LAWS

OF THE

STATE OF DELAWARE;

FROM THE SECOND DAY OF JANUARY, ONE THOUSAND EIGHT HUNDRED AND TWENTY-SEVEN, TO THE SIXTEENTH DAY OF FEBRUARY, ONE THOUSAND EIGHT HUNDRED AND TWENTY-NINE.

VOLUME VII.

PUBLISHED BY AUTHORITY.

DOVER.

1829.

LAWS

OF THE

State of Delaware.

CHAPTER I.

CHAPTER I.

1827.

AN ACT *to establish an Uniform Militia throughout this State.*

SECTION 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That each and every free able-bodied white male citizen of this State, or of any of the United States residing in this State, who is, or shall be of the age of eighteen years, and under the age of forty-five years, except as is hereinafter excepted, shall severally and respectively be enrolled in the militia by the captain or commanding officer of the company within whose bounds such citizen shall reside, such bounds to be fixed, and limited agreeably to the subdivisions which have been made by lieutenant-colonels, majors and captains of the different counties, by the directions of an act of the General Assembly of this State entitled "A supplement to an act entitled An act for establishing the militia of this State," passed the ninth day of February in the year of our Lord one thousand seven hundred and ninety-six. And it shall be the duty of every such captain, or commanding officer of a company, at all times hereafter to enrol every such citizen as aforesaid, and also those who shall from time to time arrive at the age of eighteen years, and not excepted by this act, that have or shall come to reside within the bounds of his company; and shall notify such citizen, by a proper non-commissioned officer of his company, by whom such notice may be proven: and in all cases of doubt respecting

Who shall be enrolled, and by whom.

Vol. 2. p. 1225.

Notification of the enrolment.

CHAPTER I. 1827.

the age of any person enrolled, or intended to be enrolled, the party questioned shall prove his age to the satisfaction of the commanding officer of the company within whose bounds he may reside: *Provided however*, that if the brigadier-general, with the lieutenant-colonels and majors, or a majority of them, in any of the counties of this State, shall at any time deem it necessary, they, or a majority of them acting together, are hereby authorized to alter, change, or re-divide their respective counties: and the major and captains of each battalion may, if they, or a majority of them, deem it necessary, alter, change, or re-divide their respective battalions agreeably to the provisions of the first section of the act entitled "A supplement to an act entitled An act for establishing the militia of this State," passed on the ninth day of February in the year of our Lord one thousand seven hundred and ninety-six—making return of such alterations, if any be made, as is by that act ordered and prescribed.

Changes in divisions of the counties—

and in battalions.

Exempts.

SEC. 2. *And be it enacted*, That the vice-president of the United States, the officers judicial and executive of the government of the United States, the members of both Houses of Congress, and their respective officers, the members of both houses of the General Assembly of this State, all custom-house officers and their clerks, judges of the supreme court and court of common pleas, chancellor and attorney-general, auditor of accounts, secretary and treasurer of this state, sheriffs, gaolers, and keepers of work-houses, all post-officers, and stage-drivers who are employed in the care and conveyance of the mail of the post-office of the United States, all ferrymen employed at any ferry on the post roads, all inspectors of exports, all pilots, all mariners actually employed in the sea service of any citizen or merchant within the United States, ministers of religion of every denomination, professors and teachers in colleges, academies, latin schools, and school-masters having twenty scholars, shall be exempt from military duty, and no other persons.

Arrangement of the militia.

SEC. 3. *And be it enacted*, That the militia of this State shall form one division, and shall be arranged into brigades, regiments, battalions and companies in manner and form following: The State to make one division, and each county to consist of one brigade, and each brigade to consist of not less than two nor more than eight regiments, each regiment to consist of two battalions, and each battalion to consist of five companies, one of which shall be light infantry, grenadiers, or riflemen, to be formed of volunteers from their respective regiments: each compa-

ny to consist of not more than sixty-four privates, nor less than forty, or as near as may be, having regard to their local situation. There shall be to each brigade at least one company of artillery, and one or more troops of horse, as the brigadier may deem proper, provided they do not exceed one company of each to a regiment, or more than an eleventh part of the infantry, which shall be formed by volunteers from their respective brigades.

How the militia shall be armed.

SEC. 4. *And be it enacted*, That in order that the militia may be well armed, equipped and accoutred, (except as hereinbefore excepted, and all young men under the age of twenty-one years enrolled agreeably to the second section of this act, shall be exempted from furnishing the necessary arms accoutrements, and from all military duties and fines during such minority, except in cases of rebellion or any actual invasion of thia State, provided however that) every non-commissioned officer and private who now possesses or who shall possess, before the expiration of the (said) year, a musket or firelock, shall be obliged to appear on duty with such musket or fire-lock, whether his assessment be under or above five hundred dollars, under the penalty, for neglect, of being considered and returned among the absentees; and after the expiration of the said year, every non-commissioned officer or private who may not have received any public arms, and whose assessment shall not amount to five hundred dollars, but who shall possess a musket, or fire-lock, shall be obliged to appear on duty with such musket, or fire-lock, or be considered and returned as an absentee. The commissioned officers of the infantry shall be armed with a sword, or hanger, and espontoon, and those of the artillery with a sword, or hanger, a fusee, bayonet and belt, and cartridge-box to contain twelve cartridges; the commissioned officers of the troops of horse, shall furnish themselves with good horses, at least fourteen hands and an half high; and shall be armed with a sabre and pair of pistols, the holsters of which shall be covered with bear-skin caps; each light horseman or dragoon, shall furnish himself with a good horse, at least fourteen and an half hands high, a good saddle, bridle, mail-pillion and valise, holsters and a breast plate and crupper, a pair of boots and spurs, a pair of pistols, a sabre and cartouch-box to contain twelve cartidges for pistols. The artillery, light infantry, grenadiers, and cavalry, shall be uniformly clothed in regimentals at their own expense, the colour and fashion to be recommended by the brigadier commanding the brigade to which they may belong: But the officers, non-commissioned officers and privates of every troop of horse, or volunteer compa-

How the officers shall be armed.

Artillery, light infantry, grenadiers and cavalry,—how clothed.

ny of militia shall be obliged to wear the uniform recommended by the brigadier of his brigade, or be considered as not belonging to such company. And all officers shall likewise uniform themselves in the manner directed by the major-general. Every militia man shall appear so armed and accoutred, when called out to exercise or into service, (here it is understood that the public find knapsacks, and ammunition,) and every man so enrolled as aforesaid, and having provided himself with arms and accoutrements as hereinbefore directed shall hold the same exempt from all suits, distress, executions, or sales for debt or payment of taxes: Each battalion shall be provided with a stand of colours by the commanding officer of the same, bearing the United States' coat of arms, which standard shall be borne by the eldest ensign present, and each company with a drum and fife, or bugle-horn by the commissioned officers of the company; each regiment shall have one drum-major and one fife-major, whose business it shall be to attend on battalion and regimental reviews, under the direction of the lieutenant-colonels and majors of each regiment: and it shall be the duty of each major of a battalion to cause to be established a school for music in the central part of his battalion, at which place and time, by previous notice given, the drum and fife majors shall attend to instruct any and every drummer and fifer of the several companies, the commanding officers of which are hereby authorized and required to send one or more scholar or scholars belonging to their respective companies to be instructed in the principles of martial music: The commanding officers of companies are hereby enjoined to send those only whom they have good reason to believe will continue to reside in their companies, or districts: If no suitable person can be found capable of teaching music in the bounds of the several regiments, the commanding officers of the same may obtain them wherever in their power, their board, and expenses of teaching, to be paid out of the fines of the respective battalions. Teachers of music for the troops of cavalry, to be procured by their respective commanding officers, which expense shall also be paid out of the fines of the brigade to which such troop shall belong: *Provided however*, that if the brigadier and a majority of the field officers of any brigade shall be of opinion that one school to a regiment or brigade be sufficient, they are hereby authorized and empowered to direct accordingly: *And provided further*, that nothing herein contained shall be obligatory on the commanding officers of regiments in any brigade, unless the brigadier and a majority of the field officers in such brigade shall recommend the establishment of said schools.

