaware, defining their respective boundaries, jurisdiction, rights to islands, subaqueous soil, fisheries and products of the river and bay of Delaware, southeasterly of the circular boundary between the states of Delaware and Pennsylvania.

2. *And be it enacted*, That the agreement so made by the commissioners, shall not be binding on the state of New-Jersey, until ratified and confirmed by the legislatures of the states of New-Jersey and Delaware, respectively.

3. *And be it enacted*, That the governor of this state transmit to the governor of the state of Delaware, a copy of this act, and request him to communicate it to the legislature of that state.

PAM. 205. See ante 430.

A further supplement to the act, entitled "An act making lands liable to be sold for the payment of debts," passed the eighteenth of February, seventeen hundred and ninety-nine.

Passed the 9th of November, 1820.

Application for order to orphans' court, &c.

BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That on any application hereafter made by the executor or ad-

ministrator of any testator or person dying intestate, to the orphans' court of any county in this state, for an order to shew cause, agreeably to the nineteenth section of the act to which this is a supplement, why so much of the said testator or intestate's real estate shall not be sold as will be sufficient to pay his debts, or the residue thereof, as the case may require, it shall be lawful for the said court to fix upon any day for the said hearing, not less than two months from the time of granting the order, any thing in the said nineteenth section to the contrary notwithstanding.

1820.

No day for hearing to be fixed under two months.

A further supplement to an act, entitled "An act making provision for carrying into effect the act for the punishment of crimes," passed February fifteenth, one thousand seven hundred and ninety-eight.

PAM. 206. See ante 325.

Passed the 11th of November, 1820.

1. **BE IT ENACTED** by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That at the first joint-meeting after the accounts of the state-prison are settled, three suitable persons shall be chosen as inspectors of the state-prison, who shall continue in office until the next session of the legislature, and until others are chosen in their stead; and at the first joint-meeting which shall happen after every annual settlement of the accounts of the state-prison, the inspectors shall be re-elected or others chosen in their stead; and if any vacancy shall happen by the death, removal, resignation, refusal to act, or other inability of any of the inspectors, in the recess of the legislature, it shall and may be lawful for the person administering the government to appoint a person or persons to fill the vacancy.

Vacancies, how filled.

2. *And be it enacted*, That the tenth section of the act, entitled "A supplement to an act, entitled an act making provision for carrying into effect the act for the punishment of crimes," passed February fifteenth, one thousand seven hundred and ninety-eight, which said supplement was passed on the thirtieth day of May, one thousand eight hundred and twenty, be, and the same is hereby repealed.

Section repealed.

AN ACT to repeal two certain acts therein named.

PAM. 206.

Passed the 14th of November, 1820.

BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the act, entitled "An act for the more effectual administration of justice," passed February the second, eighteen hundred and eighteen, and the supplement thereto, passed the fourteenth of the same month, and every section and clause contained in the said act, be, and the same are hereby repealed: *Provided*, That nothing herein contained shall be so construed as to affect any judgment or process issued under or by virtue of the above recited acts.

CHAP. DCCLXX.

An Act to suspend the Operation of part of a certain Act therein mentioned, so far as the same relates to a certain Tract of Tide Swamps and Meadows in the County of Bergen.

SECT. 1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the owners of a certain tract of tide swamps and meadows, in the county of Bergen, and township of Bergen, lying between the fast land of Secaucus and the fast land of Bergen woods, which tract is already enclosed by banks, dams and other waterworks, to prevent the tide from overflowing the same, shall be and they hereby are empowered to proceed, in every respect, as is directed by the act, entitled, "An act to enable the owners of tide swamps and marshes to improve the same, and the owners of meadows already banked in and held by different persons, to keep the same in good repair," passed November the twenty-ninth, seventeen hundred and eighty-eight, to support and maintain the said banks, dams and waterworks, and to erect such others as may be necessary to complete the same; any thing in the last providing clause in the first section of the before recited act notwithstanding.

C. Passed at Trenton, February 16, 1799.

CHAP. DCCLXXI.

An Act supplementary to the Act concerning the Supreme and Circuit Courts.

SECT. 1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the circuit court in the county of Essex, from and after the first day of January next, shall be held annually on the second Tuesday in April, instead of the second Tuesday in January; and that the circuit court in the county of Salem, shall be held annually on the second Tuesday in June and the first Tuesday in December, instead of the first Tuesday in March and the third Tuesday in September.

Circuit courts in Essex and Salem when to be held.

Courts of general gaol delivery to be held as heretofore.

2. And be it further enacted, That courts of general gaol delivery, shall be held in the respective counties of this state, at

the times of holding the courts of oyer and terminer, whether the same be at the terms or times appointed by law, or at the times appointed by one of the justices of the supreme court, in pursuance of the act whereof mention is above made.

C. Passed at Trenton, February 16, 1799.

CHAP. DCCLXXII.

An Act making Lands liable to be sold for the Payment of Debts.

SECT. 1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That all lands, tenements, hereditaments and real estate, shall be and hereby are made liable to be levied upon and sold, by executions to be issued on judgments, which are or shall be obtained in any court of record of this state (except justices' courts constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money and costs, so recovered or to be recovered.

Lands liable to be sold for debts, &c.

2. And be it enacted, That no judgment shall affect or bind any lands, tenements, hereditaments or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court.

Lands to be bound from time of entering judgment.

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

Goods to be bound from the time of delivering execution to sheriff.

4. And be it enacted, That where sundry writs of execution shall be issued against the goods and chattels, lands, tenements, hereditaments and real estate of the same person, and sufficient cannot be found to satisfy all the sums commanded to be made, then the like priority and preference shall be given in such cases, as is given by the preceding section of this act, in writs of execution against the goods only, and all disputes respecting the same shall be adjudged and determined accord-

Of priority of executions.

ingly; and for that purpose the like endorsement as aforesaid, shall be made on the said writs by the proper officer, of the time that he shall have respectively received the same.

Of the form of execution.

5. *And be it enacted*, That upon judgment obtained or to be obtained for debt, damages and costs, or other sum of money, in the supreme court, or any of the inferior courts of common pleas of this state, the party obtaining the same, may have an execution against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of the party against whom such judgment is or shall be awarded; but no execution shall be issued against the proper goods and chattels, lands, tenements, hereditaments and real estate of any executor, administrator, heir or devisee, unless he or she shall have made his or her estate liable for the money so recovered by false pleading or otherwise.

Duty of sheriff upon execution.

6. *And be it enacted*, That in every writ of execution, which shall be issued against lands, tenements, hereditaments and real estate, the sheriff or other officer, to whom the said writ may be directed, shall be commanded, that of the goods and chattels, in his county, of the party against whom such execution issues, he cause to be made the debt, damages and costs, or sum of money mentioned in the said execution; and if sufficient goods and chattels of the said party cannot be found in his county, that then he cause the whole or the residue, as the case may require, of the said debt, damages and costs, or sum of money, to be made of the lands, tenements, hereditaments and real estate, whereof the said party was seised, on the day when the said lands, tenements, hereditaments and real estate became liable to such debt, damages and costs, or sum of money, specifying the day particularly, or at any time afterwards, in whose hands soever the same may then be: but when such execution shall be issued against tenants, or heirs or devisees (unless they shall have made their estate liable by false pleading or otherwise) it shall only command the sheriff or other officer, that of the lands, tenements, hereditaments and real estate, whereof the ancestor, testator or person deceased, was seised on the day when the said lands, tenements, hereditaments and real estate became liable as aforesaid, or at any time afterwards, or at the time of his or her death, as the case may require, he cause to be made the debt, damages and costs, or sum of money in the said writ mentioned.

Real debt, &c. to be endorsed.

7. *And be it enacted*, That the party, at whose instance any writ of execution shall issue against the body, or against the goods and chattels, or against the goods and chattels, lands,

tenements, hereditaments and real estate of any person, shall endorse on the said writ, before it be sealed, the debt, damages and costs, or sum of money really due and to be made.

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

9. *And be it enacted*, That the sheriff or other officer, who, by virtue of such writ of execution, levies on any lands, tenements, hereditaments and real estate, shall give notice, by advertisements, signed by himself, and put up at five or more public places in the county, one whereof to be in the township where the said lands, tenements, hereditaments and real estate do lie, of the time and place where they will be exposed to sale, at least two months before the time appointed for selling them; and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder.

10. *And be it enacted*, That it shall be lawful for the said sheriff or other officer to make two adjournments, and no more, of the sale of lands, tenements, hereditaments and real estate, so by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftener or for a longer time, without permission, in writing, previously obtained of the party, at whose instance the said writ of execution was issued, he shall be and hereby is made liable to the amount of the debt or damages and costs, or sum or sums of money, mentioned in the said writ, with interest; and for the recovery thereof may be amerced and proceeded against in the manner prescribed in and by the twenty-second section of the act, entitled, "An act concerning sheriffs:" *Provided always*, That if the said sheriff or other officer shall, after two adjournments as aforesaid, sell the lands, tenements, hereditaments and real estate, and bring the whole amount of the product of such sale (after deducting his lawful fees) into the court from whence such execution issued, at any time before the entry of such amercement against him as aforesaid, the said sheriff or other officer shall be exonerated from all liability to the said amercement.

11. *And be it enacted*, That the person whose lands, tenements, hereditaments and real estate are so taken in execution,

may, if part of them be sufficient to satisfy such execution, elect what part thereof shall be sold; and thereupon it shall be the duty of the said sheriff or other officer to sell the part so elected, and no other, if it be sufficient: *Provided always*, That such election shall be made in writing, signed by such person, and delivered to the said sheriff or other officer, at least twenty days previous to the time appointed for the sale.

Sheriff to make deeds.

12. *And be it enacted*, That the sheriff or other officer, who, by virtue of such writ or writs of execution, shall sell as aforesaid the lands, tenements, hereditaments and real estate, or any part or parcel of them so levied upon, shall make to the purchaser thereof as good and sufficient a deed or conveyance for the lands, tenements, hereditaments and real estate so sold, as the person against whom the said writ or writs of execution were issued, might or could have made for the same at or before the time of tendering judgment against him or her; which deed or conveyance shall transfer to and vest in the said purchaser, as good and perfect an estate to the premises therein mentioned, as the person against whom the said writ or writs of execution were issued, was seized of or entitled to at or before the said judgment, and as fully to all intents and purposes, as if such person had sold the said lands, tenements, hereditaments and real estate to such purchaser, and had received the consideration money, and signed, sealed and delivered a deed for the same: *And further*, That the said deed or conveyance, so to be made by the said sheriff or officer, shall recite the writ or writs of execution, by virtue whereof the said lands, tenements, hereditaments and real estate therein described, were sold as aforesaid.

13. And whereas other judgments, statutes and recognizances, besides those or some of those, by virtue whereof the sale aforesaid was made, might affect the lands, tenements, hereditaments and real estate so sold, if no provision be made to remedy the same; and whereas the persons who have not taken or will not take out executions upon their judgments, statutes or recognizances, ought not to hinder or prevent such as do take out executions, from having the proper effect and fruits thereof; Therefore, *Be it enacted*, That the purchaser, his heirs and assigns, shall hold the lands, tenements, hereditaments and real estate, by him or her purchased as aforesaid, free and clear of all other judgments, recognizances, statutes-merchant and statutes-staple whatsoever, on or by virtue of which no execution has been taken out and executed on the lands, tenements, hereditaments and real estate so purchased.

Purchaser to hold lands clear of judgments &c.

14. *And be it enacted*, That if any judgment or execution (the said execution being recorded as aforesaid) by virtue whereof

such sale as aforesaid shall be made of any lands, tenements, hereditaments and real estate, shall be reversed for error, such reversal shall not be given in evidence, or be of any force or avail against any *bona fide* purchaser under the said judgment or execution; but the said purchaser, his heirs and assigns, shall hold the said lands, so *bona fide* purchased, notwithstanding such reversal, if it be posterior to the said purchase; and further, such reversal shall only operate against the defendant in error, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the lands, tenements, hereditaments and real estate so sold as aforesaid.

Reversal of judgment for error not to affect bona fide purchaser.

15. *And be it enacted*, That if any sheriff, who hath made or shall make sale of any lands, tenements, hereditaments and real estate, by virtue of an execution against the same, shall abscond or depart from the state, or be disqualified by law, or rendered unable by death, or otherwise incapable, to make a deed or conveyance for the same, it shall be lawful for any succeeding sheriff of the county, on receiving a certificate from the inferior court of common pleas of such county, signed by the clerk by order of the said court, setting forth, that sufficient proof hath been made to the said court, that such sale was fairly and legally made; and on tender of the purchase-money, or if the purchase-money or any part of it has been paid, then on proof of such payment; and on tender of the residue, if any be, to sign, seal and deliver to the said purchaser or his legal representative, a deed or conveyance of the lands, tenements, hereditaments and real estate so sold; which deed shall be as good and valid, and shall have the same force and effect, as if the sheriff who made such sale, had signed, sealed and delivered a deed of conveyance for the same in due form of law.

Sheriff being incapable to make deed, succeeding sheriff may execute deed.

16. *And be it enacted*, That if such succeeding sheriff, receive any money by virtue of the preceding section of this act, he shall pay the same to the person thereunto entitled by law.

17. *And be it enacted*, That all proprietaries, rights, share and shares of propriety and rights to unlocated lands, shall be and hereby are made liable to be levied upon and sold by executions to be issued on judgments, for the payment of the debt or damages and costs, or sum of money thereby recovered, in the same manner as lands, tenements, hereditaments and real estate are made liable to be levied upon and sold by virtue of this act; but every such execution shall issue out of the supreme court; and if the said shares or rights be within the western division, shall be directed to the sheriff of the county

Proprietary rights may be levied on and sold.

of Burlington, and if within the eastern division, shall be directed to the sheriff of the county of Middlesex; and further, that the said sheriff shall give notice, by advertisements, signed by himself, and put up in five or more public places in the said county, and by an advertisement in one of the newspapers published in this state, of the time and place of exposing such shares or rights to sale, at least two months before the time appointed for selling the same.

To prevent a final execution not to affect lands of the deceased. 18. *And be it enacted,* That no lands, tenements, hereditaments or real estate, of any testator or intestate, shall be sold or in any wise affected by any judgment or execution against executors or administrators.

Time of execution, &c. where personal estate of deceased is not sufficient to pay debts. 19. *And be it enacted,* That when any executor or administrator shall discover or believe, that the personal estate of his testator or intestate is insufficient to pay his debts, then it shall be the duty of such executor or administrator, as soon as conveniently may be, to make and exhibit, under oath, a just and true account of the said personal estate and debts, as far as he can discover the same, to the orphan's court of the county, where the lands, tenements, hereditaments and real estate, of which the said testator or intestate died or shall die seised, do lie, and request their aid in the premises; and the said court shall thereupon make an order, directing all persons interested in such lands, tenements, hereditaments and real estate, to appear before them at a certain day and place, in the said order to be mentioned, not less than two nor more than three months after the day of making such order, to shew cause, why so much of the said lands, tenements, hereditaments and real estate of the said testator or intestate should not be sold, as will be sufficient to pay his debts or the residue thereof, as the case may require; which order, signed by the surrogate or clerk of the said court, shall be immediately thereafter set up at three of the most public places in the said county for six weeks successively, and be published for the same time in one or more of the newspapers printed in this state.

Orphan's court in such case, to direct lands to be sold for the payment of debts. 20. *And be it enacted,* That the said orphan's court shall, at the time and place mentioned in the said order, or at such other time and place as they may then appoint, hear and examine the allegations and proofs of the said executor or administrator, and other persons interested; and if on full examination the said court shall find, that the personal estate of the said testator or intestate is not sufficient to pay his debts, the said court shall order and direct the executor or administrator to sell the whole, if necessary, of the lands, tenements, hereditaments and real estate of the said testator or intestate, for the payment of his debts, or so much thereof as will be suffi-

cient for that purpose; and when a part only of the said lands, tenements, hereditaments and real estate is sufficient, such order shall specify the part to be sold: *Provided always,* That where any houses and lots, or lands are so circumstanced, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the said court may, at their discretion, order the whole or a greater part than is necessary to pay such debts, to be sold; and the surplus money arising from such sale, shall be distributed among the heirs or devisees, according to the law of descents in the former, and the will of the testator in the latter case; and further, that the heir or devisee, whose lands, tenements, hereditaments and real estate, so descending or devised to him have been sold as aforesaid, for the payment of the debts of his intestate or testator, may compel all others claiming or holding under such intestate or testator, to contribute, in proportion to their respective interests, so as to equalize the burthen or loss.

How to be substantiated and sold. 21. *And be it enacted,* That the executor or administrator, who may be ordered to sell any lands, tenements, hereditaments or real estate of any testator or intestate, shall give notice, by advertisements, signed by himself, and set up at five or more public places in the county, of the time and place of selling the premises, at least two months before the time appointed for selling them, and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder; and the executor or administrator making the said sale, shall report in writing all proceedings thereon to the next orphan's court after such sale: *Provided always,* That the said executor or administrator may adjourn the said sale from time to time, not exceeding two months in the whole.

Executors, &c. to make a deed. 22. *And be it enacted,* That the said executor or administrator shall and hereby is authorized to make a deed to the purchaser for the lands, tenements, hereditaments and real estate so sold; which deed shall set forth the said order at large, and shall vest in the said purchaser as good and perfect an estate in the premises therein mentioned, as the heirs or devisees of the said testator or intestate were seised of or entitled to, at the time of the making of the said order by such orphan's court.

Monies received from sale of lands after to pay debts. 23. *And be it enacted,* That the monies arising from such sale of the lands, tenements, hereditaments and real estate of such testator or intestate, shall be received by the said executor or administrator, and be considered as assets in his hands for the payment of debts, and the surplus, if any, shall be distributed among the heirs or devisees in the proportion and manner directed by the twentieth section of this act.

24: *Provident always, and be it further enacted,* That no part of the lands, tenements, hereditaments and real estate of any testator or intestate, shall be ordered by the said orphan's court to be sold as aforesaid, until the executor or administrator shall have applied the personal estate, or such part thereof as may have come to his hands, towards payment of the debts of such testator or intestate; and no more of the said lands, tenements, hereditaments and real estate, except as is excepted in the twentieth section of this act, shall be sold than may be necessary to pay the residue of the said debts: *Provided also,* That nothing herein contained shall prevent or bar any person from bringing and maintaining any action against an executor or administrator, for or in respect of the personal estate of his testator or intestate, or for or in respect of any waste or misapplication thereof by such executor or administrator.

Former acts repealed.

25. *And be it enacted,* That the act, entitled, "An act subjecting real estates in the province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon," passed the second day of December, in the year of our Lord, one thousand seven hundred and forty-three, and the act, entitled, "An act to amend an act, entitled, 'An act subjecting real estates in the province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon,'" passed the eighth day of June, in the year of our Lord, one thousand seven hundred and seventy-nine, and the act, entitled, "An act directing the mode by which shares of property and rights to unlocated lands in the state of New-Jersey, may be sold for the payment of debts," passed the twenty-third day of November, in the year of our Lord, one thousand seven hundred and eighty-five, and the eleventh and twelfth sections of the act, entitled, "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphan's court in the several counties of the state," passed the sixteenth day of December, in the year of our Lord, one thousand seven hundred and eighty-four, and all and every other act and acts, and part and parts of any act within the purview of this act, be and they are hereby repealed; but such repeal shall not extend to or affect any execution heretofore issued out of any of the courts of record in this state, against lands, tenements, hereditaments and real estate, or against proprietary shares and rights to unlocated lands, or any order heretofore made by any orphan's court for the sale of real estate; but such execution and order shall be of the same validity, and be proceeded upon to effect, in the like manner as if this act had not been made.

A. Passed in Trenton, February 18, 1799.

C H A P. DCCLXXVIII.

An Act to issue Commissions for the Examination of Witnesses, and to take their Depositions in certain Cases.

SECT. 1. **BE** IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That if a material witness in any action or suit in the court of chancery, or in the supreme court, or any of the inferior courts of common pleas of this state, reside out of this state, or if in this state, be ancient or very infirm, or be sick, or bound on a voyage, or about to go out of this state, it shall and may be lawful for the said court, in which such action or suit is depending, on affidavit or proof thereof to the satisfaction of the said court, and upon motion made by or in behalf of either party in open court, and on such terms as the said court shall direct, to award and issue, under the seal of the said court, a commission to such person or persons, as the said court may think fit, authorizing such person or persons, or any two or more of such persons, to examine *de bene esse* the said witness on oath or affirmation, upon the interrogatories annexed to the said commission, and to reduce such examination to writing, and to return the same, annexed to the said writ, unto the said court, with all convenient speed; and the name of every witness, to be so examined by virtue of such commission, shall be inserted in the said commission; and the interrogatories for the examination of such witness shall be drawn and signed by the parties or their counsel in the cause, in which the testimony is to be used, or such of them as shall request the said commission, and be approved of by the said court, or one of the judges thereof, and shall be annexed to the same commission; and each party shall be at liberty, with the approbation of the said court or judge, to insert in the said interrogatories such questions as he or she may think proper or necessary.

Comrs may if see commissions for the examination of witnesses upon interrogatories

Vide plac. Com. Vol. 3. Page 70.

2. *And be it enacted,* That the said commissioner or commissioners, or any two or more of them, shall and may on oath or affirmation, examine every witness named in the said commission, or such as can be met with, and cause the examination of the said witness to be reduced to writing, and signed by such witness, and the said commissioner or commissioners shall then also sign the same, and such examination, and all exhibits produced to the said commissioner or commissioners, and proved by such witness, shall be annexed to the said commission, and returned to the court out of which such commis-

Commission and examination. Ac. has to be returned

II. AND BE IT ENACTED, That when any judgment shall be had against any constable for any delinquency in his office, execution shall immediately be issued against him for debt and costs.

A. D. 1799.

On judgment against constable, execution to issue immediately.

III. AND BE IT ENACTED, That the twenty eighth section of the act, entitled, "An Act constituting courts for the trial of small causes," be, and the same is hereby repealed.

Section 28th of former act repealed.

An ACT making lands liable to be sold for the payment of debts.

Passed the 18th of February, 1799.

I. **BE** IT ENACTED *by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,* That all lands, tenements, hereditaments and real estate, shall be and hereby are made liable to be levied upon and sold by executions to be issued on judgments, which are or shall be obtained in any court of record of this State (except justices' courts constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money, and costs, so recovered or to be recovered.

Lands made liable to be taken and sold by executions.

II. AND BE IT ENACTED, That no judgment shall affect or bind any lands, tenements, hereditaments or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court.

Lands bound from the time of entering judgment.

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

Goods bound from the time of delivering execution to sheriff.

Time of such delivery to be endorsed on the execution.

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

The like rule of preference to obtain in executions against lands as in executions against goods, when delivered on the same day.

V. AND BE IT ENACTED, That upon judgment obtained or to be obtained for debt, damages, and costs, or other sum of money, in the supreme court, or any of the inferior courts of common pleas of this State, the party, obtaining the same, may have an execution against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of the party, against whom such judgment is or shall be awarded; but no execution shall be issued against the proper goods and chattels, lands, tenements, hereditaments and real estate of any executor, administrator, heir or devisee, unless he or she shall have made his or her estate liable for the money so recovered by false pleading or otherwise.

Execution may be issued against the body or estate of the party.

VI. AND BE IT ENACTED, That in every writ of execution, which shall be issued against lands, tenements, hereditaments and real estate, the sheriff or other officer, to whom the said writ may be directed, shall be commanded, that of the goods and chattels, in his county, of the party, against whom such execution issues, he cause to be made the debt, damages, and costs, or sum of money mentioned in the said execution; and if sufficient goods and chattels of the said party cannot be found in his county, that then he cause the whole or the residue, as

In what form and manner execution shall issue against lands and real estate.

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

Sum due to be endorsed on the execution.

VII. AND BE IT ENACTED, That the party, at whose instance any writ of execution shall issue against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of any person, shall endorse on the said writ, before it be sealed, the debt, damages, and costs, or sum of money, really due and to be made.

Executions against lands to be recorded.

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

Lands taken in execution to be advertised two months before the time of sale.

IX. AND BE IT ENACTED, That the sheriff or other officer, who, by virtue of such writ of execution, levies on any lands, tenements, hereditaments and real estate, shall give notice, by advertisements, signed by himself, and put up at five or more public places in the county, one whereof to be in the township, where the said lands, tenements, hereditaments and real estate do lie, of the time and place where they will be exposed to sale, at least two months before the time appointed for selling them; and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder.

The sheriff may adjourn the said sale twice, and no more, and then not exceeding one month each time.

X. AND BE IT ENACTED, That it shall be lawful for the said sheriff or other officer to make two adjournments, and no more, of the sale of lands, tenements, hereditaments and real estate, so by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftner, or for a longer time, without permission, in writing, previously obtained of the party, at whose instance the said writ of execution was issued, he shall be, and hereby is made liable to the amount of the debt, or damages and costs, or sum or sums of money, mentioned in the said writ, with interest; and for the recovery thereof may be amerced and proceeded against in the manner prescribed in and by the twenty second section of the act, entitled, "An Act concerning sheriffs." PROVIDED ALWAYS, That if the said sheriff or other officer shall, after two adjournments as aforesaid, sell the lands, tenements, hereditaments and real estate, and bring the whole amount of the product of such sale (after deducting his lawful fees) into the court, from whence such execution issued, at any time before the entry of such amercement against him as aforesaid, the said sheriff or other officer shall be exonerated from all liability to the said amercement.

But if the sheriff, after two adjournments, and before amercement, bring the money into court, he shall be exonerated.

The party, whose lands are taken in execution, may elect what part thereof shall be sold.

XI. AND BE IT ENACTED, That the person, whose lands, tenements, hereditaments and real estate are so taken in execution, may, if part of them be sufficient to satisfy such execution, elect what part thereof shall be sold; and thereupon it shall be the duty of the said sheriff or other officer to sell the part so elected, and no other, if it be sufficient: PROVIDED ALWAYS, That such election shall be made in writing, signed by such person, and delivered to the said sheriff or other officer, at least twenty days previous to the time appointed for the sale.

XII. AND

II. AND BE IT ENACTED, That when any judgment shall be had against any constable for any delinquency in his office, execution shall immediately be issued against him for debt and costs.

A. D. 1799.

On judgment against constable, execution to issue immediately.

III. AND BE IT ENACTED, That the twenty eighth section of the act, entitled, "An Act constituting courts for the trial of small causes," be, and the same is hereby repealed.

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An ACT making lands liable to be sold for the payment of debts.

Passed the 18th of February, 1799.

I. **BE** IT ENACTED *by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,* That all lands, tenements, hereditaments and real estate, shall be and hereby are made liable to be levied upon and sold by executions to be issued on judgments, which are or shall be obtained in any court of record of this State (except justices' courts constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money, and costs, so recovered or to be recovered.

Lands made liable to be taken and sold by executions.

II. AND BE IT ENACTED, That no judgment shall affect or bind any lands, tenements, hereditaments or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court.

Lands bound from the time of entering judgment.

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

Goods bound from the time of delivering execution to sheriff.

Time of such delivery to be endorsed on the execution.

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

The like rule of preference to obtain in executions against lands as in executions against goods, when delivered on the same day.

V. AND BE IT ENACTED, That upon judgment obtained or to be obtained for debt, damages, and costs, or other sum of money, in the supreme court, or any of the inferior courts of common pleas of this State, the party, obtaining the same, may have an execution against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of the party, against whom such judgment is or shall be awarded; but no execution shall be issued against the proper goods and chattels, lands, tenements, hereditaments and real estate of any executor, administrator, heir or devisee, unless he or she shall have made his or her estate liable for the money so recovered by false pleading or otherwise.

Execution may be issued against the body or estate of the party.

VI. AND BE IT ENACTED, That in every writ of execution, which shall be issued against lands, tenements, hereditaments and real estate, the sheriff or other officer, to whom the said writ may be directed, shall be commanded, that of the goods and chattels, in his county, of the party, against whom such execution issues, he cause to be made the debt, damages, and costs, or sum of money mentioned in the said execution; and if sufficient goods and chattels of the said party cannot be found in his county, that then he cause the whole or the residue, as

In what form and manner execution shall issue against lands and real estate.

XII. AND BE IT ENACTED, That the sheriff or other officer, who, by virtue of such writ or writs of execution, shall sell as aforesaid the lands, tenements, hereditaments and real estate, or any part or parcel of them, so levied upon, shall make to the purchaser thereof as good and sufficient a deed or conveyance for the lands, tenements, hereditaments and real estate so sold, as the person, against whom the said writ or writs of execution were issued might or could have made for the same at or before the time of rendering judgment against him or her; which deed or conveyance shall transfer to and vest in the said purchaser, as good and perfect an estate to the premises therein mentioned, as the person, against whom the said writ or writs of execution were issued, was seised of or entitled to at or before the said judgment, and as fully, to all intents and purposes as if such person had sold the said lands, tenements, hereditaments and real estate to such purchaser, and had received the consideration money, and signed, sealed, and delivered a deed for the same: AND FURTHER, That the said deed or conveyance, so to be made by the said sheriff or officer, shall recite the writ or writs of execution, by virtue whereof the said lands, tenements, hereditaments, and real estate therein described, were sold as aforesaid.

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Sheriff to make deeds for lands by him sold in virtue of executions; which deeds shall be as good and effectual as if they had been made by the party.

XIII. AND WHEREAS other judgments, statutes, and recognizances, besides those, or some of those, by virtue whereof the sale aforesaid was made, might affect the lands, tenements, hereditaments and real estate so sold, if no provision be made to remedy the same; and whereas the persons, who have not taken, or will not take out executions upon their judgments, statutes, or recognizances, ought not to hinder or prevent such as do take out executions from having the proper effect and fruits thereof; THEREFORE, *Be it enacted,* That the purchaser, his heirs and assigns, shall hold the lands, tenements, hereditaments and real estate, by him or her purchased as aforesaid, free and clear of all other judgments, recognizances, statutes-merchant and statutes-staple whatsoever, on or by virtue of which no execution has been taken out and executed on the lands, tenements, hereditaments and real estate so purchased.

Land sold by sheriff to be clear of all judgments, on which executions have not been issued.

XIV. AND BE IT ENACTED, That if any judgment or execution (the said execution being recorded as aforesaid) by virtue whereof such sale as aforesaid shall be made of any lands, tenements, hereditaments and real estate, shall be reversed for error, such reversal shall not be given in evidence, or be of any force or avail against any bona fide purchaser under the said judgment or execution; but the said purchaser, his heirs and assigns, shall hold the said lands, so bona fide purchased, notwithstanding such reversal, if it be posterior to the said purchase; and further, such reversal shall only operate against the defendant in error, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the lands, tenements, hereditaments and real estate so sold as aforesaid.

Reversal of judgment for error not to affect lands sold prior to such reversal.

XV. AND BE IT ENACTED, That if any sheriff, who hath made or shall make sale of any lands, tenements, hereditaments and real estate, by virtue of an execution against the same, shall abscond, or depart from the State, or be disqualified by law, or rendered unable by death, or otherwise incapable, to make a deed or conveyance for the same, it shall be lawful for any succeeding sheriff of the county, on receiving a certificate from the inferior court of common pleas of such county, signed by the clerk by order of the said court, setting forth, that sufficient proof hath been made to the said court, that such sale was fairly and legally made, and on tender of the purchase money, or if the purchase money or any part of it has been paid, then on proof of such payment, and on tender of the residue, if any be, to sign, seal and deliver to the said purchaser, or his legal representative, a deed or conveyance of the lands, tenements, hereditaments and real estate so sold; which deed shall be as good and valid, and shall have the same force and effect, as if the sheriff, who made such sale, had signed, sealed, and delivered a deed of conveyance for the same in due form of law.

How and in what cases a succeeding sheriff may make deed for lands sold by his predecessor in office.

XVI. AND BE IT ENACTED, That if such succeeding sheriff receive any money by virtue of the preceding section of this act, he shall pay the same to the person thereunto entitled by law.

How to pay the money received thereon.

XVII. AND BE IT ENACTED, That all proprieties, rights, share and shares of propriety

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

Sum due to be endorsed on the execution.

VII. AND BE IT ENACTED, That the party, at whose instance any writ of execution shall issue against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments and real estate of any person, shall endorse on the said writ, before it be sealed, the debt, damages, and costs, or sum of money, really due and to be made.

Executions against lands to be recorded.

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

Lands taken in execution to be advertised two months before the time of sale.