Major-General to direct the uniform of officers.

Arms or accoutrements not liable to execution or distress.

Colours, and by whom furnished.

Schools for music to be established.

Teachers of music, how to be paid.

SEC. 5. *And be it enacted*, That the militia shall be officered as follows: To a division, one major general and two aids-de-camp to be out of the line of captains with the rank of majors: To each brigade, one brigadier-general, with one brigade inspector, to serve as brigade-major and to be out of the line of captains with the rank of major: To each regiment, one lieutenant-colonel commandant: And to each battalion one major: To each company of infantry, (including light infantry, grenadiers and riflemen,) one captain, one lieutenant, one ensign, four sergeants, four corporals, one drummer and one fifer or bugler: There shall be a regimental staff to consist of one adjutant and one quarter master to rank as lieutenants, one paymaster, one surgeon and one surgeon's mate and one sergeant-major: Each company of artillery shall consist of one captain, two lieutenants, four sergeants, four corporals, six gunners, six bombardiers, one drummer and one fifer, and fifty privates or matrosses, or as near as may be: Each troop of cavalry shall consist of one captain, two lieutenants, one cornet, four sergeants, four corporals, one sadler, one farrier, one trumpeter, and not less than thirty-two privates, or as near as may be: there shall be one quarter-master general for the State.

How the militia shall be officered.

SEC. 6. *And be it enacted*, That the governour shall appoint and commission all the officers of the militia; to wit: the major-general, brigadier-generals, adjutant-general, quarter-master general, lieutenant-colonels, majors, captains, lieutenants, ensigns and cornets: That the major-general shall appoint his own aids-de-camp: That the field officers of each regiment shall appoint their respective regimental staffs. The brigadiers shall appoint their aids-de-camp, and each captain shall appoint his sergeants, one of whom shall be clerk of the company: That all officers appointed under this act shall be commissioned for seven years, their respective grades to be decided by the dates of their commissions: and when two of the same grade shall bear equal date, then their rank shall be determined by lot to be drawn by them before the commanding officer of the brigade, regiment or battalion, company or detachment; and if they neglect or refuse to draw, the commanding officer shall draw for them, which lot shall be marked on each commission by the commanding officer, in whose presence it shall be drawn, and forever exclude the controversy of the parties: And whenever the governour shall re-commission any officer, he shall note upon the new commission the date of the former commission, if both be of the same rank: and in all matters relating to grade, the commission shall be considered

Governour to appoint & commission the officers:—

Of their commissions & rank.

CHAPTER 1. 1827.

as bearing the date of the former commission, provided it be as aforesaid for a new office of the same rank with the old.

Companies,—how classed.

SEC. 7. *And be it enacted*, That on the first Tuesday in April next the captain or commanding officer of each company shall call the persons belonging to the same together, giving due notice thereof by setting up at least three advertisements in the most public places in his district, ten days before such day of meeting: and shall divide them into eight classes, as nearly equal in number to each other as conveniently may be, allotting a sergeant, or corporal to each class; and eight slips of paper, numbered respectively from one to eight, being prepared, every private shall determine, by drawing a ballot, what class he is to serve in: And in case any of the persons belonging to any company shall neglect to attend at the time and place appointed for classing the said company, or if present shall refuse to draw as aforesaid, then the said captain or commanding officer shall appoint one disinterested freeholder to draw for the absentees, or persons so refusing: and when the classes shall be so settled, the captain or commanding officer of each company shall form a roll consisting of eight classes, and the names and surnames of the men in each class, numbered according to the order of balloting, which he shall keep for his own use, transmitting forthwith a copy thereof, with a list of his commissioned officers, and the dates of their respective commissions, and non-commissioned officers, prefixed, to the colonel or commanding officer of his regiment, who shall enter the same in a book to be by him provided for that purpose; and the captain, or commanding officer of each company of artillery, troop of horse, grenadiers, light-infantry or riflemen shall in like manner return a copy of his roll to the brigadier: and the captain or commanding officer of every company shall on the first Tuesday in April in every succeeding year, add to the roll the names and surnames of all such male white citizens between the ages aforesaid, who on the preceeding twelve months have removed to, and are then residing in, that subdivision, or therein have attained the age of eighteen years, except as hereinbefore excepted: And every militia man migrating or removing out of the bounds of one battalion or company to another, shall apply to the commanding officer to which he did belong, who shall give him a discharge, certifying the class to which he belongs, and whether he has served his tour of duty or not, and the time and date of said service; which certificate the said militia man shall produce to the captain or the comman-

Rolls of each company.

Certificates in cases of removal from one district to another.

ding officer of the company within whose bounds he next settles, within ten days after his settlement, and the said captain or commanding officer is hereby required to enrol him in the class specified in the said certificate. Any captain or commanding officer of a company who shall neglect or refuse to perform all the duties enjoined upon him by the provisions of this section, shall be liable to a fine of fifty dollars and to a forfeiture of his commission.

Penalty.

Squadrons of Horse, and battalions of artillery, how formed.

SEC. 8. *And be it enacted*, That when there shall be two or more full troops of horse in any brigade, they shall be formed into a squadron or battalion and shall be entitled to a major, adjutant and quarter-master, and every such battalion shall meet in squadron at least once in every year, at such time and place as shall be ordered by the brigadier; and when the artillery in any brigade shall form two or more full companies, they shall compose a battalion, and be entitled to a major, adjutant and quarter-master; and any company of artillery most convenient to the place of regimental review appointed by this act, may be ordered to attend the same, at the direction of the brigadier.

Who may call the militia into service.

SEC. 9. *And be it enacted*, That when it may be necessary to use any portion of the militia for public defence, it shall be in the power of the commander-in-chief, the major-general or brigadier, according to the emergency and nature of the service, to call out any company or companies of artillery, troop of horse, light-infantry, infantry or riflemen, or any part thereof: and the service so performed by them shall be deemed and taken as a part of their tour of duty: And whenever any number of battalion companies are drafted for service, it shall be the duty of the adjutant-general to call out, and proportion the number of artillery-men, horsemen, light infantry or riflemen necessary for the same, according to the military usage.

No volunteer company to contain less than 20 privates.

SEC. 10. *And be it enacted*, That in case any company of artillery, light-infantry, riflemen or troop of horse, to be raised under the provisions of this act, by voluntary enrolments, shall not, in the course of one year from the appointments of their officers, contain at least twenty privates, or shall be reduced under that number and shall remain in that situation for six months thereafter, such corps shall be deemed disbanded, and the men which belonged to such corps shall be enrolled in the battalion company within the bounds of which the individuals thereof shall respectively reside; and if any non-commissioned officer

Uniform.

or private of any volunteer corps shall neglect, for the term of six months after having enrolled in the same, to provide himself with the uniform of the company to which he belongs, he shall be considered as discharged from the said corps, and shall be enrolled in the battalion company within the district where he resides, by the captain of such company.

Drafts for actual service.

SEC. 11. *And be it enacted*, That to the end the militia when called into service by classes, shall be properly officered, the following order is hereby directed and enjoined to be observed; that is to say; for the first draft the captains, lieutenants and ensigns holding the oldest commissions in each regiment; for the second draft the captains, lieutenants and ensigns holding commissions of the next oldest dates: and so on until the whole number of classes shall have performed an equal tour of duty. The field officers of the divisions and of every brigade in this State, shall be divided in like manner, provided that not more than one commissioned officer be drawn from any one company, nor a greater number of field officers from any regiment or brigade than the commander in chief may limit, (respect being always had in like manner to the seniority of the commissions of such field officers,) and each class to be considered as a detachment from the different companies, liable to serve six months, and no more, and to be relieved by the next class in numerical order; the relief to arrive at least two days before the expiration of the term of the class relieved: but nothing herein contained shall prevent the governour, major-general or brigadiers from calling out and employing part of any class or any company or companies, regiment or regiments without respect to rule, whenever the exigency is too sudden to allow the assembling of the militia which compose the particular classes; and the service of those so called out, shall be a part of their tour of duty: and the pay of the militia, when called into actual service, shall commence two days before marching, and they shall receive pay and rations at the rate of fifteen miles per day on their return home.