IX. AND BE IT ENACTED, That the sheriff or other officer, who, by virtue of such writ of execution, levies on any lands, tenements, hereditaments and real estate, shall give notice, by advertisements, signed by himself, and put up at five or more public places in the county, one whereof to be in the township, where the said lands, tenements, hereditaments and real estate do lie, of the time and place where they will be exposed to sale, at least two months before the time appointed for selling them; and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder.

The sheriff may adjourn the said sale twice, and no more, and then not exceeding one month each time.

X. AND BE IT ENACTED, That it shall be lawful for the said sheriff or other officer to make two adjournments, and no more, of the sale of lands, tenements, hereditaments and real estate, so by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftner, or for a longer time, without permission, in writing, previously obtained of the party, at whose instance the said writ of execution was issued, he shall be, and hereby is made liable to the amount of the debt, or damages and costs, or sum or sums of money, mentioned in the said writ, with interest; and for the recovery thereof may be amerced and proceeded against in the manner prescribed in and by the twenty second section of the act, entitled, "An Act concerning sheriffs." PROVIDED ALWAYS, That if the said sheriff or other officer shall, after two adjournments as aforesaid, sell the lands, tenements, hereditaments and real estate, and bring the whole amount of the product of such sale (after deducting his lawful fees) into the court, from whence such execution issued, at any time before the entry of such amercement against him as aforesaid, the said sheriff or other officer shall be exonerated from all liability to the said amercement.

But if the sheriff, after two adjournments, and before amercement, bring the money into court, he shall be exonerated.

The party, whose lands are taken in execution, may elect what part thereof shall be sold.

XI. AND BE IT ENACTED, That the person, whose lands, tenements, hereditaments and real estate are so taken in execution, may, if part of them be sufficient to satisfy such execution, elect what part thereof shall be sold; and thereupon it shall be the duty of the said sheriff or other officer to sell the part so elected, and no other, if it be sufficient: PROVIDED ALWAYS, That such election shall be made in writing, signed by such person, and delivered to the said sheriff or other officer, at least twenty days previous to the time appointed for the sale.

XII. AND

the premises, at least two months before the time appointed for selling them, and shall, at the time and place so appointed, between the hours of twelve and five in the afternoon, expose the said lands, tenements, hereditaments and real estate to sale by public vendue, and strike off the same to the highest bidder; and the executor or administrator, making the said sale, shall report in writing all proceedings thereon to the next orphan's court, after such sale: PROVIDED ALWAYS, That the said executor or administrator may adjourn the said sale from time to time, not exceeding two months in the whole.

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XXII. AND BE IT ENACTED, That the said executor or administrator shall, and hereby is authorised to make a deed to the purchaser for the lands, tenements, hereditaments and real estate so sold; which deed shall set forth the said order at large, and shall vest in the said purchaser as good and perfect an estate in the premises therein mentioned, as the heirs or devisees of the said testator or intestate were seised of or entitled to, at the time of the making of the said order by such orphan's court.

For lands so sold the executor or administrator to make deed.

XXIII. AND BE IT ENACTED, That the monies, arising from such sale of the lands, tenements, hereditaments and real estate of such testator or intestate, shall be received by the said executor or administrator, and be considered as assets in his hands for the payment of debts, and the surplus, if any, shall be distributed among the heirs or devisees in the proportion and manner directed by the twentieth section of this act.

Monies received by executor or administrator from sale of lands, to be assets for the payment of debts.

XXIV. PROVIDED ALWAYS, and be it further enacted, That no part of the lands, tenements, hereditaments and real estate of any testator or intestate, shall be ordered by the said orphan's court to be sold as aforesaid, until the executor or administrator shall have applied the personal estate, or such part thereof as may have come to his hands, towards payment of the debts of such testator or intestate; and no more of the said lands, tenements, hereditaments and real estate, except as is excepted in the twentieth section of this act, shall be sold, than may be necessary to pay the residue of the said debts: PROVIDED ALSO, That nothing herein contained shall prevent or bar any person from bringing and maintaining any action against an executor or administrator, for or in respect of the personal estate of his testator or intestate, or for or in respect of any waste or misapplication thereof by such executor or administrator.

Lands of testator or intestate not to be sold till the personal estate be applied to the payment of debts.

XXV. AND BE IT ENACTED, That the act, entitled, "An Act subjecting real estates in the Province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon," passed the second day of December, in the year of our Lord, one thousand, seven hundred and forty three; and the act, entitled, "An Act to amend an act, entitled, "An Act subjecting real estates in the Province of New-Jersey to the payment of debts, and directing the sheriff in his proceedings thereon," passed the eighth day of June, in the year of our Lord, one thousand, seven hundred and seventy nine; and the act, entitled, "An Act directing the mode by which shares of propriety and rights to unlocated lands in the State of New-Jersey, may be sold for the payment of debts," passed the twenty third day of November, in the year of our Lord, one thousand, seven hundred and eighty five; and the eleventh and twelfth sections of the act, entitled, "An Act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphan's court in the several counties of the State," passed the sixteenth day of December, in the year of our Lord, one thousand, seven hundred, and eighty four, and all and every other act and acts, and part and parts of any act, within the purview of this act, be, and they are hereby repealed; but such repeal shall not extend to or affect any execution heretofore issued, out of any of the courts of record in this State, against lands, tenements, hereditaments and real estate, or against proprietary shares and rights to unlocated lands, or any order heretofore made by any orphan's court for the sale of real estate; but such execution and order shall be of the same validity, and be proceeded upon to effect in the like manner, as if this act had not been made.

This act not to prevent suits against executor or administrator for waste, &c.

Certain acts, &c. repealed.

But such repeal not to affect antecedent executions and orders.

A. D. 1799.

Proprietary rights may be levied on and sold by executions.

Judgment or execution against executors or administrators, not to affect lands of the testator or intestate.

If the personal estate of the testator or intestate be insufficient to pay his debts, the executor or administrator may make application to the orphan's court; whose duty it shall be to order all persons interested to appear before them on a certain day to shew cause, why the real estate should not be sold.

If the personal estate be inadequate to pay the debts of the testator or intestate, the orphan's court may direct the real estate to be sold.

Lands ordered to be sold by the orphan's court to be advertised two months before the time of sale.

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

XVIII. AND BE IT ENACTED, That no lands, tenements, hereditaments or real estate, of any testator or intestate, shall be sold or in any wise affected by any judgment or execution against executors or administrators.

XIX. AND BE IT ENACTED, That when any executor or administrator shall discover or believe, that the personal estate of his testator or intestate is insufficient to pay his debts, then it shall be the duty of such executor or administrator, as soon as conveniently may be, to make and exhibit, under oath, a just and true account of the said personal estate and debts, as far as he can discover the same, to the orphan's court of the county, where the lands, tenements, hereditaments and real estate, of which the said testator or intestate died or shall die seised, do lie, and request their aid in the premises; and the said court shall thereupon make an order, directing all persons interested in such lands, tenements, hereditaments and real estate to appear before them at a certain day and place, in the said order to be mentioned, not less than two nor more than three months after the day of making such order, to shew cause, why so much of the said lands, tenements, hereditaments and real estate of the said testator or intestate should not be sold, as will be sufficient to pay his debts, or the residue thereof, as the case may require; which order, signed by the surrogate or clerk of the said court, shall be immediately thereafter set up at three of the most public places in the said county for six weeks successively, and be published for the same time in one or more of the newspapers printed in this State.

XX. AND BE IT ENACTED, That the said orphan's court shall, at the time and place mentioned in the said order, or at such other time and place as they may then appoint, hear and examine the allegations and proofs of the said executor or administrator, and other persons interested; and if on full examination the said court shall find, that the personal estate of the said testator or intestate is not sufficient to pay his debts, the said court shall order and direct the executor or administrator to sell the whole, if necessary, of the lands, tenements, hereditaments and real estate of the said testator or intestate, for the payment of his debts, or so much thereof as will be sufficient for that purpose; and when a part only of the said lands, tenements, hereditaments and real estate is sufficient, such order shall specify the part to be sold: PROVIDED ALWAYS, That where any houses, and lots, or lands are so circumstanced, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the said court may, at their discretion, order the whole or a greater part, than is necessary to pay such debts, to be sold; and the surplus money arising from such sale shall be distributed among the heirs or devisees, according to the law of descents in the former, and the will of the testator in the latter case; and further, that the heir or devisee, whose lands, tenements, hereditaments and real estate, so descending or devised to him, have been sold as aforesaid, for the payment of the debts of his intestate or testator, may compel all others claiming or holding under such intestate or testator, to contribute in proportion to their respective interests, so as to equalise the burden or loss.

XXI. AND BE IT ENACTED, That the executor, or administrator, who may be ordered to sell any lands, tenements, hereditaments or real estate of any testator or intestate, shall give notice by advertisements, signed by himself, and set up at five or more public places in the county, of the time and place of selling the

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proclamation, offering a reward, as aforesaid, for apprehending and securing any person or persons, charged, on oath or affirmation as aforesaid, with aiding, abetting, comforting, harboring or concealing any person or persons, who hath or have committed any of the crimes above specified and described, knowing him, her or them to be guilty thereof; which reward, on conviction of the person so charged, shall be paid in the same manner as is above directed.

May offer a reward for apprehending the unknown perpetrators of certain offences.

3. *And be it enacted*, That when any murder, burglary, robbery or other offence, as aforesaid, hath been, or shall be committed by any person or persons unknown, it shall and may be lawful for the governor or person administering the government, for the time being, on the oath or affirmation of one or more credible witness or witnesses, setting forth the fact, and that the same was perpetrated by a person or persons unknown, to issue his proclamation, offering a reward as aforesaid, for apprehending and securing the person or persons who may have committed the same, and any person or persons who may have aided, abetted, comforted, harbored or concealed him, her, them or any of them, to be in such wise guilty; which reward shall, in every case, be paid on conviction of the party offending, as in manner aforesaid.

Acts repealed.

4. *And be it enacted*, That the act, entitled "An act to empower the governor to offer a reward for the apprehension of certain offenders," passed the fifth day of March, one thousand seven hundred and ninety-five, be, and the same is hereby repealed.

P.A.M. 180.

AN ACT to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state.

Passed the 13th of June, 1820.

WHEREAS it is necessary that the power and authority of the ordinary of the state, and his surrogates, should be defined, the jurisdiction of the prerogative court regulated, and an orphans' court established, in the several counties of this state;
THEREFORE—

Authority of the ordinary, how far to extend.

1. *BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That from and after the passing of this act, the authority of the ordinary shall extend only to the granting of probates of wills, letters of administration, letters of guardianship, and to the hearing and finally determining of all disputes that may arise thereon.

Prerogative court when and where to be held.

2. *And be it enacted*, That for the more regular hearing and determination of all causes cognizable before the ordinary, he shall, at stated periods, hold a prerogative court, at the times and places appointed, or that hereafter shall be appointed by him for holding the court of chancery, when he shall hear and finally de-

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termine all causes that shall come before him, either directly or by appeal from any of his surrogates, or the orphans' court hereinafter established.

3. *And be it enacted*, That the secretary of the state, for the time being, shall be register of the prerogative court, and besides the business heretofore done by him, shall attend the sitting of the court at the stated times, to register the decrees and proceedings of the court.

Secretary of state to be register.

4. *And be it enacted*, That the ordinary shall hereafter appoint but one deputy or surrogate in each county of the state, and that the power and authority of such surrogate shall be limited to the county for which he shall be appointed.

One surrogate in each county.

5. *And be it enacted*, That the judges of the court of common pleas, in the several counties of this state, or any three of them, shall be, and they hereby are, constituted and appointed judges of a court of record, to be held four times a year, in the same week that the courts of general quarter-sessions of the peace are, or hereafter shall be held, and also at such other times as the said judges shall see occasion to hold the same; which court shall be styled "The Orphans' Court," and that the surrogate of the county shall be clerk or register of said court.

Orphans' court established.

6. *And be it enacted*, That the orphans' court shall have full power and authority to hear and determine all disputes and controversies whatsoever, respecting the existence of wills, the fairness of inventories, the right of administration and guardianship, and the allowance of the accounts of executors, administrators, guardians or trustees, audited and stated by the surrogate, as hereinafter directed; and also, all other matters and things hereinafter submitted to their determination, and to award process, and cause to come before them, all and every person and persons interested or necessary to give evidence in any such cause, or who, as executors, administrators, guardians, trustees or otherwise, are or shall be entrusted with, or in anywise accountable for, any lands, tenements, goods, chattels or estate, belonging, or which shall belong, to any orphan or person under age; and the ordinary of the state, his register and surrogates, are hereby directed and required, upon application made for that purpose, and payment of reasonable fees, to transmit into the orphans' courts, true copies or duplicates of all bonds, inventories, accounts and proceedings whatsoever, now or hereafter remaining or being in their respective offices or possession, which do or shall relate to the estates of orphans, or any of them.

Jurisdiction of the orphans' court.

7. *And be it enacted*, That the said orphans' court shall have full power and authority, where letters of administration or guardianship shall have been granted upon insufficient security, to order and direct all such administrators or guardians, to give such further or other security to the ordinary, by bonds in the usual form, as the said court, after hearing the objection of creditors, or persons concerned, shall approve of; and if it appears, on examination, that any administrator or guardian hath embezzled, wasted, or misapplied all or any part of the decedent's estate, or shall

Orphans' court may order administrators or guardians to give further security, and may revoke letters of administration or guardianship.

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neglect or refuse to give bonds, with sureties as aforesaid, or the security taken shall have been insufficient, then, and in every such case, the said court shall forthwith, by sentence, revoke or repeal the letters of administration or guardianship, and thereupon the surrogate shall grant letters of administration or guardianship, to such person or persons having right thereunto, as will give bonds in manner and form aforesaid, who may have actions of trover, detinue, or on the case, for such goods or chattels as came to the possession of the former administrators or guardians, and shall be detained, wasted, embezzled, withheld or misapplied by any of them, and no satisfaction made for the same.

In what cases the orphans' court may order executors, guardians and trustees to give security.

8. *And be it enacted*, That when any complaint is made to any one of the judges of the orphans' court, that an executrix having a minor or minors of her own, or being concerned for others, is married, or like to be espoused to another husband, without securing the minors' portions or estates, or that an executor, guardian or other person having the care and trust of minors' estates, is likely to prove insolvent, or shall refuse or neglect to exhibit true and perfect inventories, or give full and just accounts of the said estates come to their hands or knowledge, then and in every such case, the said judge is hereby required, forthwith to call an orphans' court, which court shall order and direct all and every such executrix, executor, guardian or trustee, to give security to the orphans or minors, by mortgage or bonds, in such sums and with such sureties as the said court shall think reasonable, conditioned for the performance of their respective trusts; and for the true payment or delivery, to and for the use and behoof of such orphan or orphans as they are concerned for, or such as shall legally represent them, the legacies, portions, shares and dividends of estates, real and personal, belonging to such orphans or minors, so far as they have assets, as also for their maintenance and education, as the said court shall judge fit for the benefit and best advantage of such orphans.

May order an administrator or guardian, on application of a surety, to render an account, and proceedings thereon.

9. *And be it enacted*, That where the surety, in any bond given by an administrator or guardian, for the faithful execution of his office, shall discover or believe that such administrator or guardian is wasting or mismanaging the estate, whereby the said surety may become liable to loss or damage, the said orphans' court, upon application of such surety, and upon sufficient reason therefor, may order and direct every such administrator or guardian, to render an account of his or her administration or guardianship, to such surety, and if it shall appear that such administrator or guardian has embezzled, wasted, misapplied or mismanaged the estate, in every such case the said court shall direct the said administrator or guardian, to give separate security to his or her surety, for the true payment of the balance remaining in his or her hands, to creditors, representatives, or the ward of such guardian, and on neglect or refusal, it shall be lawful for the said court to revoke the letters of administration or guardianship, and grant the same to such person or persons having right thereto, as will give sufficient bonds, in the usual form, to the ordinary, and in such case it shall be the duty of the said newly appointed

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administrator or guardian, immediately to bring an action on the case against such removed administrator or guardian, and hold him or her to bail, and in such action to recover the amount of all moneys, assets, rents, issues and profits received by such removed administrator or guardian, and not applied according to law, as well as all damages done or committed by such administrator or guardian, in respect of the estate in his or her hands.