Drafts in cases of exigency.

Pay, when to commence, &c.

Pay, how fixed.

SEC. 12. *And be it enacted*, That when the militia or any detachment thereof are called into service, the pay and rations of the officers, non-commissioned officers and privates shall be the same as is or may be established by the general government of the United States.

Rules of discipline.

SEC. 13. *And be it enacted*, That the rules of discipline approved and established, or which may hereafter be

approved and established, by congress, shall be the rules of discipline to be observed by the militia of this State, and it shall be the duty of every commanding officer at every muster day, whether by brigade, regiment, battalion or single company, to cause the militia to be exercised and trained agreeably to the said rules of discipline, but the captain or commanding officers of companies or troops, on company days, shall not keep the men under arms longer than five hours, during which time it shall be the duty of such commanding officers to have as many of the evolutions in the said rules of discipline performed as the nature of the case will admit.

How long men may be kept under arms.

SEC. 14. *And be it enacted*, That if any person or persons, whether officer or soldier, belonging to the militia of this State, called out into the service of this State, be wounded or disabled while in said service, he shall be taken care of and provided for at the public expense: and if any horse shall be taken into the service of the militia, either in troop, artillery or wagons, or otherwise, such horse or horses, shall, by the brigade-inspector with two freeholders, be appraised immediately before the time of going into actual service, and the said brigade-inspector shall enter the same in a book, and in case such horse or horses shall be killed, disabled, die or taken by the enemy, the owner or owners shall be paid the full value of such horse, provided the said loss has not happened in consequence of the neglect or improper conduct of the owner of the said horse, or of his servant.

Provision for such as may be disabled in service.

Horses killed, when paid for.

SEC. 15. *And be it enacted*, That from and after the passing of this act, the militia of this State shall be exercised in companies once in the month of April and November in every year, at such time and place within the district as the captain or commanding officer of each company shall appoint and direct; and in battalions in the month of May in every year within the bounds of each battalion as the major thereof shall direct; and in regiments as follows; the first regiment on the first Monday in June in every year, the second regiment on the Tuesday following, and the third regiment on the Wednesday following, and so on according to their numerical rank, on every day in the week (Saturdays and Sundays excepted) until the whole number of regiments shall have mustered and exercised in the aforesaid manner: *Provided however*, that it shall be the duty of the major to give fifteen days' notice before the meeting of any battalion to the officers commanding companies within his battalion: and it shall be the duty of the commanding officers of companies

Militia, when exercised in companies;

when in battalions;

and when in regiments.

Notice of musters.

CHAPTER I. 1827.

to give notice ten days before the days of mustering, by at least three advertisements set up in the most public places in their respective districts, giving information of the time and place of muster either in companies, battalions or regiments.

Penalty on officers neglecting to call out their companies;

on privates not doing duty.

SEC. 16. *And be it enacted*, That if any captain or commanding officer of a company shall neglect or refuse to call out his company agreeably to the directions of this act, he shall abide the decision of a court-martial, who may cashier him if they deem it proper: and if any non-commissioned officer or private, not having a reasonable excuse, shall neglect or refuse when the roll is called over to answer to his name, or if any answering to his name shall not go into the ranks and there perform his duty, he shall be noted on the roll with the absentees, and be tried by a court-martial to be appointed for that purpose, who may fine such person, as a *looker-on*, in any sum not exceeding ten dollars;—and as soon as the duty of the day is concluded, the captain or commanding officer shall cause the roll of his company to be called, and every member of it at that time absent without leave shall be noted and returned as an absentee.

Account of fines to be kept; and where to be sent.

SEC. 17. *And be it enacted*, That the captain or commanding officer of each of the companies or troops composing the militia of this State, shall enter in a book to be by him for that purpose provided, an exact account of all fines imposed on the officers, non-commissioned officers and privates of his company or troop, and shall cause to be transmitted, in the month of January in every year, a fair account of all such fines, with his name subscribed thereto, to the commissary of the brigade to which such officer may belong, and a duplicate thereof he shall transmit at the same time to the brigadier-general; and the said commissary and brigadier, when they receive the said lists, shall endorse on them the time when they received the same, and they shall both cause the amount of each list of fines, with the dates when they were received, to be recorded in the books for that purpose to be provided: and in the month of November in every year, the brigadiers shall cause to be transmitted to the auditor of accounts all such lists of fines so by them received. And every captain or commanding officer omitting, refusing or neglecting to transmit the said lists in manner aforesaid, shall, for every such neglect or omission, be fined thirty dollars, which fine may be sued for and recovered by the commissary of the county in which such neglect shall happen, before any justice of the peace, with costs of suit,

Penalty.

who is hereby enjoined and required on proof of such neglect to give judgment for the same; whereupon the amount of such judgment may be levied and collected by any collector appointed by said commissary in the manner that other fines are directed by this act to be recovered.

Commissaries, their duties.

SEC. 18. *And be it enacted*, That there shall be a commissary of military stores in each of the counties of this State, whose duty it shall be to collect all the public arms in their respective counties, and to provide some safe and convenient place where they may be kept, and shall cause every musket so collected, received or on hand to be branded on the but of the stock with the words "State of Delaware;" and the said commissaries shall not give out such public arms except to the order of the governour, as hereinafter provided, or to the order of the major-general or brigadier, in case of emergency, insurrection or actual invasion of the State.

Appropriation of fines.

SEC. 19. *And be it enacted*, That all sums of money which shall come into the hands of any military commissary in pursuance of this act, shall by him be applied in purchasing and paying for colours, drums and fifes, and for the hire of musicians, as the field officers or a majority of them may direct: *Provided*, that the payments made on account of orders drawn by the field officers of any regiment, shall not exceed the amount of money received for fines from any such régiment; *and provided*, that no second order drawn shall be paid until an exact account of the disbursements of the money last paid, with proper vouchers, be rendered to the said commissary: and the captains or commanding officers of all troops of horse and companies of artillery, shall have power to draw orders on the said commissary for the payment of their respective instruments of music and their musicians, which orders shall in all cases be countersigned by the brigadier-general of the brigade.

If no fines, captain to report to commissary and brigadier.

Sec. 20. *And be it enacted*, That the captain or commanding officer of each of the companies or troops composing the militia of this State shall, and is hereby enjoined and required, in case no fines shall be imposed on the officers, non-commissioned officers or privates of his company or troop, to make report in writing, at the times mentioned in the seventeenth section of this act, to the commissary of the brigade to which said officer may belong, that no such fines have been imposed, and a duplicate thereof he shall transmit, at the same time, to the brigadier-general; and the commissary and brigadier

shall endorse the said reports and record them in the same manner as is directed to be done with the accounts of fines transmitted according to the said section: and every captain or commanding officer omitting, refusing or neglecting to make such reports, shall be liable to the same fine, for every such neglect or refusal, to be recovered in the same manner as by this act is directed.

Penalty.

Commissaries to give bond,

SEC. 21. *And be it enacted*, That every military commissary who shall be appointed, before he enters upon the duties of his office, shall give bond in the name of the State, with one or more sureties, to be approved of by the brigadier-general, in the sum of three thousand dollars, conditioned for the faithful performance of the duties of his office; which bond the brigadier shall immediately forward to the auditor of accounts: and it shall be the duty of the commissary once in every year, and not oftener, to have the fines collected which shall be imposed within the brigade to which he belongs, and the accounts of which shall be transmitted him in the manner herein prescribed; and for this purpose he is hereby authorized and empowered to appoint such and as many collectors as he may think proper; and each collector shall be by him furnished with a list of all fines to be collected within the district for which such collector may be assigned, which list shall be signed by the commissary; and there shall be annexed to each list a warrant from the said commissary, which he is hereby authorized and empowered to issue, authorizing such collector, after having given ten days' notice by at least three advertisements set up in the most public places in his collection district, to demand and receive from all delinquents the several fines which they have been adjudged to pay, and in case of refusal or neglect to pay the same, to levy and recover such fines, with constable's costs, in the same summary mode and as fully and amply, to all intents and purposes, as the collectors of the county rates and levies may or can, by the laws of this State, collect such rates and levies: and if any collector shall in any case, levy for or receive a larger sum than the amount of the fine or fines actually due, and of constable's costs, or in case of sale being made for the recovery thereof, shall not within ten days after such sale, return the overplus, if any, to the person whose property may be sold, the party aggrieved is hereby authorized and empowered to sue for and recover, before any justice of the peace, from the said commissary, or his collector, ten dollars, with costs of suit, in addition to the sum which the said party may have paid over and above the fines actually due.

and to appoint collectors of fines.

Penalty for collecting more than is due.

SEC. 22. *And be it enacted*, That the auditor of accounts be, and he is hereby, directed and required to procure, at the expense of the State, a good and sufficient book, in which he shall make regular and fair entries of the transactions of the several military commissaries; and that he shall make a report of the same, together with all fines returned, to the legislature at their annual meeting in January in every year.

Auditor to keep accounts with commissaries, and report to the legislature.

SEC. 23. *And be it enacted*, That if any collector appointed by the commissary of either of the counties, shall neglect unreasonably or refuse to pay over the money which he may have received for fines, to such commissary, when thereto required, after retaining the amount of the commissions or compensation hereinafter mentioned and allowed to said collector, then the said commissary is hereby authorized and empowered to sue for and recover the same, with costs, before any justice of the peace in the county where such default may happen, who is hereby required to issue execution, without stay, against such delinquent collector, in favour of the said commissary, empowering and requiring any lawful constable to levy therefor with costs, in like manner as for debts under forty shillings.

Liability of collectors for fines received.

SEC. 24. *And be it enacted*, That it shall and may be lawful for the military commissary in each county, to appoint any one or more of the collectors of the county rates and levies, or any other person or persons at his election, collector or collectors of such fines as may be imposed on the officers, non-commissioned officers and privates; and in case of the appointment of any collector of the county rates and levies, to be collector of such fines, the same shall be made after the first Tuesday of February and before the first Tuesday of March annually: and every such collector of county rates and levies, so appointed, shall take upon himself the duty of collecting such fines, and shall, before he enters on the duties of his office, give bond, with one or more good and sufficient freeholders, jointly and severally, in the sum of one thousand dollars, lawful money of the United States, with a warrant of attorney thereto annexed for confessing judgment for the said penalty, in the name of the said commissary, to be taken and approved by the levy-court, at their meeting in March annually, conditioned for the faithful discharge of his duty in collecting the fines in his hundred, and the payment over of the same to the commissary, according to the true intent and meaning of this act; and in case of their or any of their refusal or ne-

Collectors of tax may be appointed collectors of fines;

to give bond:

Penalty for not giving bond.

glect to give such bond and warrant of attorney, he or they respectively, so neglecting or refusing, shall pay to the said commissary a fine of fifty dollars, to be sued for and recovered in the same manner as for the recovery of debts under fifty dollars, to be applied as other fines under this act: and every such appointment of a collector of county rates and levies to collect such fines, shall be made and delivered to the collector, under the hand and seal of the commissary, at the time of his appointment; and a certificate thereof shall be delivered or transmitted by the said commissary, to the commissioners of the levy-court, on or before the first Tuesday in March annually: and every such collector of county rates and levies so appointed to collect fines, shall be allowed commissions on all such sums as may thus come into his hands and be duly accounted for, at the rate of ten dollars for every hundred dollars; which commissions shall be deducted and taken out of the commissions to be credited to the commissary according to the provisions hereinafter mentioned: *Provided however*, that no such collector shall be obliged or required to collect any fines from persons residing out of his hundred at the time of the delivery of his list of fines and warrant of the commissary; *and provided also*, that the remedy given against collectors of fines, by the twenty-first section of this act, shall be and remain good and available, notwithstanding the giving bond with surety aforesaid.

Appointments how made.

Collectors' commissions.

Proviso.

Commissary to settle with the auditor.

SEC. 25. *And be it enacted*, That the commissary of each county shall annually settle with the auditor of accounts, in the month of December, when he shall produce to him the list of fines transmitted him by the returning officers, and a fair accout of his transactions *as commissary: and the auditor shall charge the said commissary with the amount of each list of fines, with the fine of every officer who has neglected to return his lists as directed by this act, and with all other money which he may have received; and shall credit him with all monies expended by him in pursuance of the directions of this act, if proper vouchers for such expenditure be exhibited, with the amount of all orders, drawn upon and paid by him, by the field officers: *Provided*, that the money paid to the orders of the said field officers of any one regiment does not exceed the nett amount arising from fines within the district of such regiment; *and provided*, it shall appear that no second order was paid by him, until the money paid upon the former order had been regularly accounted for with vouchers: and the auditor shall fur-

* "And" in the original.

ther credit the said commissary with the amount of all fines on returning officers, the payment of which it shall appear, from certificate of the field officers, have been excused, with the amount of all lists of delinquencies passed by the field officers, or a major part of them, of the regiment wherein the said fines have been imposed: *Provided however*, that the said field officers do declare, in a certificate to be attached to such list of delinquencies, that they believe neither the commissary nor any of his collectors have been guilty of neglect with regard to such delinquencies: and the auditor shall further credit the same commissary with the sum of twenty dollars for every hundred dollars which he shall collect, in compensation of the trouble of the said commissary and his collectors in collecting the fines: and the said commissary shall be responsible to the said collectors for their compensations: and if any of the said commissaries shall neglect or refuse to appear and settle as aforesaid, or after settlement shall neglect or refuse for the space of one month after each settlement, to pay over to the state-treasurer the balance due on such settlement, he not having therefor a sufficient excuse in the opinion of the commander-in-chief, he shall not be entitled to the commissions allowed by this act, and the auditor shall immediately give notice to the governour of such neglect or refusal, in order that he may remove, and commission some other person to be commissary in his place: and the auditor shall cause a suit forthwith to be instituted against such delinquent commissary, upon his bond, in which suit there shall be recovered, besides costs of suit, the whole amount of the lists of fines which have been returned to the brigadier, and of such other lists as can be proven to have been returned to the said commissary, as well as the amount of all other monies received by him, and of the fines incurred by officers neglecting to make regular returns, deducting only therefrom the lists of delinquencies attested in the manner directed by this act, and the amount of such fines on the returning officers the payment of which may have been excused in the manner herein before directed, and of such payments and expenditures as he shall prove that he has made conformable to this act. And the field officers who attest any list of delinquencies shall forthwith forward to the auditor the amount and date of the list so passed, and the State-treasurer, whenever any payments are made to him by the commissary, is hereby required immediately to transmit to the auditor the amount of such payments and the time when made.

Commissary's compensation.

Penalty for not settling or paying over.

Duty of field officers—and State-treasurer.

SEC. 26. *And be it enacted*, That when any class or

Militia, how

notified when called into service.

classes or parts of classes of militia shall be called to perform any tour of duty, the adjutant-general shall give the orders to the brigade-major, which orders shall be given by the brigade-major to the captain or commanding officers of the several companies in his brigade, who shall immediately give notice to such non-commissioned officers and privates in their respective companies as shall be obliged to perform the same; and every non-commissioned officer and private so notified to perform any tour of duty, shall either perform the same in person, or find an able-bodied substitute to perform the same in his stead; or he shall pay a sum of money not exceeding thirty dollars, which shall be applied by the captain or commanding officer of the company to which the person belongs, so neglecting or refusing to perform his tour of duty, towards procuring a substitute as aforesaid; which sum shall be recovered in the same manner as fines and forfeitures are recoverable by this act, unless the party be excused by a court-martial.

Substitute.

Penalty for not serving.