10. *And be it enacted*, That whenever there are two or more acting executors, guardians or administrators, the orphans' court shall or may, from time to time, on application of any one or more of them, upon sufficient reasons given to the court therefor, order and direct every such executor, guardian or administrator, to account with his or her co-executor or co-executors, administrator or administrators, guardian or guardians, for all assets which have severally come to the hand of such executor, guardian or administrator, and whenever the court shall judge it necessary, shall compel each executor, guardian or administrator, to give separate security to his co-executor or co-executors, administrator or administrators, guardian or guardians, for the true payment of the balance remaining in his or her hands, to wards, creditors, legatees or representatives of the testator or intestate, and on neglect or refusal in giving such account or security, it shall and may be lawful for the same court to authorize such co-executor or co-executors, administrator or administrators, guardian or guardians, to sue for such assets in the hands of such executor or executors, administrator or administrators, guardian or guardians so neglecting or refusing as aforesaid.

May direct an executor, administrator or guardian to account with, and give security to his co-executor, &c.

11. *And be it enacted*, That executors, administrators, trustees or guardians, may, by leave and direction of the orphans' court, put out their minors' money to interest, upon such security, and for such a length of time, as the said court shall allow of, and if such security so taken, bona fide and without fraud, shall happen to prove insufficient, it shall be the minors' loss, and it shall be the duty of executors, administrators, trustees and guardians, in cases where the minors' estates may be materially benefited thereby, to make application to the orphans' court for such leave and direction, and in case they shall neglect so to do, they shall be accountable for the interest that might have been made thereby: but if no persons who may be willing to take the said money at interest, giving such security, can be found by the said executors, administrators, trustees or guardians, nor by any other friend or friends of such minors, then the said executors, administrators, trustees or guardians, shall, in such cases, be accountable for the principal money only, until it can be put out at interest, as aforesaid: *Provided nevertheless*, That in any case where executors, administrators, trustees or guardians shall make use of the money of minors, which shall come to their hands, they shall be accountable not only for the principal but for the interest thereon.

The money of minors may be put out to interest, under the direction of the court.

12. *And be it enacted*, That where any person hath died, or shall die intestate, seized in fee-simple of any lands, tenements, or hereditaments, leaving two or more children, or other heirs, any of whom being under the age of twenty-one years, the or-

The real estates of intestates may be divided in certain cases.

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phans' court of the county in which such real estate is situate, upon application made by the said heirs, or any of them, or by any person duly authorized in their behalf, or claiming under them or any of them, shall and may order and direct a division of such real estate to be made in such shares and proportions between them as they may be entitled to under the laws of this state, or any of them, directing the descent of real estates; the metes and bounds of each child's or other heir's share, to be ascertained by three disinterested commissioners, to be appointed by the court, whose report, or the report of any two of them, made in writing, under their hands, to the next or any subsequent orphans' court, after such division shall be made and approved of by the court, shall be recorded in the records of said court, and be conclusive to all parties concerned.

Real estates, devised by will, may be divided.

13. *And be it enacted*, That where any person hath died or shall die seized of any lands, tenements or hereditaments, leaving a legal will and testament, devising his or her real estate to two or more devisees, and not ascertaining the metes and bounds of each devisee's share, any of whom being under the age of twenty-one years, and their shares remaining undivided, or any such devisee shall die, leaving any heir under the age of twenty-one years, entitled to the share, or a part of the share of such devisee, so dying, and no division shall have been made among the said devisees, the said orphans' court, upon application by any of the devisees, or any person claiming under them, or any of them, or duly authorized by them, or any of them, shall and may order and direct a division of such real estate to be made, agreeably to the true intent and meaning of the said testator's last will and testament; the metes and bounds of each devisee's share to be ascertained by three disinterested persons, commissioners, to be appointed by the court, whose report, or the report of any two of them, made in writing, under their hands, to the next or any subsequent orphans' court, after such division made and approved of by the court, shall be recorded in the records of the court, and be conclusive to all parties concerned.

Cases where a person dies intestate, in which the surrogate-general is authorized to direct a division.

14. *And be it enacted*, That where any person hath died, or shall die intestate, seized in fee-simple of any lands, tenements or hereditaments, situate in two or more counties, leaving two or more children or other heirs, any of whom being under the age of twenty-one years, the surrogate-general, on application made by the said heirs, or any of them, or by any person duly authorized in their behalf, or claiming under them or any of them, shall and may order and direct a division of such real estate to be made in such shares and proportions between them, as they may be entitled to under the laws of this state, or any of them, directing the descent of real estates, the metes and bounds of each child's or other heir's share, to be ascertained by three disinterested persons, commissioners, to be appointed by the said surrogate-general, whose report or the report of any two of them, made in writing, under their hands, to the next or any prerogative court held after such division made, and approved by the surrogate-general, shall be conclusive to all parties concerned.

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and shall be recorded in the clerk's office in each of the counties where the lands lie, for which the said surrogate-general and register of the prerogative court, commissioners and clerks, shall be entitled to the same fees as are allowed, by this act, to the orphans' court, commissioners and surrogate, for similar services.

15. *And be it enacted*, That where any person hath died, or shall die, seized of any lands, tenements or hereditaments, leaving a legal will and testament, devising real estate to two or more devisees, situate in two or more counties, and not ascertaining the metes and bounds of each devisee's share, any of whom being under the age of twenty-one years, and their shares remaining undivided, or any such devisee shall die, leaving any heir under the age of twenty-one years, entitled to the share or a part of the share of such devisee so dying, and no division shall have been made among the said devisees, upon application made by said devisees, or any of them, or any person claiming under them, or any of them, or duly authorized by them, to the said surrogate-general, he shall and may order and direct a division to be made of such real estate, agreeably to the said last will and testament, by three disinterested persons, commissioners, appointed by the said surrogate-general; and the proceedings on such application shall be in like manner, in all respects, as is prescribed in the foregoing section, and have the same force and effect, and the same fees be allowed.

Cases where he is authorized to direct a division among devisees.

16. *And be it enacted*, That the persons appointed by the orphans' court, or by the surrogate-general, to make partition in any of the cases aforesaid, shall, before they enter upon the duties of their appointment, take an oath or affirmation, to make a fair and just partition of such real estate, without partiality, favor or affection; which oath or affirmation may be administered by any judge of the orphans' court, surrogate or justice of the peace of the county or counties in which the said real estate is situate, or by the said surrogate-general.

Persons appointed to make partition of lands, to take an oath.

17. *And be it enacted*, That the necessary costs and expenses which shall arise under an order of the orphans' court or surrogate-general, in any of the cases aforesaid, shall be assessed by the said court or surrogate-general, upon each share, in proportion to the value divided to him or her, and may be recovered by a warrant from the said court or surrogate-general, directing distress and sale to be made of so much timber, wood or herbage, or other property belonging to such devisee or heir, as may be found on the part divided to him or her, as will be sufficient to pay the costs and expenses aforesaid, and costs of such distress and sale.

Expense of division, how assessed and recovered.

18. *And be it enacted*, That on a division made in any of the cases aforesaid, if any devisee or heir as aforesaid, or any person claiming under him or her, hath, after the death of the testator or intestate and before the division, cut off or made use of any timber, or committed any waste or destruction on the premises, the commissioners appointed to make the division shall estimate the damage done by such heir or devisee, or person claiming under him or her, and divide the premises so that such heir or devisee

In making a division, damage committed to be estimated.

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shall be charged with said damage, and have a share proportionably less in value than the other heirs or devisees who have done no waste or damage.

Manner of proceeding in case a division cannot be made without great prejudice to the owners.

See 590

19. And be it enacted, That wherever commissioners, appointed in any of the cases mentioned in this act to divide real estate, shall be of opinion that the tract or tracts of land or real estate is or are so circumstanced, that a partition thereof cannot be made without great prejudice to the owners of the same, they may proceed as is directed in such case by the act, entitled "An act for the more easy partition of lands held by coparceners, joint tenants and tenants in common," and by an act, entitled "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the seventh February, eighteen hundred and sixteen; and the fees of the commissioners in such case shall be the same as is allowed by this act to commissioners for dividing lands: *Provided*, That such fees and expenses shall not bar any claim which may be made by such commissioners for services which may be performed under the fifth and eighth sections of said act.

In what case a creditor may apply to the orphans' court to direct a sale of real property.

20. And be it enacted, That when any creditor shall have obtained judgment against an executor or administrator, and the execution issued on the same shall remain unsatisfied in whole or part, for defect of personal estate to be levied on and sold, and there is real estate, it shall be lawful for the creditor or his legal representative, if the executor or administrator, being thereto required, shall neglect or refuse to obtain a sale thereof, according to law, for the space of six months after being so required, to apply to the orphans' court of the proper county, to order such sale to be made; and the said court, upon due notice given to said executor or administrator, of such application, shall examine the circumstances of the case; and if it appears that the said debt, or any part thereof, is unpaid, and the personal estate deficient as aforesaid, and no sufficient cause being shewn to the contrary, the said court may make such order to shew cause as is mentioned in the nineteenth section of the act, entitled "An act making lands liable to be sold for the payment of debts," passed eighteenth of February, seventeen hundred and ninety-nine; and such further proceedings shall be had as is prescribed in the same act in relation to the sale of real estate, where the personal estate is insufficient to pay debts.

Surrogates to take the depositions to wills, inventories, administrations, &c.

Disputes relative to the same, when and how to be settled.

21. And be it enacted, That the surrogate of each county shall take the depositions to wills, administrations, inventories and administration bonds, in case of intestacy, and issue thereon letters testamentary and of administration; which several letters shall be in the form herein after mentioned; but in all cases whatsoever, where doubts arise on the face of a will, or a caveat is put in against proving a will, and wherever disputes happen respecting the existence of a will, the fairness of an inventory, or the right of administration, the surrogate shall issue citations to all persons concerned, to appear at the next orphans' court to be held in and for the county; which citations shall be served at

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least ten days before the sitting of the court, when the cause shall be heard in a summary way, and determined by the judges of the court, subject to an appeal to the prerogative court, if demanded by any of the parties within thirty days after the sentence or decree of the orphans' court; after which, if no appeal be demanded, the surrogate shall proceed thereon as the sentence of the orphans' court shall direct; and all proceedings of surrogates, not brought as aforesaid before the orphans' court, shall, in like manner, be subject to an appeal to the prerogative court by any persons interested, or other person legally representing them, provided such appeal be made within six months after any such proceedings; and upon all causes heard in a summary way, as aforesaid, upon citation by the orphans' court, the evidence and proceedings, upon the application of either party, shall be reduced to writing by the register of the court, and the court, upon just cause, may put off the hearing of the cause to another time, upon the application of either party: *Provided*, That no surrogate shall proceed to prove any will until ten days from the death of the testator.

22. And be it enacted, That each of the surrogates, in the several counties of this state, shall record, in books to be provided for that purpose, at the expense of the county for which they shall be used, all wills proved before them or the orphans' court, together with the proofs thereof, all letters of guardianship, letters testamentary and letters of administration, by him issued or granted, and all things concerning the same, and also all inventories proved before him; which records shall be of the same force, validity and effect as the like records in the prerogative office, and the transcript of such records, certified under the hand and seal of office of the surrogate, shall be received in evidence in every court of this state, and have the same validity and effect as transcripts certified by the register of the prerogative court.

Surrogates to record all wills, letters of administration, guardianship, &c.

23. And be it enacted, That each of the said surrogates shall issue letters testamentary in the following form:

I, surrogate of the county of do certify the annexed to be a true copy of the last will and testament of late of the county of deceased, and that the executors therein named, proved the same before me, and are duly authorized to take upon themselves the administration of the estate of the testator, agreeably to the said will. Witness my hand and seal of office, the day of in the year of our Lord, one thousand eight hundred

Letters testamentary.

And the said surrogate shall issue letters of administration in the following form:

I, surrogate of the county of do certify, that on the day of administration of the goods and chattels, rights and credits, which were of late of the county of who died intestate, was granted by me to of who are duly authorized to administer the same agreeably to law. Witness my hand and seal of office, the day of in the year of our Lord, &c.

Letters of administration.

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And the said probate of wills and letters of administration shall have the same validity and effect as probate of wills and letters of administration issued by the register of the prerogative office, in the name of the ordinary or surrogate-general, with the seal of office affixed.

Surrogates to make returns to the register.

24. *And be it enacted,* That it shall be the duty of every surrogate, on the first Mondays of February, May, August and November, in each year, to transmit to the register of the prerogative court, all wills and inventories proved by him, and a return of all letters of administration granted during the preceding three months, to be filed in the said register's office.

To file administration bonds &c.

25. *And be it enacted,* That every surrogate shall carefully file all administration and guardianship bonds by him taken, and all other instruments of writing required by law in conducting the business of his office, or which were heretofore used to be filed in the prerogative office.

The ordinary may direct guardianship bonds to be prosecuted.

26. *And be it enacted,* That it shall and may be lawful for the ordinary or surrogate-general, to cause any guardianship bond to be prosecuted in any court of record, at the request and expense of any person aggrieved by the said bond having become forfeited, and the moneys recovered upon such bond shall be applied towards making good the damages sustained by the not performing the condition thereof, in such manner as the ordinary or surrogate-general shall by his sentence or decree direct.

Orphans' court to admit guardians.

27. *And be it enacted,* That the powers and duties formerly exercised and performed by the ordinary, relative to the admission of guardians, for persons under the age of twenty-one years, shall hereafter be exercised and performed by the orphans' court of the county in which the minor applying for a guardian may reside, or shall have real or personal estate, subject, however, to an appeal to the prerogative court, and the letters of guardianship shall be issued under the direction of the orphans' court, by the surrogate of the county in which the application shall be made, which letters shall be in the following form :

Form of letters of guardianship.

I, surrogate of the county of do certify on the day of the orphans' court of the county of admitted of as guardian of the person and property of being a minor under the age of . Witness my hand and seal of office, &c.

Provided, That nothing in this act shall be construed to prevent the ordinary or surrogate-general, in person, from granting probates of wills, letters of administration and letters of guardianship, from the prerogative office, in cases where a convenience will arise from doing the same.

When, how, and to whom letters of guardianship may be granted.

28. *And be it enacted,* That where an orphan is of the age of fourteen years or upwards, letters of guardianship shall be granted, on petition to the orphans' court, signed by such orphan in presence of the surrogate, and on the guardian or guardians first entering into a bond to the governor or ordinary of the state, with good security, in a sufficient sum, for the faithful execution of his, her or their office; but where an orphan is under the age

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of fourteen years, the mother, or next of kin, of full age, and where there are several relations in equal degree of kindred, any one, giving due notice to the rest, may apply to the orphans' court for the guardianship of such orphan, who, upon inquiry into the circumstances of the case, may admit one or more of them, or a stranger willing to accept the trust, at their discretion, to be guardian or guardians of such orphan, until he or she attains the age of fourteen years, or other guardian or guardians be appointed in his stead, such guardian or guardians, giving good security by bond as aforesaid, as the said court shall direct, and until the said orphan, after arriving at the age of fourteen, shall choose another guardian or guardians, the person or persons so first appointed shall remain the lawful guardian or guardians of such orphan, under the said first letters of guardianship, and the bond given thereon shall continue in full force; but where the orphan, after arriving to the age of fourteen years, shall choose any other person or persons to be guardian or guardians, letters of guardianship shall be applied for, as before directed, and all proceedings thereon be had accordingly.

29. *And be it enacted,* That every surrogate, before he enters upon the execution of the duties of his office, shall enter into bond to the state of New-Jersey, in the sum of two thousand dollars, with at least two good and sufficient securities, being freeholders of the county for which such surrogate is appointed, to be approved of by two of the judges of the inferior court of common pleas of said county, which bond, with the condition thereof, shall be in the form hereinafter mentioned, and shall also take and subscribe the following oath, before one of the judges of the inferior court of common pleas aforesaid :

Surrogates to give bond and take oath.

I, being appointed surrogate of the county of do solemnly swear, (or affirm, as the case may be) that I will well, truly, faithfully and impartially, execute the office of surrogate of the said county, agreeably to law, according to the best of my skill and understanding. So help me God.

Form of oath.