Penalty in case of officers not serving,—

SEC. 27. *And be it enacted*, That if any commissioned officer shall refuse or neglect to perform his tour of duty when called on, he shall forfeit and lose his commission, and shall additionally pay such fine as may be imposed upon him by a court-martial, not exceeding five hundred dollars: provided a forfeiture of commission shall not happen if a court-martial, upon a full hearing of his case, shall otherwise determine. And for a neglect or refusal to perform all or any other military duty required of such commissioned officer, by the requisitions of this State, or of the executive of the United States, he shall abide the sentence of a court-martial, according to the articles of war established by congress.

or omitting any military duty.

Reviews.

SEC. 28. *And be it enacted*, That the governour may review the militia of the State at his pleasure; the major-general shall review at least one brigade once in every year; and the brigadier-generals shall respectively review the regiments in his brigade every year.

Adjutant-general,—his duties.

SEC. 29. *And be it enacted*, That there shall be an adjutant-general appointed for the State, whose duty it shall be to distribute all orders from the commander-in-chief of the State to the several corps, to attend all public reviews when the commander-in-chief shall review the militia or any part thereof, to obey all orders relative to carrying into effect and for perfecting the system of military discipline established by this act, to furnish blank forms of different returns that may be required, and to

explain the principles on which they should be made, to receive from the different officers of the several corps throughout this State returns of the militia under their command, reporting the actual situation of their arms and accoutrements and every other thing which relates to the general advancement of order and discipline; all of which the several officers of brigades, regiments, battalions and companies are required and commanded to make agreeable to the forms and directions of the adjutant-general, so that he may be duly furnished therewith; from which returns he shall make proper extracts and lay before the governour or commander-in-chief of the State, to be by him laid before the General Assembly of the State, the number of effective men in each brigade, the State of the militia, magazines and military stores; and the said adjutant-general shall transmit a duplicate of the same to the President of the United States; and every officer neglecting or refusing to make such returns in due and proper time, shall forfeit his commission, and be liable to a fine not exceeding one hundred dollars nor less than twenty dollars, to be determined by a court-martial: and the said adjutant-general shall be allowed and paid the sum of three hundred dollars, out of the treasury of this State, for each and every year during which he shall continue to do and perform well and faithfully all the duties enjoined upon him by this act, to be paid half yearly by an order drawn on the State-treasurer.

Duties of the officers.

Penalty for omitting returns to the adjutant-general.

Adjutant-general's compensation.

SEC. 30. *And be it enacted*, That the Governour of this State, for the time being, be and he is hereby authorized and required, on application as hereinafter directed, to deliver out to the militia of this State, a portion or the whole of the arms belonging to the State:—that is to say; to every private or non-commissioned officer enrolled, and fully equipped with the uniform of his company, in any company of infantry, light infantry or grenadiers, one musket, with bayonet, belt and cartouch-box: *Provided however*, that no such arms or accoutrements shall be delivered by the governour, unless he shall be fully satisfied by the certificate of at least two majors and one colonel or lieutenant-colonel of the brigade from which such application may be made, that the company applying for the same does, at the time of making such application, contain a number not less than forty effective members, exclusive of commissioned officers, all of whom shall be fully and completely equipped with the uniform of such company; *and provided also*, that before the distribution of any such arms as aforesaid, the commissioned officers of the company applying for the same, togeth-

Governour to deliver to the militia, arms of the State.

Officers to give bond before receiving the arms.

CHAPTER I. 1827.

er with at least two good and substantial freeholders, to be approved by the governour, shall give bond in the penal sum of one thousand dollars, in the name of the State of Delaware, with a condition annexed, that the arms so delivered shall be kept in good order and condition, and promptly returned to the military commissary residing in the county where such arms have been used, or to such other receiving officer as may be designated by the governour, when by him so ordered, or that on failure to make such delivery within twenty days after having been required so to do, the sum of fifteen dollars to be paid to the State-treasurer, for the use of the State, for each and every musket, with its bayonet, belt and cartouch-box, not so returned: and it shall be the duty of the military commissaries of the respective counties, or such other receiving officer as may for that purpose be designated by the governour, when and as often as any such arms or accoutrements are presented for return, to examine carefully all such arms and accoutrements, and if not in the order required by this act, a reasonable allowance only being made for wear and use, to refuse receiving the same, and make report, forthwith, of his proceedings in the case, to the Governour. All bonds taken in pursuance of the provisions of this section, shall be lodged in the office of the Secretary of State.

Duty of the commissaries.

Fines for non-attendance on days of exercise.

SEC. 31. *And be it enacted*, That if any officer, non-commissioned officer or private shall neglect or refuse to appear, at the time and place appointed to exercise, either in company, battalion or regiment, such officer, non-commissioned officer or private, so neglecting or refusing, if not excused by a court-martial, shall be fined,—if a colonel or lieutenant-colonel, ten dollars,—if a major, six dollars,—if a captain, four dollars,—if a subaltern, three dollars,—and if a non-commissioned officer or private, two dollars; and the return of all fines incurred on a battalion or regimental day, by field officers, shall be made by the highest officer in rank attending, to the commissary, in the same months in every year as is prescribed by this act for returning company fines, and under the same penalty as is herein provided of irregular returns of company fines, and to be sued for in like manner, and to be chargeable to the commissary by the auditor, on settlement, as herein before provided with regard to commanding officers of companies.

Return of fines.

Penalty for disorderly conduct, &c.

SEC. 32. *And be it enacted*, That any commissioned officer, non-commissioned officer or private of militia, who shall be disorderly or disobedient, or guilty of un-

military conduct, on a muster or training day, or at any other time when on duty,—if a commissioned officer, shall be put under arrest by the commanding officer, or tried by a court-martial, and may be cashiered,—if a non-commissioned officer or private, he shall be confined during the time of said muster or training, at the discretion of his officers, and shall be fined not more than five dollars nor less than two dollars, at the discretion of a court-martial.

Courts-martial, how appointed for the trial of officers.

SEC. 33. *And be it enacted*, That the Governour or commander-in-chief shall appoint courts-martial for the trial of all officers above the rank of captain,—that the major-general or commandants of brigades shall appoint courts-martial for the trial of captains and all officers under that rank, agreeable to the rules established by the congress of the United States: and it shall be the duty of every officer who shall appoint a court-martial to approve or disapprove of every sentence of such court-martial by them appointed: and the officer who shall appoint a court-martial shall, at the same time, appoint a judge advocate, whose duty it shall be, impartially to state the evidence both for and against the officer or other person under trial, take accurate minutes of the evidence and all proceedings of the court; all of which he shall transmit, with the judgment of the court thereon, under seal, to the officers whose duty it is to approve or disapprove such judgment; every officer put under arrest, or suspended from command, shall have a copy of the charges exhibited against him, ten days before the sitting of said court; and in case any officer for the trial of whom a court-martial shall be appointed, shall neglect to appear, unless in case of his sickness or unavoidable accidents, which shall be made appear to the satisfaction of the said court, and make his defence, he shall be deemed by said court guilty of the charge or charges and sentenced according. All courts-martial shall be carried on in day time, and when the members shall be required to vote on a question of decision, they shall begin with the youngest in commission first. All persons shall be holden to appear and give evidence before a court martial, under the penalties for neglect, as are by law provided for witnesses in other cases, when summoned by a justice of the peace: and if any subaltern or private shall refuse or neglect to serve on a court-martial, when duly noticed thereof, he shall be fined, if a subaltern, four dollars, and if a private two dollars: to be returned and collected as other company fines, unless excused by the commanding officer of the company.

Judge advocate, his duties.

Copy of charges for accused.

Witnesses.

Penalty for not serving on court-martial.

Courts-martial, how appointed for trial of privates, &c.

SEC. 34. *And be it enacted,* That all courts-martial for the trial of non-commissioned officers and privates, shall be appointed by the captain or commanding officer of the company, which shall consist of one subaltern and four privates, the subaltern to be president thereof: and at such courts-martial no person shall be excused, unless it be made appear to the entire satisfaction of the court, by the testimony of one or *[more] disinterested witnesses, that he was prevented from attending and doing duty by sickness of himself, family or other unavoidable circumstances of such nature as to demand his personal attention.

Oath of members of court-martial.

SEC. 35. *And be it enacted,* That every member of a court-martial for the trial of a commissioned, non-commissioned officer or private, shall, before he proceeds to discharge the duties of a member of such court, take the following oath or affirmation; to wit: that he will faithfully and impartially perform the duties of a member of the said court-martial, without favour or partiality: which said oath or affirmation may be administered by any commissioned officer or by the president of the said court.

Officers to be exercised twice a year.

SEC. 36. *And be it enacted,* That the commissioned officers of every regiment shall be called out twice in every year; that is to say; once in the month of May and once in the month of September annually, by order of the commanding officer of each regiment through the adjutant of the same, to be by him trained and exercised, under the inspection of the field officers of the regiment, the time and place of exercise to be appointed by the commanding officer of the regiment: and if any commissioned officer shall neglect or refuse to attend, or, if attending, shall refuse to be exercised, he shall be fined in any sum not exceeding ten dollars, at the discretion of a court-martial.

Arrests of brigade-inspectors and adjutants.

SEC. 37. *And be it enacted,* That the adjutant-general shall have power to arrest the brigade-inspector for neglect of duty, or disobedience of orders: that the brigade-inspector shall in like manner have power to arrest adjutants of regiments, and that the returns of such arrests shall be made,—in case a brigade-inspector is arrested, to the commanding officer of the brigade to which such inspector shall belong,—and in case of the arrest of an adjutant, to the commanding officer of his regiment, who shall respectively appoint the court-martial for the trial of such officers.

* "More" omitted in the original.

SEC. 38. *And be it enacted*, That all and every person or persons whatsoever, now holding any muskets, colours, drums, or instruments of martial music, belonging to the militia of this State, shall forthwith deliver over the same to the captain of the district wherein they reside, under the penalty of twenty dollars, to be sued for and recovered in like manner as debts under forty shillings are by the laws of the State recovered.

Persons holding any arms o the State to deliver them, &c.

Penalty.

SEC. 39. *And be it enacted*, That the rules and articles of war established by the General Government for the army of the United States, are enacted and declared to be the rules and articles applicable to the government of the militia of this State, whenever the said militia, or any part or detachment thereof, shall be called into actual service by authority of this State or of the United States.

Articles of war.

SEC. 40. *And be it enacted*, That with every commission issued under this act, the governour shall cause to be delivered or transmitted to the person receiving such appointment, one copy of this act; and that the governour may be enabled to carry this part of the law into effect, the Secretary of State is hereby required to have printed and published, forthwith, separate and a part from other laws that are or may be passed at the present session, three hundred copies of this act.

Copies of this act for officers:

300 to be printed.

SEC. 41. *And be it enacted*, That the act entitled "An act to establish an uniform militia throughout this State," passed on the 10th day of August, 1807, and the act entitled "A supplement to the act entitled "An act to establish an uniform militia throughout this State," passed on the second day of February, 1811, and the act entitled "A supplement to the act entitled an act to establish an uniform militia throughout this State," passed on the 25th day of May, 1812, and the act entitled "An additional supplement to the act entitled An act to establish an uniform militia throughout this State," passed on the 30 day of January, 1816, and the act entitled "An act to repeal fines for non-attendance on days of parade, and for other purposes," passed on the 2d day of February, 1816, be, and every part of the said recited acts is, from and after the passing of this act, declared to be repealed, made null and void.

Repeal of former acts. — Chap. 49, vol. 4, p. 123 to 158,—13 Aug. 1807.

Ch. 157, vol. 4, p. 443.

Ch. 217, vol. 4, p. 582 to 586.

Ch. 233, vol. 4, p. 608 to 611.

Ch. 74, vol. 5, p. 127.

PASSED AT DOVER, *February* 9, 1827.

CHAPTER II. 1827.

CHAPTER II.

AN ACT *to enable Sarah K. Hudson, of Sussex county, to bring into this State, from the State of Maryland, a certain negro slave therein mentioned.*

PASSED AT DOVER, *January* 10, 1827. } PRIVATE ACT.

CHAPTER III.

AN ACT *to dissolve the bonds of matrimony between Ann Clark and her husband Abraham Clark.*

PASSED AT DOVER, *January* 19, 1827. } PRIVATE ACT.

CHAPTER IV.

AN ACT *to authorize Curtis Brinckle Beswick to remove from the State of Maryland, into this State, a certain male negro slave.*

PASSED AT DOVER, *January* 19, 1827. } PRIVATE ACT.

CHAPTER V.

A SUPPLEMENT *to the act entitled "An act to incorporate a company for making an artificial road from or near the borough of Wilmington, in the county of Newcastle, on the east side of the Brandywine creek, in the rout through West-Chester, to the turnpike roads in the great valley, in the State of Pennsylvania."*

Toll

BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That any person or persons who shall hereafter travel on the said turnpike road, or use it for any space or distance less than one mile, shall be charged and required to pay toll or tolls as for one full or entire

mile; and when such tolls shall, according to the rate of tolls established by the act to which this is a supplement, amount to any sum less than one cent, the said company shall have a right to demand and receive for the said toll, one cent; any law, usage or custom to the contrary notwithstanding; and all the tolls demandable under this act, shall be collected in the same manner, and the toll-gatherers shall have the same power and authority, as is provided in this behalf in the act to which this is a supplement: *Provided*, that nothing in this act shall authorize the said company to demand or receive toll from any elector of Brandywine hundred going to and returning from any general or special election.

Electors, when exempt.

PASSED AT DOVER, *January* 19, 1827.

CHAPTER VI.

AN ACT *authorizing Moses Bradford, of Newcastle county, to bring into this State, from the State of Maryland, a certain negro girl therein named.*

PASSED AT DOVER, *January* 22, 1827.

PRIVATE ACT.

CHAPTER VII.

AN ACT *concerning the office of Sheriff.*

SECTION 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That no person who shall have served as under sheriff for one continued year, or who shall have served as under sheriff several times amounting in the whole to one year, during the term of office of any sheriff, shall be appointed or chosen to the office of sheriff in the county in which he shall have so served as under sheriff, within the space of three years after the termination of his service as under sheriff.

1 vol. 165, § 2.

When under sheriff shall not be chosen sheriff.

SEC. 2. *And be it further enacted*, That if any person, being candidate for the office of sheriff, or any person or persons for or on behalf of a candidate for the said office, shall attempt to promote the election of such candidate,

1 vol. 165, § 6.

Giving or promising bribes, treats, &c., how punished.

CHAPTER VII. 1827.

or to influence any elector in giving his vote concerning the said office, by giving or promising to any person or persons, either by themselves or others in their behalf, or for their use, directly or indirectly, any wages, gratuity, strong drink of any kind, treats, entertainments, gift or reward, every person so offending shall be deemed to be guilty of a misdemeanour, and, upon conviction thereof, shall forfeit and pay to the State a fine not exceeding the sum of one hundred dollars.

Repeal. 1 vol. 164.

SEC. 3. *And be it further enacted*, That the act entitled "An act limiting the time of the sheriffs within this government holding their offices, and preventing bribery and corruption in the election of said sheriffs," be and is hereby repealed, except so far as shall concern any matter or thing heretofore done or transacted against the form of the said act.

PASSED AT DOVER, *January* 23, 1827.

CHAPTER VIII.

AN ACT *for the relief of Justus Lowery.*

PASSED AT DOVER, *January* 23, 1827.

PRIVATE ACT.

CHAPTER IX.

AN ACT *making provision for the preservation of some of the records in Sussex county.*

Commissioners to examine the records in Recorder's office, Sussex.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That Thomas Robinson, senior, Matthew Rench and George Rodney be, and they are hereby appointed, commissioners to examine the records belonging to the office for recording of deeds in Sussex county, which are in danger of being lost; and they, or any two of them, shall determine what records therein ought to be copied and again recorded: and it shall be the duty of the recorder of deeds in said county, to copy or cause to be copied and recorded in well bound books, to be procured by him, all such records which the said commission-

Recorder to copy such as they shall order.

ers or any two of them shall order to be copied and recorded. And it shall be the duty of said commissioners to compare and correct said copies with and by the original records so copied and recorded; and after such duty shall be performed and certified by the said commissioners, it shall be the duty of the said recorder to certify, under his hand and seal of office, at the end of the book containing said copies, that the same have been compared and corrected, and are true and perfect copies of the original records belonging to said office; and the said copies, and book or books containing the same, shall be and remain of record in said office, and the same, or duly certified copies of any deed, certificate of survey or other writing therein contained, shall have and receive, as well in all courts of law or equity as thereout, the same faith, credit and effect, as the original records thereof may, should or can have and receive.