Which oath or affirmation shall, by the judge before whom the same is taken, be delivered or safely transmitted to the secretary of this state, together with the bond aforesaid, to be filed among the public papers of his office; and the bond to be entered into, as aforesaid, shall be in the following form :

Know all men by these presents, that we, of the county of in the state of New-Jersey, are held and firmly bound unto the said state in the sum of two thousand dollars, to be paid to the said state, to which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of in the year of our Lord, one thousand eight hundred and . The condition of this obligation is such, that if the above bounden shall well and truly execute the office of surrogate of the county of and in all things touching and concerning the said office shall well and truly, faithfully and impartially, execute and perform the same

Form of bond.

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according to law, as well with respect to all persons whatsoever concerned, as to the said state of New-Jersey, and at the expiration of his said office, shall deliver the seal and all the books, records and papers remaining in said office or appertaining thereto, to his successor in office, then the above obligation to be void, otherwise to be and remain in full force and virtue.

Surrogates to state the accounts of executors, &c. and report the same.

30. *And be it enacted*, That the surrogate shall audit and state the accounts of executors and administrators exhibited to him, and report the same to the orphans' court, at the next sitting thereafter, the executor, in case of a will, or the administrator, in case of intestacy, giving at least two months' notice of his intention in five of the most public places in the county, as near as may be to the place of residence of the parties concerned, or some of them, where such account is to be allowed, which court, on due proof of notice as aforesaid, and no exception being made to the report of the surrogate, shall decree an allowance of the account as stated; but if any person or persons, interested in the settlement of said account, shall, by himself or attorney, appear and make exceptions to the report, the court shall either proceed to hear the proofs and allegations, and correct or amend any mistake or errors that may happen in the account as reported, or refer the same to auditors, who shall examine and restate the account, after hearing parties and witnesses, and make report to the next or some subsequent court, for confirmation and allowance as aforesaid: *Provided always*, That in all cases where it shall appear, that the executor or administrator hath not had sufficient assets in hand, of the testator or intestate, to satisfy all just debts and expenses, the court shall not proceed to decree an allowance of the account, until the next sitting after the report is made; and the accounts of guardians or trustees shall be audited and stated by the surrogate, and reported to, and finally settled and allowed by, the orphans' court, in manner aforesaid; but in cases of trustees and guardians, the surrogate shall issue citations to all persons concerned, to appear at the said orphans' court, which citations shall be served at least ten days before the sitting of the court; and the said court shall, upon application of an orphan or other person interested, from time to time order and direct the guardians to account, as aforesaid, for all moneys, goods and chattels they shall receive, and for the rents, issues and profits of any real estate in their possession, belonging to their wards.

In what manner errors are to be corrected.

Accounts of guardians and trustees to be audited and settled in like manner.

Executors, &c. exhibiting their accounts, may be examined on oath.

Allowance of their commissions.

31. *And be it enacted*, That it shall be lawful for the court to whom any account is reported for allowance, as aforesaid, or for the auditors to whom an account is referred, as aforesaid, at the instance of any party interested in the same, or by their own proper authority, to examine any executor, administrator, guardian or trustee exhibiting such account, on oath or affirmation, touching the truth and fairness of the same, or any part or item thereof, and the allowance of commissions to executors, administrators, guardians or trustees, shall be made with reference to their actual pains, trouble and risk, in settling such estate, rather than in respect to the quantum of estate; and where any difference arises between executors, administrators, guardians or trustees, in re-

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gard to the proportion of commissions between them, the orphans' court shall determine the same, having regard to their respective services.

32. *And be it enacted*, That the sentence or decree of the orphans' court, on the final settlement and allowance of the accounts of executors, administrators, guardians or trustees, shall be conclusive upon all parties, and shall exonerate and for ever discharge every such executor, administrator, guardian or trustee, from all demands of creditors, legatees or others, beyond the amount of such settlement, except for assets or moneys which may come to hand after settlement as aforesaid, excepting also in cases where a party applying for a re-settlement, shall prove some fraud or mistake therein, to the satisfaction of the said orphans' court.

Decree of the court, in the settlement of accounts, conclusive, except &c.

33. *And be it enacted*, That every person duly cited or summoned to appear at any of the said orphans' courts, ten days before the time appointed for appearance, who shall make default, shall be liable to attachment for contempt, and the said courts are hereby authorized and empowered to compel obedience to their process, orders and sentences, by imprisonment of body or distress and sale of lands and goods, as fully and amply as any other court of record in the state, and all final sentences or decrees of the orphans' courts, in the several counties of this state, where no appeal is given to the prerogative court, shall be subject to removal by certiorari into the supreme court: *Provided always*, That such certiorari be applied for by either of the parties, within ninety days after such final sentence or decree shall be made, and not afterwards.

Persons summoned to appear at court, and neglecting to attend, how punishable.

Certain decrees may be removed into the supreme court.

34. *And be it enacted*, That the sheriff and constables of the county shall be, and they hereby are, severally declared to be officers of the orphans' court, and shall attend the same as such, and serve all process and orders of the court or judges, directed to them, or any of them.

Sheriff and constables of officers of the orphans' court.

35. *And be it enacted*, That if it shall happen that an orphans' court shall not be held at the regular term or terms of said court, by reason of the non-attendance of a sufficient number of judges, the business and proceedings pending in said court and process returnable thereto, shall be considered continuing from term to term, until a regular court shall be held.

Court not held for want of judges, business pending continued.

36. *And be it enacted*, That the clerk of the orphans' court shall draw bills of costs on all litigated suits in said court, and present the same to the court, who shall adjudge and direct which of the parties shall pay the same, and examine and tax the said bill agreeably to the fees allowed by law, which bill of costs shall be filed by the surrogate, who is hereby authorized, if the same is not paid, to issue an execution against the goods and chattels, lands and tenements, of the party adjudged to pay the same, and the costs, when paid or levied, shall be received by the surrogate, who shall pay to the court, sheriff and cryer, each their fees, as the same shall be taxed, and the residue to the persons entitled thereto, and for issuing the said execution the surrogate shall be

Bills of costs, by whom drawn and taxed.

Manner of recovery.

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entitled to fifty cents, and the execution, before the same is delivered to the sheriff, shall be recorded by the clerk of the county, in the book by him kept for recording executions.

Surrogate to keep up, in his office, a list of fees, &c.

37. *And be it enacted*, That the surrogate shall cause to be affixed, and at all times kept up in his office, in some conspicuous place, a true list of all fees which may be lawfully demanded by him, as well in his capacity of clerk of the orphans' court as of surrogate of the county, and if he shall neglect to put up and keep in view such list of fees, or shall take other or greater fees than by law allowed, or shall take fees for services not performed, he shall, for every such offence, forfeit and pay the sum of thirty dollars, to be recovered in an action of debt, with costs of suit, before any court having cognizance thereof, by the party aggrieved.

Receipts and discharges given to the executor, &c., to be recorded by the surrogate.

38. *And be it enacted*, That it shall be lawful for every executor, administrator or guardian, who hath settled, or shall settle his or her account before the orphans' court, and who hath, or shall hereafter pay, any legacy or legacies, distributive share or shares, or sums of money, to any person or persons entitled by law to receive the same, his, her or their executors or administrators, to produce the receipts and discharges therefor, to the surrogate of the county in which letters testamentary, or of administration or guardianship have been or shall be granted, and the said surrogate shall immediately record the same in a book to be by him kept for that purpose: *Provided*, That the same be first proved and acknowledged, in the manner that deeds of conveyance of land are by law required to be proved and acknowledged, which proof or acknowledgment shall be recorded with such receipts or discharges, and the said surrogate shall endorse on such receipts and discharges, the book and page in which the same is recorded, with the time of recording the same, and sign his name thereto, and the said record, or a copy thereof, under the hand and seal of office of the surrogate, shall be received in evidence in any court of record in this state, if it shall be made appear to the satisfaction of said court, that the original receipt or discharge hath been lost, or that it is not in the power of the party offering the copy in evidence, to produce the same, and the surrogates of the several counties of this state, shall procure, at the expense of the county, a good bound book, in which they shall record such receipts and discharges, and be entitled to receive ten cents for recording each receipt or discharge.

How proved.

How special orphans' courts are to be appointed, and where held.

39. *And be it enacted*, That any special orphans' court, to be held in vacation, excepting in cases directed by the eighth section of this act, shall be appointed by the judges at a regular term, in open court, and be held at the place in the county, where the said court by law holds its regular terms.

Surrogate not to act as attorney &c. in certain courts.

40. *And be it enacted*, That no surrogate shall be allowed to appear or act as attorney, proctor or counsel, in the orphans' court of any of the counties of this state, and also that no surrogate of any county, being a judge of the court of common pleas of such county, shall sit as a judge of the orphans' court, on the hearing of any cause pending before said court.

41. *And be it enacted*, That upon the death, removal, or expiration of the office of surrogate, the minutes, papers, writings, documents and books of, and belonging to, such office, shall be delivered to his successor in office, on oath or affirmation of the preceding surrogate, or in case of his death, on the oath or affirmation of his executors or administrators, and if such surrogate, or the executors or administrators of a deceased surrogate, shall refuse or neglect to deliver the same on oath or affirmation, as aforesaid, being demanded by the successor in office, then every such person shall forfeit and pay five hundred dollars, to be recovered, with costs, by action of debt, in the name of the county collector, for the use of the state.

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Books and papers to be delivered over to the successor, on oath.

42. *And be it enacted*, That the transcript of any will or testament, registered or recorded in the prerogative office of this state, duly certified by the register of the said office to be a true transcript, shall be received in evidence in any court of this state, and shall be as good and effectual in law, as if the books in which the same are registered or recorded, were then and there produced and proved.

Transcripts of wills, certified by the register, to be received in evidence.

43. *And be it enacted*, That the judges, surrogates, and other officers of the orphans' court, shall be entitled to demand and receive, for the services hereinafter mentioned, the fees thereunto annexed, and no more, and that a sheet or folio shall contain one hundred words.

Fees of the officers of the orphans' court.

Fees to be divided among the judges who are present in court when the service is performed.

The first motion in every cause, (but no case to be deemed a cause in court, unless there be adverse parties to the same)

fifty cents.

Every rule in a cause

twenty cents.

The trial and argument of every cause

fifty cents.

Every judgment and decree,

eighty cents.

Every appointment of auditors, guardians, trustees or commissioners

eighty cents.

Taxing every bill of costs

fifty cents.

Fees of surrogate and clerk of the orphans' court.

For drawing and taking deposition on will, and inventory

one dollar thirty-three cents.

Engrossing a last will and testament, each sheet

twelve cents.

Recording proof

sixty cents.

Recording a last will and testament, each sheet

eight cents.

Granting probate

one dollar.

Engrossing probate

eight cents.

Recording probate

twelve cents.

In taking depositions to codicils

sixty-two and a half cents.

Recording proof

sixty cents.

Recording and engrossing codicil, the same as will.

1820. *Fees to be received by the surrogate, for services directed by law to be performed by the register of the prerogative court, and to be paid over to him.*

For recording the name of each testator, the year in which the will was proved, and filing the will twenty-five cents.

Recording the name of each intestate, where administration hath been granted, and the year when granted twelve cents.

Filing every inventory twelve cents.

Surrogate's fees.

Drawing administration bond, and taking deposition thereon one dollar thirty-three cents.

Granting letters of administration one dollar.

Recording ditto twelve cents.

Filing administration bond ten cents.

Recording inventory, each sheet eight cents.

Drawing bond and petition for guardianship one dollar thirty-three cents.

Reading do. do. ten cents.

Filing do. do. ten cents.

Granting letters of guardianship one dollar.

Recording do. twelve cents.

Entering rule of court on appointment of guardian twenty cents.

Recording inventories, made by guardians, each sheet eight cents.

Drawing petition, stating a list of debts and credits on application for the sale of real estate, entering rule, and making copies one dollar fifty-five cents.

Exhibiting proofs of advertising rule to shew cause, entering decree, copies thereof, and receiving, filing, and recording report of sales four dollars twenty cents.

For advertising the rule of court, when done by the surrogate one dollar.

For services enjoined by the act concerning contracts of real estate, made by testators and intestates, in their lifetime, the same fees as allowed for the sale of land.

Drawing petition, reading, filing and recording decree, appointing commissioners for the division of real estate, and a certified copy of such decree three dollars forty cents.

Recording report of commissioners, each sheet eight cents.

Recording drafts, for each and every course three cents.

Drawing petition on application for rule to limit time to creditor's demand, entering the rule, advertising, entering the decree, making the rule absolute, and a certified copy of the decree four dollars twenty cents.

Drawing every citation or other process thirty cents.

Sealing the same fourteen cents.

Entering every action eight cents.

Entering the return of a writ ten cents.

Entering every rule or order of court ten cents.

Copy of such rules or order eight cents.

Searching the records twelve cents.

Swearing each witness six cents.

Reading every petition or other writing given in evidence eight cents.

Filing every citation, exception, or other paper ten cents.

Entering every discontinuance eight cents.

Entering every judgment or decree ten cents.

Entering and filing appeal ten cents.

Copies of citations, exceptions, records, and other papers, twenty cents.

each sheet eight cents.

Seal and certificate twenty-five cents.

Depositions taken in court, each sheet twelve cents.

Engrossing copy, when required eight cents.

Recording certified copy of proceedings in cases of lunacy, transmitted to the court, each sheet eight cents.

Transmitting bond of guardianship, in the above cases, or of trustees' bonds to the register's office twelve cents.

Recording discharges taken by executors and administrators on a final settlement, each sheet eight cents.

For auditing and stating the account of executors, administrators, guardians, or trustees, and reporting the same to the court, such fees as the court shall think reasonable.

Fees of sheriff.

Serving citation or other process one dollar fifty cents.

Returning every writ twelve cents.

Mileage, the same as allowed in serving writs issued out of the court of common pleas.

Fees of commissioners to divide land.

Each commissioner one dollar fifty cents per diem, for every day employed in the service, together with all actual expenses for surveying, chain-bearing, assistants, and other necessary charges.

Cryer's fees.

Making proclamation on application for the fulfilment of contracts eight cents.

Swearing a witness six cents.

44. *And be it enacted*, That the act, entitled "An act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the sixteenth day of December, one thousand seven hundred and eighty-four; and the act, entitled "A supplement to an act entitled an act to ascertain the power and authority of the ordinary and his surrogates, to regulate the jurisdiction of the prerogative court, and to establish an orphans' court in the several counties of this state," passed the twenty-second day of March, one thousand seven hundred and eighty six; and the act, entitled "An act to revive the orphans' court, and for other purposes therein mentioned," passed the twentieth day of November, one thousand seven hundred and ninety; and the act, entitled "An act concerning surrogates, and declaring what exemptions of

Acts repealed.

1820. wills and testaments shall be holden and received as good evidence," passed the seventh day of June, one thousand seven hundred and ninety-nine; and the act, entitled "An act concerning the surrogates in the several counties of this state," passed the eighteenth day of March, one thousand seven hundred and ninety-six, and the supplement thereto, passed the sixth day of March, one thousand seven hundred and ninety-seven; and the act, entitled "An act relative to the probate of wills, granting letters of administration and guardianship," passed the ninth day of November, one thousand eight hundred and three; and the act, entitled "An act relative to the mode of dividing real estates of intestates, situate in more counties than one," passed the sixth day of March, one thousand eight hundred and six; and the act, entitled "A supplement to the act concerning executors, and the administration and distribution of intestates' estates," passed the second day of March, one thousand seven hundred and ninety-five, which supplemental act was passed the fifth day of February, one thousand eight hundred and twelve; and the act, entitled "An act relative to the division of real estates of intestates," passed the sixth day of February, one thousand eight hundred and eighteen; and an act, entitled "An act to regulate fees of the judges, surrogates, clerks, and other officers of the orphans' court," passed the eighteenth day of February, one thousand eight hundred and nineteen, be, and the same are hereby repealed: *Provided nevertheless*, That nothing contained in this repealing section shall destroy, or any way impair any right acquired under the acts so repealed, nor invalidate or make void any proceedings legally had or done under the same.

See act concerning surrogate's office.

PAM. 203.
See ante 747.

AN ACT relative to commissioners for taking the acknowledgment and proof of deeds and conveyances.

Passed the 2d of November, 1820.

Former act explained.

BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That nothing in the repealing section of the act, entitled "A supplement to an act entitled an act respecting conveyances," passed June seventh, one thousand seven hundred and ninety-nine; and to an act, entitled "An act to register mortgages," passed June seventh, one thousand seven hundred and ninety-nine, which said supplemental act was passed the fifth day of June, one thousand eight hundred and twenty, shall be so construed, as to make void the appointment, or in any way affect the power of any commissioner appointed under the act passed the eighth of February, one thousand eight hundred and sixteen, or to render null, or in any way to invalidate or impair any act or proceeding of such commissioner, done or had by virtue of his appointment.

A further supplement to the act, entitled "An act for the punishment of crimes," passed the eighteenth day of March, one thousand seven hundred and ninety-six.

Passed the 3d of November, 1820.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That when any slave shall hereafter be convicted of manslaughter, arson, burglary, rape or robbery, or of an assault and battery, with intent to commit murder, arson, burglary, rape, or robbery, or of a misdemeanor in poisoning, or attempting to poison, and so to endanger the life of any person whatsoever, and shall have judgment of imprisonment for the same, it shall be lawful for the governor of this state, at any time during the said imprisonment, by writing sealed with the great seal, to authorize and empower the owner of such slave to send him or her out of this state, and of the United States; and to direct the officer in whose custody such slave may be, to deliver him or her to such owner, for that purpose, accordingly: *Provided*, That such owner, before he shall obtain such authority, shall enter into bond to this state, with one or more surety or sureties, to be approved of by the governor, and filed in the secretary's office, in the penal sum of four hundred dollars; conditioned that such slave shall be sent so out of this state and of the United States, within ten days after such delivery by the said officer, and shall never return to this state without lawful permission: *And provided also*, That such owner, before the delivery of such slave by such officer, shall pay all the costs of the prosecution, imprisonment and maintenance of such slave, up to the time of such delivery.

2. *And be it enacted*, That the fifth and sixth sections of the act, entitled "A supplement to the act entitled an act for the punishment of crimes," passed the thirty-first day of March, one thousand eight hundred and twenty, be, and the same are hereby repealed.

1820.
PAM. 203.
See ante 244.

Condemned criminal may be sent out of United States, &c.

AN ACT to repeal an act, entitled "A supplement to an act entitled an act for the relief of persons imprisoned for debt," passed the eighteenth day of March, one thousand seven hundred and ninety-five; and to an act, entitled "An act to repeal the several insolvent laws, passed since the eighteenth day of March, one thousand seven hundred and ninety-five;" and to revive the act, entitled "An act for the relief of persons imprisoned for debt."

Passed the 3d of November, 1820.

PAM. 204.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the act, entitled "A supplement to an act entitled an act for the relief of persons imprisoned for debt," passed the eighteenth day of March, one thousand seven hundred and ninety-five; and to an act, entitled "An act to repeal the several insol-

1820. vent laws passed since the eighteenth day of March, one thousand seven hundred and ninety-five; and to revive the act, entitled "An act for the relief of persons imprisoned for debt," passed the third day of March, one thousand eight hundred and twenty, be, and the same is hereby repealed.

2. *And be it enacted*, That in all cases where an inventory and bond shall have been given, agreeably to the provisions of the first section of the act hereby repealed, the same shall be valid; and all persons who have given such inventory and bond, shall be entitled to the benefit, and subject to the provisions of the said act, to all intents and purposes, as if this repealing act had not been passed.

PAM. 205.

AN ACT concerning the boundaries and jurisdiction of this state in the bay of Delaware.

Passed the 7th of November, 1820.

Commissioners to be appointed, &c.

1. **BE IT ENACTED** by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the governor be, and he hereby is, authorized, empowered and directed to appoint three commissioners on the part of this state, who shall be entitled to a reasonable compensation, to meet commissioners appointed by the competent authority of the state of Delaware, should the state of Delaware think proper to appoint such commissioners; which said commissioners of the state of New-Jersey and of the state of Delaware, when so met, shall have full power and authority to make and conclude an agreement between the said states of New-Jersey and Delaware, defining their respective boundaries, jurisdiction, rights to islands, subaqueous soil, fisheries and products of the river and bay of Delaware, southeasterly of the circular boundary between the states of Delaware and Pennsylvania.

2. *And be it enacted*, That the agreement so made by the commissioners, shall not be binding on the state of New-Jersey, until ratified and confirmed by the legislatures of the states of New-Jersey and Delaware, respectively.

3. *And be it enacted*, That the governor of this state transmit to the governor of the state of Delaware, a copy of this act, and request him to communicate it to the legislature of that state.

PAM. 205. See ante 430.

A further supplement to the act, entitled "An act making lands liable to be sold for the payment of debts," passed the eighteenth of February, seventeen hundred and ninety-nine.

Passed the 9th of November, 1820.

Application for order to orphans' court, &c.

BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That on any application hereafter made by the executor or ad-

ministrator of any testator or person dying intestate, to the orphans' court of any county in this state, for an order to shew cause, agreeably to the nineteenth section of the act to which this is a supplement, why so much of the said testator or intestate's real estate shall not be sold as will be sufficient to pay his debts, or the residue thereof, as the case may require, it shall be lawful for the said court to fix upon any day for the said hearing, not less than two months from the time of granting the order, any thing in the said nineteenth section to the contrary notwithstanding.

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No day for hearing to be fixed under two months.

A further supplement to an act, entitled "An act making provision for carrying into effect the act for the punishment of crimes," passed February fifteenth, one thousand seven hundred and ninety-eight.

PAM. 206. See ante 325.

Passed the 11th of November, 1820.

1. **BE IT ENACTED** by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That at the first joint-meeting after the accounts of the state-prison are settled, three suitable persons shall be chosen as inspectors of the state-prison, who shall continue in office until the next session of the legislature, and until others are chosen in their stead; and at the first joint-meeting which shall happen after every annual settlement of the accounts of the state-prison, the inspectors shall be re-elected or others chosen in their stead; and if any vacancy shall happen by the death, removal, resignation, refusal to act, or other inability of any of the inspectors, in the recess of the legislature, it shall and may be lawful for the person administering the government to appoint a person or persons to fill the vacancy.

Vacancies, how filled.

2. *And be it enacted*, That the tenth section of the act, entitled "A supplement to an act, entitled an act making provision for carrying into effect the act for the punishment of crimes," passed February fifteenth, one thousand seven hundred and ninety-eight, which said supplement was passed on the thirtieth day of May, one thousand eight hundred and twenty, be, and the same is hereby repealed.

Section repealed.

AN ACT to repeal two certain acts therein named.

PAM. 206.

Passed the 14th of November, 1820.

BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That the act, entitled "An act for the more effectual administration of justice," passed February the second, eighteen hundred and eighteen, and the supplement thereto, passed the fourteenth of the same month, and every section and clause contained in the said act, be, and the same are hereby repealed: *Provided*, That nothing herein contained shall be so construed as to affect any judgment or process issued under or by virtue of the above recited acts.

FIRST SPECIAL SESSION

SENATE, No. 1

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 19, 1951

By Messrs. HANNOLD and CLAPP

(Without Reference)

AN ACT to adopt a supplement to the Revised Statutes consisting of, and to be known as, Title 2A, Administration of Civil and Criminal Justice, as revised in one thousand nine hundred and fifty-one, to repeal Title 2 of the Revised Statutes, as amended and supplemented, and to provide for the effect and operation of the said Title 2A.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

1 1. The revision of Title 2 of the Revised Statutes of New Jersey, pre-
2 pared under the direction of the Advisory Committee on Revision of Statutes
3 appointed under chapter one hundred seventy-one of the laws of one thou-
4 sand nine hundred and fifty, is adopted as a supplement to the Revised
5 Statutes, consisting of, and to be known as, Title 2A, Administration of Civil
6 and Criminal Justice, as revised in one thousand nine hundred and fifty-one.

1 2. The said revision constituting Title 2A, supplemental to the Revised
2 Statutes, shall not be printed in the Pamphlet Laws of this session.

1 3. The said revision shall be deemed to be a part of the general and per-
2 manent statutes of this State. In any citation the abbreviation "N. J. S.",
3 meaning New Jersey Statutes, shall be equivalent to a reference to the said
4 revision and shall similarly be applicable to any and all future revisions of
5 any part of the statutes of this State of a general and permanent nature;
6 and sections of such revision and of any subsequent revision may be cited
7 by section number only, preceded by such abbreviation.

1 4. Title 2 of the Revised Statutes, as amended and supplemented, is re-
2 pealed, but such repeal shall not affect any right now vested in any person
3 pursuant to the provisions of said title, nor any remedy where an action or
4 proceeding thereunder has heretofore been instituted and is pending on the
5 effective date of said repeal.

1 5. The said repeal of Title 2 of the Revised Statutes, as amended and
2 supplemented, shall not of itself be deemed to revive any common law, right
3 or remedy abolished by any provision of the said title.

1 6. The provisions of said Title 2A not inconsistent with those of prior
2 laws shall be construed as a continuation of such laws.

1 7. The classification and arrangement of the several sections of the said
2 Title 2A have been made for the purpose of convenience, reference and or-
3 derly arrangement, and therefore no implication or presumption of a legis-
4 lative construction is to be drawn therefrom.

1 8. In the construction of the said Title 2A, or any part thereof, no outline
2 or analysis of the contents of said title or of any subtitle, chapter, article or
3 other part thereof, no cross-reference or cross-reference note and no headnote
4 or source note to any section of the said Title 2A shall be deemed to be a part
5 of the said title.

1 9. If said title or any subtitle, chapter, article or section of the said title
2 or any provision thereof, shall be declared to be unconstitutional, invalid or
3 inoperative in whole or in part, by a court of competent jurisdiction, such title,
4 subtitle, chapter, article, section or provision shall to the extent that it is not
5 unconstitutional, invalid or inoperative, be enforced and effectuated, and no
6 such determination shall be deemed to invalidate or make ineffectual the re-
7 maining provisions of the said title, or of any subtitle, chapter, article, or sec-
8 tion of said title.

1 10. The provisions of section R. S. 1:1-8, and sections E. S. 1:1-11 to
2 R. S. 1:1-21, both inclusive, shall be applicable to the enactment and opera-
3 tion of said Title 2A.

1 11. The said revision of Title 2, constituting Title 2A, Administration
2 of Civil and Criminal Justice, is as follows:

1 12. This act shall take effect January first, one thousand nine hundred
2 and fifty-two.

[OFFICIAL COPY REPRINT]
FIRST SPECIAL SESSION
SENATE, No. 1

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 19, 1951

By Messrs. HANNOLD and CLAPP

(Without Reference)

AN ACT to adopt a supplement to the Revised Statutes consisting of, and to be known as, Title 2A, Administration of Civil and Criminal Justice, as revised in one thousand nine hundred and fifty-one, to repeal Title 2 of the Revised Statutes, as amended and supplemented, and to provide for the effect and operation of the said Title 2A.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

1 1. The revision of Title 2 of the Revised Statutes of New Jersey, pre-
2 pared under the direction of the Advisory Committee on Revision of Statutes
3 appointed under chapter one hundred seventy-one of the laws of one thou-
4 sand nine hundred and fifty, is adopted as a supplement to the Revised
5 Statutes, consisting of, and to be known as, Title 2A, Administration of Civil
6 and Criminal Justice, as revised in one thousand nine hundred and fifty-one.

1 2. The said revision constituting Title 2A, supplemental to the Revised
2 Statutes, shall not be printed in the Pamphlet Laws of this session.

1 3. The said revision shall be deemed to be a part of the general and per-
2 manent statutes of this State. In any citation the abbreviation "N. J. S.",
3 meaning New Jersey Statutes, shall be equivalent to a reference to the said
4 revision and shall similarly be applicable to any and all future revisions of
5 any part of the statutes of this State of a general and permanent nature;
6 and sections of such revision and of any subsequent revision may be cited
7 by section number only, preceded by such abbreviation.

1 4. Title 2 of the Revised Statutes, as amended and supplemented, is re-
2 pealed, but such repeal shall not affect any right now vested in any person
3 pursuant to the provisions of said title, nor any remedy where an action or
4 proceeding thereunder has heretofore been instituted and is pending on the
5 effective date of said repeal.

1 5. The said repeal of Title 2 of the Revised Statutes, as amended and
2 supplemented, shall not of itself be deemed to revive any common law, right
3 or remedy abolished by any provision of the said title.

1 6. The provisions of said Title 2A not inconsistent with those of prior
2 laws shall be construed as a continuation of such laws.

1 7. The classification and arrangement of the several sections of the said
2 Title 2A have been made for the purpose of convenience, reference and or-
3 derly arrangement, and therefore no implication or presumption of a legis-
4 lative construction is to be drawn therefrom.

1 8. In the construction of the said Title 2A, or any part thereof, no outline
2 or analysis of the contents of said title or of any subtitle, chapter, article or
3 other part thereof, no cross-reference or cross-reference note and no headnote
4 or source note to any section of the said Title 2A shall be deemed to be a part
5 of the said title.

1 9. If said title or any subtitle, chapter, article or section of the said title
2 or any provision thereof, shall be declared to be unconstitutional, invalid or
3 inoperative in whole or in part, by a court of competent jurisdiction, such title,
4 subtitle, chapter, article, section or provision shall to the extent that it is not
5 unconstitutional, invalid or inoperative, be enforced and effectuated, and no
6 such determination shall be deemed to invalidate or make ineffectual the re-
7 maining provisions of the said title, or of any subtitle, chapter, article, or sec-
8 tion of said title.

1 10. The provisions of section R. S. 1:1-8, and sections R. S. 1:1-11 to
2 R. S. 1:1-21, both inclusive, shall be applicable to the enactment and opera-
3 tion of said Title 2A.

1 11. The said revision of Title 2, constituting Title 2A, Administration
2 of Civil and Criminal Justice, is as follows:

1 12. This act shall take effect January first, one thousand nine hundred
2 and fifty-two.

2A:135-9 ✓

N. J. Legislative Histories
Feb. 23, 1956

Copy 1

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BUREAU OF LAW AND LEGISLATIVE REFERENCE

N. J. PUBLIC OFFICERS: REMOVAL AND SALARY THEREAFTER

legislative History of the following Sections of the New Jersey Revised Statutes.

2A:135-9. Forfeiture of office or position; restoration on reversal

"Any person holding an office or position, elective or appointive, under the government of this state or of any agency or political subdivision thereof, who is convicted upon, or pleads guilty, non vult or nolo contendere to, an indictment, accusation or complaint charging him with the commission of a misdemeanor or high misdemeanor touching the administration of his office or position, or which involves moral turpitude, shall forfeit his office or position and cease to hold it from the date of his conviction or entry of plea.

"If the conviction of such officer be reversed, he shall be restored to his office or position with all the rights and emoluments thereof from the date of the forfeiture.

Historical Note

Source:

R.S. 2:160-9; 2:160-10.

R.S. 2:160-9, 2:160-10 (L.1913, c. 74, Secs 1, 2, p.116 (1924) Suppl.

Secs. 52-211a, 52-211a), suppl. to L.1898, c. 235, p. 794) read as follows:

"2:160-9. Any person holding an office, elective or appointive, under this state, or any county or municipality thereof, who shall be convicted upon, or who shall plead guilty, non vult or nolo contendere to, an indictment or allegation charging him with the commission of a misdemeanor or high misdemeanor touching the administration of his office, or which involves moral turpitude, shall forfeit such office and cease to hold the same from the date of such conviction or entry of such plea as aforesaid.

"2:160-10. If the conviction against such officer be reversed, he shall be restored to his office with all the rights and emoluments thereof from the date of such forfeiture, but a pardon shall not have such effect."

New Jersey Law, 1898, Chapter 235.

General law pertaining to criminal matters.

New Jersey Law, 1913, Chapter ⁷⁴ 24 (A.188).

A.188 was enacted as a supplement to chapter 235, 1898. Its exact language is given in above Historical Note. There was no statement of purpose on the bill. It passed both houses without amendment.

2A:158-14. Salaries of prosecutors suspended when attorney general attends in county
on request of assignment judge of superior court.
2:182-12)

Whenever the attorney general, either personally, or by such assistant or assistants as he may designate, shall, at the request of the assignment judge of a county, attend in the county for the purpose of prosecuting the criminal business of the state therein, including the investigation of alleged crimes and misdemeanors, the attendance before the criminal courts and grand jury of such county and the preparation and trial of indictments for crimes and misdemeanors, in accordance with section 52:17A-4 of the title State Government, Departments and Offices, and such attendance, by the attorney general in person or by such assistant or assistants as the attorney general may have designated for that purpose, shall continue in such county for a period of more than 3 months, the payment of the salary or other compensation of the prosecutor in and for such county shall be suspended from and after the expiration of a period of 3 months after the commencement of such attendance, and such suspension of payment shall continue until such attendance of the attorney general shall have terminated the prosecutor shall have resumed the discharge of his duties. Whenever the payment of the salary or compensation of any prosecutor shall be subject to suspension as herein provided, the county board or officer charged with the duty of paying or providing for the payment of such salary or compensation shall suspend the payment thereof for the period fixed by this section."