How such copies shall be compared and certified.

Copies to be evidence, &c.

SEC. 2. *And be it enacted*, That if the said commissioners, or any two of them, shall be of opinion that there are any books of record belonging to the office aforesaid, or to the office of the supreme court or court of common pleas in the county aforesaid, which can be preserved by binding the same, they are hereby authorized and required to cause the same to be bound, in such manner and form as they may deem proper; and every book in the office for recording of deeds in the county aforesaid, which can be bound without injuring the records therein, is excepted out of the first section of this act.

Certain records to be re-bound without copying.

SEC. 3. *And be it enacted*, That the said commissioners, before entering upon the duties aforesaid, shall be sworn or affirmed, by some judge or justice of the peace, faithfully and impartially to perform the said duties, and shall file a certificate thereof in the office for recording of deeds in Sussex county, and the recorder shall record the same.

Commissioners to be sworn, and certificate thereof filed.

SEC. 4. *And be it enacted*, That each of the said commissioners shall have and receive, for each day's attendance in performing the duty in him reposed, and for any money expended for binding any book or books, such compensation as may be allowed by the levy-court and court of appeals of the county aforesaid, to be paid by the county-treasurer, out of any moneys in his hands belonging to the county; and the recorder of deeds shall have and receive such compensation for recording as aforesaid, as the said levy-court and court of appeals may allow for the same, to be paid as aforesaid.

Compensation of commissioners and recorder.

Vacancy among commissioners.

SEC. 5. *And be it enacted,* That if any of the said commissioners shall die, remove out of the county, or refuse or neglect to perform the duties herein before required, it shall be lawful for the other commissioners to appoint some other person in his place or stead; and the person so appointed shall have all the power and authority of the commissioner in whose place he shall be so appointed, and shall be sworn or affirmed as is required by the third section of this act.

PASSED AT DOVER, *January* 23, 1827.

CHAPTER X.

AN ACT *authorizing Ann Bail, of Newcastle county, to bring into this State, from the State of Maryland, a certain negro girl named Rachel, and to retain her for a limited time as a slave.*

PASSED AT DOVER, *January* 23, 1827.

PRIVATE ACT.

CHAPTER XI.

AN ACT *against the firing of wood-lands and the unseasonable firing of marshes.*

1 vol. 217.
1 vol. 232.
Penalty for firing woodland, or firing marsh before 10 March or after 1 May.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That if any person or persons shall set on fire any woodland, or cause or procure any woodland to be set on fire, or shall, before the tenth day of March, or after the first day of May, in any year, set on fire any marsh, or cause or procure any marsh to be set on fire, every person so offending shall be deemed guilty of a misdemeanour, and, upon conviction thereof, shall forfeit and pay to the State a fine not less than fifteen dollars nor exceeding two hundred dollars; and every such person shall also be answerable to every person injured by means or in consequence of the setting of such fire, for all damages on occasion of such injury, to be recovered, with costs of suit, by an action on the case. *Provided,* that the burning of wood cut down, or of brush-wood or bushes, upon land, for the purpose of clearing such land, or of

Proviso.

consuming such wood or brush-wood upon the land, using all due precaution to prevent mischief, shall not be deemed within the foregoing provision against setting woodland on fire. If any negro or mulatto slave, shall commit the misdemeanour herein before described, every such slave, upon conviction thereof, before any justice of the peace for the county wherein the misdemeanour shall be committed, shall be whipped with any number of lashes not exceeding thirty-one, upon the bare back.

Penalty on slaves.

SEC. 2. *And be it further enacted*, That the "Act against unseasonable firing the wood-lands and marshes within this government," and the act entitled "An act to prevent the damages which may arise by firing the wood-lands in the parts of this government in this act mentioned;" be and are hereby repealed; except so far as shall concern any offences heretofore committed against, or any forfeitures, or penalties heretofore incurred under, either of the said acts.

Repeal. 1 vol. 217. 1 vol. 232.

PASSED AT DOVER, *January* 23, 1827.

CHAPTER XII.

AN ACT *to enable Sarah G. Banning, of Newcastle county, to bring into this State, from the State of Maryland, a certain negro slave therein named.*

PASSED AT DOVER, *January* 25, 1827.

PRIVATE ACT.

CHAPTER XIII.

AN ACT *concerning the conducting of criminal prosecutions in certain cases.*

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That, if at any court of over and terminer and general gaol delivery or any court of general quarter sessions of the peace and gaol delivery, held in either of the counties of this State, the attorney-general, or a deputy by him appointed, shall not be present, such court shall appoint a deputy of the attorney-general for the occasion,

Vol. 1, chap. 13 a, p. 57.

In absence of the Attorney-general or his deputy, court to appoint a deputy for him.

CHAPTER XIII. 1827.

and the deputy so appointed shall have authority at such court, and during the absence of the attorney-general, to institute or conduct any criminal prosecution, and perform every duty of the attorney-general which the public service shall require to be performed at such court. The acts of the deputy shall be in the name of the attorney-general, and shall be valid as if performed by him.

Acts of such deputy valid.

Repeal. Vol. 1, page 56.

SEC. 2. *And be it further enacted*, That the act entiled "An act about attorneys and solicitors," be and hereby is repealed.

PASSED AT DOVER, *January* 26, 1827.

CHAPTER XIV.

AN ACT *dissolving the bonds of matrimony between Elizabeth Jester and her husband, Elijah Jester.*

PASSED AT DOVER, *January* 26, 1827.

PRIVATE ACT.

CHAPTER XV.

A SUPPLEMENT *to the act entitled "An act to enable certain persons therein mentioned to raise by lottery, the sum of fifteen thousand dollars, for building a Grand Masonic Hall in the borough of Wilmington and State of Delaware."*

Managers appointed:

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That Louis M'Lane, Arnold Naudain, John Sellars, Victor Du Pont and David C. Wilson be, and they are hereby appointed, managers of the said lottery, and that the said managers, or a majority of them, before entering upon the duties required of them, shall give bond in the manner provided by the third section of the act to which this is a supplement.

they shall give bond.

Managers may sell the scheme, or any class, provided the purchaser give bond, &c.

SEC. 2. *And be it enacted*, That if the said managers, or a majority of them, shall deem it expedient to sell or dispose of the scheme of said lottery, or any class or classes thereof, it shall and may be lawful for the said ma-

nagers so to do, provided the purchaser or purchasers shall, with such surety or sureties as the attorney-general shall approve, execute a bond to the State of Delaware, in the sum of thirty thousand dollars, conditioned for the payment of the prizes drawn, and for the refunding to any person or persons who shall have purchased, or may hold, any ticket or tickets in the same, the respective sum or sums which shall have been paid for such tickets, if such lottery or class or classes shall not be drawn within three years from the approval of the scheme by the Governour; which said bond shall be deposited, within two months after the execution thereof, in the office of the prothonotary of the court of common pleas in and for Newcastle county, and shall be to and for the use of, and in trust for, the person or persons concerned; and the benefit thereof shall be extended, from time to time, for the relief of the party or parties aggrieved by the default of the principal obligor or obligors therein, and such proceedings may be had thereon, for the relief of the party or parties aggrieved as may, by the laws of the State, be had upon administration bonds: and that if the said managers shall, before the sale of any tickets by such purchaser or purchasers of the said lottery, or of any class or classes thereof, take such bond, with surety or sureties, as aforesaid, they shall not be liable, upon the bond mentioned in the preceding section, for any act or default of such purchaser or purchasers.

PASSED AT DOVER, *January* 26, 1827.