Historical Note

Source:

R.S. 2:182-12.

L.1932, c. 222, Secs. 1, 2, pp. 498, 499, suppl. to Rev. 1877, p. 56.

2:182-12, New Jersey Laws 1932, Chapter 222 (S.311)

S.311 was introduced by Senator William H. J. Ely, Bergen County and referred to Committee on the Judiciary. Committee members: Emerson L. Richards, Atlantic County; Joseph G. Wolber, Essex County; Dr. Elmer Gale, Sussex County. The bill passed both Houses without amendment. The following is the statement on the original print of S.311:

"Sec. 1 of P.L. 1911, p. 325, as amended by P.L. 1922, p.11, provides that the Attorney General may supersede the prosecutor of the pleas in any county under certain conditions.

"Sec. 2 of P.L. 1911, p. 325, as amended by P.L. 1927, p.116, provides for the adequate compensation of the Attorney General, or his assistants, in such cases where he has suspended any prosecutor of the pleas.

There is no corresponding provision in the acts relating to prosecutors of the pleas to balance the situation.

"The purpose of this act is to authorize and provide for the suspension of the payment of the salary of the prosecutor of the pleas of any county when he has been superseded by the Attorney General, and such supersedeure has extended for a period of more than three months."

The following is the Trenton Times comment on S.311 and S.312, both introduced by Sen. Ely and both passed and submitted to the Governor. S. 312 was vetoed by the

Governor (Copies of S.312 and Governor's Veto message thereon submitted):

Trenton Times, June 10, 1932:

"Senator Ely put through both branches a measure which would eliminate the salary of any county prosecutor at the end of three months in the event he is superseded by order of the court. It is designed to deal with a situation in Bergen County where Prosecutor Edward O. West has been drawing salary for nearly two years while the work of the office has been in charge of an assistant attorney general."

Trenton Times, June 16, 1932:

"Among the measures filed without signature was the bill to require Supreme Court justices to file with the Governor their reasons for removing county prosecutors."

"This bill provides a limitation upon the Governor in which to file charges with the House of Assembly and in the present instance would necessitate the calling of a special session of the legislature", said the Governor. "I do not believe there should be any limitation. The legislature already has the power of impeachment."

"The bill was one of two sponsored by Senator Ely, of Bergen, and aimed at a situation in that county, where Prosecutor Edward O. West was removed nearly two years ago. The other, signed earlier, provides for the suspension of the salary of an ousted prosecutor three months after he has been superseded by the attorney general."

New Jersey Law, 1951, Chapter 344 (S.1, First Special Session)

S.1 was introduced in the Senate, November 19, 1951 by Senators Hamnold and Clapp, without reference to committee. It was passed by Senate, November 26, and by House, November 28. No amendments were made by either house. Bill was approved by Governor, December 5, 1951. Copies of S.1, in original and Official Copy Reprint Form, are supplied. The title of S.1 indicates its nature and purpose. The actual text of the bill as such was not printed. Matter following the title explains the reason for such omission. Sections 7 and 8 of the explanation pertain to the construction of Title 2A, which title is the subject of S.1. One of the sections of Title 2A, which was enacted through passage of said S.1, First S.S. 1951 differs in wording from the words of 2:182-12, which it replaced, by omission of the last sentence of 2:182-12, "When the period of suspension of payment has ended, the total amount of such salary or other compensation held in suspense shall be paid to the prosecutor of the pleas".

The text of S.1 was prepared by a special committee, The Advisory Committee on Revision of Statutes. Its members were: Peter P. Artaserse, Harold W. Hamnold, George W. C. McGarver, Robert B. Meyner, Elden Mills, Theodore B. Parsons, Elvin R. Summell, Arthur T. Vanderbilt, and Alfred C. Clapp, Chairman. The Committee's Secretary was John H. Yarnsh, Jr., 11 Commerce Street, Newark 2, N.J. No copy or data on the Committee's deliberations was filed with the State Library. Preceding introduction of S.1, S.S. 1951, the Committee issued a tentative draft of Title 2A. A copy of this is in the library collection. Its foreword states that it "is submitted to bench, bar and public for suggestions". The Committee requested that such suggestions be submitted to its Secretary. The draft also

listed

acknowledges the services of some 100^A "reporters" who contributed to its preparation. No copy of any suggested amendments to Title 2A which the Committee Secretary may have received was ever filed with the State Library. The Library has made frequent request that background data on the preparation of 2A be filed in the State Library, or that information as to the repository of such data be supplied for referral purposes.

The following are comments appearing in the Trenton Times on the passage S.1, S.S. 1951:

Trenton Times, November 20, 1951

"The speed of the session timetable was assailed by Assemblymen Tumulty and Friedland, both of Hudson, who argued the legislators were moving too fast on the proposed broad revision of statutes.

"Tumulty cited the proposed downgrading of certain crimes from grand jury offenses to disorderly acts that could be tried before municipal magistrates as matters calling for discussion and careful deliberation before a final vote.

"Majority Leader Carvino said the changes had been drafted by a committee of lawyers after months of study and represented the best thinking of experts to bring about the administration of justice.

"Tumulty obtained from House Speaker Thompson an assurance that opportunity would be afforded next week for submission of amendments. It was indicated a number would be offered."

Trenton Times, November 29, 1951

"The State Legislature has delivered to Governor Driscoll a bundle of bills that revises New Jersey's laws on crime and administration of estates.

"Driscoll called the Legislature into special session expressly to approve a general revision of the laws, something that never had been done before. There had been compilations that were called revisions, the most recent in 1937. This was the first time a body of lawyers put a scalpel to the statutes.

"They cut out about 350 pages of law, reduced 57 crimes from misdemeanors to disorderly persons acts, clarified the rule making power of the State Supreme Court, and modernized statutes on the administration of estates."

52:17A-5. Authority of Attorney-General as county prosecutor.

"Whenever the Attorney-General, personally or by his deputies or assistants, shall attend in any county where there is no county prosecutor, or at the request of the Governor or of an assignment judge of the Superior Court or of the board of chosen freeholders or of the county prosecutor of the county, for the prosecution of the criminal business of the State in said county or of such part thereof as shall be designated in, or as shall fall within the general purview of the matters designated in, the written request therefor, the Attorney-General and his deputies or assistants shall have all the power and authority of the county prosecutor for prosecuting the criminal business of the State or such part thereof, including the investigation of alleged crimes and misdemeanors, the attendance before the criminal courts and grand juries of the county, the preparation and trial of indictments for crimes and misdemeanors and the representation of the State in all proceedings in criminal cases on appeal or otherwise in the courts of this State.

"Whenever the Attorney-General shall have taken over the duties of a county prosecutor, he shall have all of the authority conferred by law upon the prosecutor, and he may appoint such temporary assistants as he may deem necessary, and shall also have power to appoint such aids, investigators or other personnel and clerical assistants as he shall deem necessary.

"Whenever the criminal business or any part of the criminal business of any county is prosecuted by the Attorney-General, personally or by his deputies or assistants, there shall be paid, by the treasurer of the county, such sum for that special service as the assignment judge of the Superior Court of the County or a judge of the County Court of said county shall certify and fix, on the application of the Attorney-General; provided, that the compensation allowed shall not exceed that provided by law for the payment of the county prosecutor in said county for the same or similar services; provided, however, that no compensation so allowed shall affect the salary of the county prosecutor or assistant prosecutors if any in said county.

"In prosecuting such criminal business, the Attorney-General shall have the power to employ such investigators, clerical and other assistants and to incur such expenses as he shall determine, and the cost thereof, including the compensation allowed as aforesaid of any deputy or assistant attorneys-general who shall be employed or designated by the Attorney-General for that special purpose in addition to those regularly employed in the Division of Law, shall likewise be paid by the treasurer of the county when certified and fixed in the same manner. L.1914, c. 20, p. 52, Sec. 5, L.1953, c. 49, p. 859, Sec. 22."

New Jersey Law 1914, Chapter 20, Sec. 5, p. 52 (S.133)

S.133 contained no statement of purpose. It was introduced by Sen. Farley, Atlantic County and referred to the Judiciary Committee. Committee members: Farley, Proctor, Barton, Sholl, Neelan. Approved by the Fiscal Affairs Committee. Reported by Judiciary Committee as a Committee substitute and passed in this form by both houses. S.133 as introduced did not include the following words which appeared in the text of the Committee Substitute: "No compensation so allowed shall affect the salary of the prosecutor or assistant prosecutor."

New Jersey Law 1953, Chapter 49, Sec. 22, p.459 (S.45)

S.45 contained no statement of purpose. It was introduced by Senator Clapp, Essex County and referred to the Committee on Revision and Amendment of Laws. Committee members: Clapp, Hand, Forbes, McCay, Vegal. It passed the Senate without amendment. In Assembly it was referred to the Committee on Revision and Amendment of Laws. Members: Tompkins, Deemer, Cahill, Silver, Stewart. Passed Assembly without amendment; S.45, as introduced and enacted into law, contained the same words as Chapter 20, N.J.L. 1914: "no compensation so allowed shall affect the salary of the county prosecutor".

ask KR for p. nos. next.

h0146-14. ✓ Salary of employee illegally dismissed; recovery.

"Whenever a municipal officer or employee, including any policeman or fireman, has been or shall be illegally dismissed from his office or employment, and such dismissal has been or shall be judicially declared illegal, he shall be entitled to recover the salary of his office or employment for the period covered by the illegal dismissal."

Historical Note

Source:

L. 1918, c. 139, secs. 1, p. 322, as am. by L. 1919, c. 149, sec. 1, p. 323
1924 Suppl. secs. 136-1320B (1)7. L. 1926, c. 153, sec. 1, p. 257;
1948, ch. 163, sec. 1, p. 900; 1948, ch. 395, sec. 1, p. 1592.

New Jersey Laws 1918, Chapter 139 (A. 231)

A. 231 was introduced by Ralph H. Kellan, Camden County, and referred to Municipal Corporations Committee. Passed both houses, without amendment except for substitution of word, "court" for "tribunal". The statement on the original print of A. 231 follows:

"This is a bill to protect the employees and officers of municipalities who may be illegally dismissed from their employment. It is now possible under the law to illegally dismiss a man, and when the dismissal is set aside as illegal, it may happen in many instances that the individual cannot recover the salary that is rightfully his because of the law and the decisions in this State. In a word, the Civil Service Law does not give the protection that it ought to give. This bill would remedy that evil and would protect the individual."

New Jersey Laws 1919, Chapter 149 (A. 360)

A. 360 was introduced by Ralph H. Kellan, Camden County, and referred to Municipal Corporations Committee. It passed both houses without amendment. The only difference in the language of Chapter 139, Laws of 1918 and Chapter 149, Laws of 1919 is in the change in tense of verbs used. The verb "shall have been" in Chapter 139, Laws of 1918 was changed to "has been or shall be" in Chapter 149, Laws of 1919. The text of Chapter 139, Laws of 1918 follows:

"Whenever any municipal officer or employee shall have been illegally dismissed from such office or employment and the said dismissal shall have been set aside as illegal by a court of competent jurisdiction, such officer or employee shall be entitled to recover the salary of such office or employment for the period covered by such illegal dismissal."

The statement on the original print of A. 360 follows:

"The purpose of this bill is to clarify the meaning of Chapter 139, P. L. 1918, and make it read more clearly, as intended to cover all cases where a municipal officer or employee has been or shall be illegally dismissed from such office or employment and the said dismissal has been or shall be set aside as illegal by a court of

competent jurisdiction and entitle such officer or employee to recover the salary of such office or employment for the period covered by such illegal dismissal.

"In the case of Van Sandt v. Atlantic City the Supreme Court has held that a public officer who claimed to have been unlawfully dismissed from his office cannot recover salary without first having recourse to the court and having the illegal dismissal reversed. Consequently under this act no officer or employee who claims to have been illegally dismissed can recover the salary of his office until he first has recourse to the court and has said illegal dismissal reversed.

"Supreme Court Justice Parker in recently deciding the case of Cahill v. West Hoboken (October 28, 1918) held that Chapter 139, P. L. 1918, entitles one who was illegally dismissed prior to the passage of said act, and whose dismissal the court has reversed, to recover salary for the time he was illegally deprived of his office, and in the opinion rendered in said case Justice Parker says:

The expression 'shall have been' is strictly applicable to one who after the passage of the act is in the condition of 'having been.' If the law-making body had intended to deal with future cases only they would have used the form 'wherever any officer shall be' &c.

"and cites the case of Jersey City v. Spear, 78 N. J. Law 34, at page 39, to evidence that the expression "shall have been" is a common form of expression in statutes, and in his judgment "does not indicate that the Legislature intended to restrict the act to future cases of removal." However, there seems to be some doubt about the construction of Chapter 139, P. L. 1918, and therefore this bill is to clarify the situation. Under this act a dismissed municipal officer or employee cannot recover salary for the time he was deprived of his office or employment unless the Supreme Court determines in an appropriate action and he was illegally dismissed."

New Jersey Laws 1926, Chapter 153 (A. 302)

A. 302 was introduced by Sharkey, of Hudson County and referred to the Committee on Claims and Pensions. It passed both houses without amendment. Language of Chapter 153, L. 1926 was as follows:

"When any person has been or shall be appointed by the governing body of a municipality as a policeman or fireman, and thereafter dismissed by means of a resolution adopted by the governing body of such municipality and such resolution has been or shall be set aside by the Supreme Court, such person shall be entitled to receive the salary, prevailing in such municipality for policemen and firemen for the period of time during which such person was deprived of the right to perform his duty as such policeman or fireman."

2A:135-9

The statement on the original print of A. 302 follows:

"The purpose of this bill is to enable persons who were appointed policemen and firemen by the board of commissioners of the city of Bayonne, who, after performing duties for a short time, were removed by means of a resolution, which was thereafter set aside by the Supreme Court and decision affirmed by the Court of Errors and Appeals (O'Neill v. Bayonne, 99 N. J. L. 430; Carroll, Quinn et al v. Bayonne, 99 N. J. L. 493), to receive payment of salary for the period of time during which they were illegally prevented from rendering service."

New Jersey Laws 1948, Chapter 163 (A.229)

A.229 was introduced by Walter H. Jones, Bergen County. Referred to Committee on Revision and Amendment of Laws. Committee members: Casinato, Saltsburg, Mills, Curtis, Tuzilty. Passed Assembly without amendment. Amended by Senate Committee on Revision of Laws. Committee Members: Hamold, Hand, Mathis, Mayner. Senate amendment to A.229 follows:

"Senate amendment to Assembly Bill No. 229:

Amend page 1, section 1, line 8, after "pension" insert ", provided that a written application therefor shall be filed with the clerk of the municipality within thirty days after such judicial determination, unless such determination was made prior to the effective date of this act, in which case such application shall be filed within thirty days after the effective date of this act".

The statement on the original print of A.229 follows:

"The present law is R.S. 40:146-34. It only applied to persons illegally dismissed. Recently the Court of Errors and Appeals in the case of Strohmyer v. Little Ferry held that a police officer illegally suspended could not recover his salary during the period of the suspension because the present law was not broad enough. The courts differentiate between "dismissal" and a suspension. The present act grants relief to any officer or municipal employee who has been illegally suspended."

New Jersey Laws 1948, Chapter 395 (A.547)

A.547 was introduced by Walter H. Jones, Bergen County. It was referred to the Committee on Municipalities. Committee members: McKay, Mills, Widnall, Consojine, Dickerson. The bill passed both houses without amendment. The statement on the original print of A.547 follows:

"The act to which this amendment applies was introduced by 1948 A.229. The bill was amended in the Senate and as amended was passed by the Assembly and approved by the Governor.

"The act as it is now on the books contains a proviso that if the determination was made prior to the effective date of the act, written application must be made within 30 days from the date of this act. This period of time is too short in view of the fact that members of the bar and general public do not have actual notice, as distinguished from the constructive notice of the passage of laws and their approval by the Governor, until they are published and circulated either by the West Publishing Company, Soney and Sage Company, or some other distributing agent. It is impossible to believe that any person affected by the passage of this statute could possibly have notice of it in time to file a claim within 30 days.

"To illustrate the difficulty of acting on such short notice the pamphlet, New Jersey Statutes Annotated, which was published in July, 1948, simply contains the laws enacted up to May 13, 1948. This is the cumulative pamphlet to New Jersey Statutes Annotated."

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BUREAU OF LAW AND LEGISLATIVE REFERENCE

N.J. PUBLIC OFFICERS AND EMPLOYEES: APPOINTMENT, TERM, REMOVAL, ETC.New Jersey Constitution, 1947, Arts. 5, Executive & 7, Public Officers...

Excerpts from New Jersey Constitutional Convention, 1947. Record of Proceedings.
5 vols.

Y. 2: Monographs

The Appellate Power - Term, Removal and Confirmation of Officers,
by Anne Tilton, p. 1383-1409.

At p. 1409, quotes text of Proposed Constitution 1944: "Prosecutors
of the pleas shall be nominated by the Governor and confirmed by
the Senate for terms of 5 years. Art. 6, Sec. II, para. 2 ..."

The Governor - Constitutional Power of Investigation and Removal of
Officers, by A.S. Freedman, p. 1410-1417.

Discusses investigation and removal powers of Governor. Excerpts
supplied.

(Note: Neither paragraph discusses salary termination or
removal of officer or payment thereof on his reinstatement.
Nor was this point raised in the Report of the Committee
on the Executive ... which considered the removal proposal
No. 3-1 or in proposed amendments offered thereon.)

N.J. Joint Legislative Committee created by SCR 2, 1953.
Known to the Legislature. 1953. (Stamler Report);
Recommendation VII: that the legislation be enacted
whereby payment of the salary of a prosecutor of any
county shall cease forth with whenever he shall be
superceded or relieved of his duties for reasons arising
out of the improper conduct of his office.)

Y. 3: General Sessions, Aug. 12, 1947, p. 268---

At p. 263, re Rights and Privileges Proposal. Amendments from floor;
Walker G. Wilms: "I have an amendment which is substantially a
committee amendment to Para. 4 of Sec. IV of the Executive Articles
which provides in substance that a removed officer or employee shall
have the right of review on the law and on the facts, in such manner
as may be provided by law. I offer the amendment."
Amendment handed to the Secretary.

(Note: N.J. Constitution, Art. 5, Executive, Sec. 4, para. 5,
so provides.)

Y. 5: Afternoon Session, June 24, 1947, p. 29---
Committee on Executive, Militia, etc.

At p. 38, re: Prosecutors of pleas. Testimony of Gov. Alfred E. Briscoe, In answer to a query. "It seems to me that prosecutors of the pleas, as we now know them, and if continued, should be appointed by the Governor subject to confirmation by the Senate and should be a part of the Department of Law. There is no need for the continuation of prosecutors of the pleas ... as constitutional officers ... Of course they could continue to perform the functions that those men have performed in the 103 years since the Constitution of 1844 was written."

Morning Session, July 8, 1947. p. 205-206.

Re: Prosecutors of pleas.

After discussion that to give officers term of office in Constitution would make them removable only by impeachment, Farley moved Prosecutors be retained as in Constitution, 1944, Art. 6, Sec. 2, Para. 2. Motion seconded. Eggers moved to amend by providing that a removal shall be provided by law. Motion carried as amended. Miller moved title be changed to County Prosecutor. Seconded and carried 5 to 3.

Morning Session, July 10, 1947. Re: Public Officers and Employees Article of Constitution, 1947.

At p. 289. Prosecutors: Sec. II, Para. 1 of Public Officers Article read as follows:

"County prosecutors shall be nominated and appointed by the Governor with the advice and consent of the Senate. Their term of office shall be 5 years and they shall be removable in a manner to be provided by law."

Discussion followed as to just what a county prosecutor was--a state or county law enforcement officer. William Miller described the officer as having a dual capacity "in local peace as well as state law enforcement ..." The Chairman: "... in all their functions and in everything they look primarily to the county ... so that the office isn't necessarily per se an arm of the State Government."

At p. 291. Above text of section adopted.

Morning Session, July 29, 1947. p. 337-39.

Testimony: Walter D. Van Riper, N.J. Attorney General.

At page 337, re: proposed language of Public Officers and Employees Article, Sec. II, relative to appointment of county prosecutors be amended so as to provide term of 5 years. "and until their successors shall be appointed and qualify." Phrase adopted (p. 406)

At page 339, In answer to a question of Mrs. Barnes, Van Riper discussed removal procedures in removal of county prosecutor.

"Mr. Van Riper: I think it would be a fair removal process to subject them to removal on the same basis on which constitutional officers and other civil officers of the State are liable to impeachment. I think that your provision in here on impeachment is perfectly all right. I think it is very fair, very honest, for misdemeanor--whether in

connection with the conduct of their office or otherwise. I personally would think that was perfectly fair to everyone concerned. But I think that the people who have the power to pass upon that removal and to adjudicate it ought to be defined in the Constitution. My personal thought is that it ought to be the Governor or the Supreme Court.

Mrs. Barus: As an officer of the government he would be liable to impeachment with cause.

Mr. Van Riper: He would be liable to impeachment.

Mrs. Barus: It wouldn't be necessary to put that in.

Mr. Van Riper: That's right, even without this.

Chairman: Are there any other members of the Committee who would like to ask the Attorney-General a Question?"

New Jersey Constitution, 1947 Art. 8, Sec. 3, Para. 2.

"2. No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation, or become security for, or be directly or indirectly the owner of, any stock or bonds of any association or corporation."

A careful, page by page check of the Proceedings of the Constitutional Convention, 1947 did not disclose any discussion of this particular section.

See enclosed typed compilation on New York Public Officers, p.2-3. for New York Courts ruling on same provisions in N.Y. Constitution (Now Art. 8, Sec 11)
(People v. Groat, 90 N.Y.S.122)

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NEW YORK PUBLIC OFFICERS: REMOVAL AND SALARY CONSIDERATIONS

Constitutional and Statutory Authority

New York Constitution, Art. 4, Executive, Sec. 3, Powers and Duties.

"... He ... shall take care that the laws are faithfully executed ..."
This phrase has been construed by the Courts as giving the Governor power to remove officials. (21 N.Y.S. 2d 270). And the section, together with sections of Executive Law, secs. 6 and 68, have been held to give the Governor authority for inquiries and investigations into matters concerning the public peace, public safety, and public justice and investigation of affairs of government (105 N.Y.S. 2d 268; 105 N.Y.S. 2d 669, 303 N.Y. 206)

The section is derived from the New York Constitution, 1938. The New York Constitutional Convention Committee, 1938, v. 8, "Problems Relating to Executive Administration and Powers" attempts to review existing constitutional and statutory provision of N.Y. and other states on these matters. Chapter 2 covers Executive Powers and Chapter 8, Constitutional Problems Regarding Removal of Officers. The volume is supplied. *To be mailed or given to J. Tash*

Mc Kinsey's Consolidated Laws of New York. Annotated, 1952. With pocket parts, 1955.

Book 18, Executive Law, Art. 2, Sec. 6: "Examination and Inspection by the Governor: The Governor is authorized at any time, either in person or by one or more persons appointed by him for the purpose, to examine and investigate the management and affairs of any department, board, bureau or commission of the state. The governor and the persons so appointed by him are empowered to subpoena and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath and to require the production of any books or papers deemed relevant or material. Whenever any person so appointed shall not regularly in the service of the state his compensation for such services shall be fixed by the governor, and said compensation and all necessary expenses of such examinations and investigations shall be paid from the treasury out of any appropriations made for the purpose upon the order of the governor and the audit and warrant of the comptroller."

Historical Note

Section is from Executive Law of 1909, c. 23, Sec. 8, as amended by L. 1928, c. 131. Said section 8 derived from Executive Law of 1892, c. 683, Sec. 7, as added by L. 1907, c. 539, Sec. 1.

Chap. 539, N.Y.L. 1909 mentioned in the Historical Note is N.Y.'s Moreland Act. "The Moreland Act: Executive Inquiry in the State of New York;" by J.E. Missall, 1946, contains details of Act's passage and compares it with other State laws of like nature. Chapter 2, "Origin of the Act," attributes it to the Gov., Charles E. Hughes, whose own investigation of insurance companies had earned the confidence of the public in his ability and integrity; Chapter 3, "Comparative State Legislation,"

lists New Jersey as one of the States whose law closely paralleled the New York statute. It contains a detailed comparison to the New Jersey law referred to as "New Jersey's Moreland Act". (Miscall pamphlet supplied.) Mailed to J. Jacobs with memo.

Book 16, Public Officers, Art. 3, Secs. 33-34. These sections related to removal of officers by the Governor and procedure thereunder. They are derived from N.Y.L. 1892, Chapter 681, Public Officers Law, as amended. It has not been possible to fill in the legislative history of the enactment of these sections. In any attempt to provide such history it was noted that the Public Officers Law, Chap. 681, L. 1892; the Legislative Law, Chap. 682, L. 1892; and the Executive Law, Chap. 683, L. 1892 (which contains the Governor's investigatory powers) were all signed May 18, 1892 and in their titles are called "Chapters 7-8-9, of the General Laws". Attempts to establish from the State Library collection of N.Y. Documents that these statutory provisions were considered together, either by the legislature in enacting them or the Governor in approving them on the same day, proved fruitless.

The New York State Library has been contacted as to the legislative history of the above sections and on the legislative history of New York statutory provisions for salary reimbursement of reinstated officers. To date no such history has been established.

The Legislature's intent, and its apparent policy and objective in enacting the above sections are dealt with in much detail in State of New York v. Ahearn, 196 N.Y. 221 (1909); 26 LRA New Series 1153. The case involved a county officer removed by the Governor for incompetence and reappointed by county officials to the very office left vacant by such removal. The Court termed such reinstatement "reimbursement for his loss". In defining the term, "office" the Court quoted from Burrell's Law Dictionary: "The idea of an office clearly embraces the idea of tenure, fees or emoluments, rights and powers, as well as that of duty..." (26 L.R.A. supplied.) (2) To be mailed or given to J. Jacobs

Book 9, Civil Service Law, Sec. 23, Compensation of Officers and Employees Reinstated by Order of the Courts. (3) ~~Right~~ section 23 supplied

Historical Note

Section derived from L. 1901, c. 533, as amended by L. 1904, c. 637.

Note of Commission.—Board of Statutory Consolidation: "This statute, 1904, Ch. 637, was passed for the benefit of one George Blair, a veteran, removed from the position of superintendent of outdoor poor in the city of New York. See People ex rel, Blair v. Root, 45 Misc. 505. In terms, however, it is a general law, applicable to all veterans discharged in violation of section 21 of the 'old' Civil Service Law, and is an express exception to the rule of law that an official illegally removed cannot recover the salary paid to his successor before the state, city or municipality had knowledge that the removal was illegal." Report of Board of Statutory Consolidation, 1907, p.473.

The above Section ^{23 of Civil Service Law} was challenged as a contravention of the N.Y. Constitution, Art. 8, Sec. 1, prohibiting the giving money or property to an individual, People v. Grout, 90 N.Y.S. 122 (1904). In this case the Court held the

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Constitutional provision did not deny payment of a moral obligation and that it was not prepared to hold there was no moral obligation where an officer has been wrongfully removed.

23
The same section was amended, ^{by} N.Y.L. 1929, Chap. 511; L. 1934, Chap. 366; L. 1935, Chap. 734.

1929-35
A search through the New York Time Index, for background material on these laws on which the section is based reveals ^{only} the following:

Lehman vetoes Bynes bill requiring removal trials and bill on removal of veterans and volunteer firemen; signs McHabee bill granting full salaries to reinstated persons, New York Times Index, 1935, p. 1089.

The Governor signed the McHabee bill... He wrote:
"This bill is very essential to safeguard the rights of civil service employees and protect them against improper removals...
"To deny a civil service employee this compensation would deprive him of his full remedy in bringing his dismissal to the Courts for adjudication. "The bill is approved." New York Times, May 7, 1935, p. 10.

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PUBLIC OFFICERS: REMOVAL AND SALARY THEREAFTER

General Discussions of the Law:

In U. S. and England

"Removal of Public Officers from Office for Cause" (3 Michigan Law Review 290-301)
To the effect that in England and at common law public office is an incorporeal hereditament and public officer has property right in his office. In U.S. office is not property right, nor is it in the nature of a contract between officer and state.

Power to Remove Public Officer without Notice and Hearing: Annotation (99 ALR 336-)
Discusses the American view that no one has a property right in a public office. Also reports from Oklahoma case, 13 Okla. 585, 76 Pac. 135, as follows: "A public office while not property is a position held of right by election or appointment, and all the Courts are quick to protect one in the enjoyment of these rights. They may differ ... as to what his rights are, but whatever the courts conceive them to be, it will protect as quickly and as fully as though it were property; and though this is done, in one sense for the benefit of the State, the right of the officer is worthy of some consideration ... it is the duty of the Courts to protect a citizen in the enjoyment of every right which he acquires under statutory or constitutional authority, as quickly and as fully as they would his property."

On consulting the opinion in the Oklahoma case quoted above, the court was found to further hold (76 Pac. 135, at 141) that the right to enjoy the honor and emoluments of an office are as sacred as property rights and "wherever one is entitled to enjoy any right, even though it may not be property, he may invoke the aid of the judicial power of the state to protect him in enjoying the same, and, as a rule, it is the only power that can afford him relief."

At p. 142, of its opinion the court held that where an officer was illegally removed from his office (in this case without notice and hearing) that " he nevertheless was removed from this office" and such removal "in no way affected his right to the property in question."

In New Jersey

"A New Jersey Municipal Law Mystery: What Is a 'Public Office'?" by Abraham Glasier (6 Rutgers Law Review 503-527)

A study of over 100 New Jersey cases on the above subject. Includes coverage of cases holding contractual status cannot attach to a public office.

At p. 521 discusses Stahr v. Curran (44 N.J.L. 181) rule that no contractual right to past salary in the case of a temporary ouster of a de jure officer. Counsel for Stahr in arguing the case cited authority (68 N.Y. 774) that a person who is rightfully entitled to an office, although not in actual possession of it has property in it and may recover salary arising therefrom from the public treasury.

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Also discusses *Hoboken v. Gear* (27 N.J.L. 265) that appointment to office for term of years is not a contract between the government and the person appointed that the officer will serve or that the government will pay during the term for which the officer was appointed. It is at most a contract that while the party continues to perform the duties of his office he shall receive the compensation which may from time to time be provided by law.

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PUBLIC POLICY

General Discussions

Definition: "Public policy" of state means the law of the state, whether found in Constitution, statute, or judicial records. *Strans & co. v. Canadian Pacific Ry. co.*, 254 N.Y. 1407

Definition: The "public policy" of New Jersey is the creature not of the courts but of the legislature; the courts have nothing to do with forming it, and can only recognize it like any other matter of public law. *Bighow v. Old Dominion Copper Mining & Smelting co.*, 74 N.J. Eq. 457.

"Public Policy in the Common Law"; by Sir Percy Henry Winfield. (In his *Selected Legal Essays*, p. 241-265)

Includes: Definition of public policy and analogous terms, "against common right and reason"; Brief history of development of public policy with copious reference to Bracton, Pollock, Holdsworth; Harrowing application of public policy doctrines in *Richardson v. Millish*, 2 Bing. 229, 242-43, where court held it had gone too far on public policy and where questions were doubtful they ought to be left to the legislature; describes *Egerton v. Brownlow*, 4 H.L. Cas. (1853) in which 16 judges argued in the House of Lords their opinions on public policy; Current meaning of public policy; variability of public policy; How public policy is evidenced, at p. 261-262; ~~Interpretation of public policy~~ - "One guide that they are certain to employ whenever it is available is statutory legislation in pari materia, if it is not too antiquated to be useful. In exercising this branch of judicial discretion, they must consider the tendency of the transaction which they are investigating. Tendency, it has been pointed out, is not an easy word to define; and it is not clear whether it signifies a mere possibility that a given act may develop into something contrary to the public weal, or whether there must be a probability of this occurrence as well." Limits of public policy; public policy is no ideal to which law ought to conform; there cannot be public policy leading to one conclusion when there is a statute directing a precisely opposite conclusion.