CHAPTER XVI.

AN ACT *ceding to the United States of America the jurisdiction which this State now has over certain parts of the shore, bed and waters of the Delaware Bay, with a reservation therein named.*

Cession of jurisdiction to U. S. for the erection of a breakwater, &c.

SEC. 1 BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That all the jurisdiction and title of the State of Delaware over and to so much of the shore, bed and waters of the Delaware bay as are necessary for the erection of a breakwater or other harbour, and for the construction of such defences as may be thought proper at or near the mouth of said bay, be and the same is hereby ceded to the United States of America, for the purpose

of erecting and keeping up such breakwater or other harbour, or such defences, and for no other uses and purposes whatsoever:—*Upon condition nevertheless*, that such harbour and defences as may be there erected shall be constructed and kept up at the sole expense of the United States of America; *and upon the further condition*, that all process both civil and criminal, under the authority of this State, may be executed and served within the place or places the jurisdiction of which is hereby ceded, in the same manner as if no such cession had been made: *Provided nevertheless, and it is hereby expressly understood and enacted*, That if the erection of such breakwater or other harbour shall not have been commenced at or before the expiration of ten years from the passing of this act, all the jurisdiction, right and powers hereby ceded to or vested in the United States of America, shall revert to and remain in the State of Delaware to as full an extent as if this act had not been passed.

Conditions.

PASSED AT DOVER, *January* 26, 1827.

CHAPTER XVII.

AN ADDITIONAL SUPPLEMENT *to an act, entitled "An act to enable the persons therein named to raise, by lottery, the sum of three thousand dollars, for discharging the incumbrances against St. Peter's church, in the borough of Wilmington, and for finishing the said church.*

Time for drawing lottery extended to 4 July, 1832.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That the time allowed by the act to which this is a supplement, and by the acts supplementary thereto, heretofore passed, for drawing the said lottery in classes, be and the same is hereby extended to the fourth day of July, which will be in the year of our Lord one thousand eight hundred and thirty-two; and if the said lottery shall not be drawn within the said time, the managers shall return and pay over, on demand, to any person or body corporate, the respective sums that may have been received from such person or body corporate, for tickets sold in said lottery.

PASSED AT DOVER, *January* 26, 1827.

CHAPTER XVIII.

AN ACT *for the relief of Robert Boyce and others therein named.*

PASSED AT DOVER, *January* 29, 1827. } PRIVATE ACT.

CHAPTER XIX.

AN ACT *for the security of purchasers of real estate, sold in execution of judgments or decrees.*

6 vol. 78.

Writ of possession, when to be awarded.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That in any case of sale of lands, tenements or hereditaments, by order of the chancellor, or by virtue of an execution issued out of either of the courts of this State, if the defendant, or one or more of the defendants, or any person holding as tenant under the defendant or one or more of the defendants, by lease or contract posterior to such order, or to the date of the judgment whereon such execution was issued, be in possession of the premises sold, or if such defendant or defendants shall have died in possession of the premises sold within one year next preceding the day of sale, and the person or persons in possession either shall have come into such possession after such defendant or defendants, and by means of his, her or their possession, or shall hold under or through a person or persons so coming into possession, the purchaser or purchasers shall be entitled to have a writ of possession awarded pursuant to such sale: but if the defendant be in possession, *bona fide*, as tenant under or by permission of another, this writ shall not be awarded; and if the defendant be owner of an undivided share, the writ shall be restricted to such share; and any holder of another share, or his or her tenant, shall not be removed nor further disturbed than by putting the purchaser or purchasers into the peaceable possession of the undivided share whereof such defendant was the owner. That any person concerned may have opportunity to be heard touching the awarding of such writ, the chancellor, if the sale be by order of the chancellor, or if the sale be by virtue of an execution, the court out of which the execution was issued, upon the application of the purchaser or purchasers, and on the oath or affirmation of

How persons concerned shall be heard.

CHAPTER XIX. 1827.

the purchaser, or some credible person, stating a proper case for the awarding of such writ, shall grant a rule upon the defendant or defendants, owner or owners of the premises sold, and also upon the person or persons in possession of said premises, if any person other than the defendant or defendants be in possession, to shew cause, on a day in said rule to be specified, why a writ of possession shall not be awarded for putting the purchaser or purchasers in possession of said premises: this rule shall be served at least two days before the expiration thereof; but if the defendant or defendants do not reside in the county wherein the proceedings shall be, the court may order service on the tenant in possession to be sufficient.

Stay of the writ in certain cases.

A writ of possession shall not be issued without such rule made absolute; and, on making the rule absolute, the court may direct a reasonable stay of execution, and if the person in possession be a tenant, execution shall be stayed until the usual expiration of the year of tenants, according to the custom of letting, in the place or neighbourhood wherein the premises shall be situate. Such rule shall not be granted, unless application therefor shall be made at the term of the return of the sale, or at the next succeeding term. A writ of possession may be according to the following form, viz.

Application for a rule, when to be made.

Form of the writ.

——— County, ss. The State of Delaware, to the sheriff of the said county, greeting:

Seal of court.

We command you that, without delay, you cause ——— ——— to have peaceable possession of [*here insert the description of the premises*] which were lately sold by virtue of a writ of venditioni exponas issued out of our [*here insert the style of the court*] in the said county, returnable to ——— term, 18—, at the suit of ——— ———, plaintiff, vs. ——— ———, defendant; and have this writ, with your doings thereon certified, at our said court, to be held at ———, on the ——— day of ——— next. Witness ——— ———, at ———, the ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

——— ———, Clerk [or *Pro.*]

When the writ may be directed to coroner.

If there be a legal exception to the sheriff, the writ may be directed to the coroner: if the sale be by order of the chancellor, omit of said form from the word "venditioni" to the word "defendant," both inclusive, and, instead thereof, insert "an order of our chancellor made in our court of chancery, at ———, in a certain cause between ——— ———, complainant, and ——— ———, defendant; and the writ may be adapted

Form of the writ when awarded by the chancellor.

to the case in which it shall be awarded, by any requisite variation from the said form. Any thing herein before contained shall not be construed to deprive any purchaser of remedy by action of ejectment, or to debar from such remedy any person removed from possession; and any proceedings pursuant to the foregoing provisions, shall not be conclusive as to the title of either party. In any case of sale as aforesaid, the purchaser shall be entitled to rent for the premises sold, from the day of sale: if such premises be in possesion of a tenant under rent, such rent shall be apportioned according to time, the proportion for the time the rent has been growing due to the day of sale, being payable to the lessor or his assigns, and the residue to the purchaser; and each party shall have remedy by distress or action, for his just proportion; and a purchaser may recover his proportion of rent, although such rent be reserved by deed, (as well as rent from the day of sale, in case no rent has been reserved,) by an action of assumpsit for use and occupation: in any action or proceeding for such rent, any fair defence, which would have availed against the person as whose property the premises were sold, shall avail against the purchaser; but if a rent reserved be not a fair rent for the premises, and the lease or contract be posterior to the order, or to the date of the judgment in execution, or by virtue whereof the sale shall be made, the purchaser shall not be limited by the rent reserved, but may demand and recover a fair rent: if the crop be sold separately from the soil the demand of the purchaser shall proportionally abate.

Ejectment.

Proceedings not to be conclusive as to title.

Rent, how to be paid.

Remedy of the parties for recovery of rent.

Lessee not deprived of any fair defence.

When the purchaser shall not be limited by the rent reserved.

SEC. 2. *And be it further enacted*, That in any case of sale, whether made heretofore or to be made hereafter, of lands, tenements or hereditaments, by order of the chancellor, or by virtue of an execution issued out of either of the courts of this State, if the officer or person making such sale or the purchaser be dead, or if such officer be out of office, and the purchase money be paid without a deed being made pursuant to such sale, the purchaser or purchasers, or, if a purchaser be dead, the person or persons having right by descent, devise, assignment or otherwise, from such purchaser, may prefer to the supreme court, or to the court of common pleas, or to the chancellor in the court of chancery, at any term of said courts respectively, in the county wherein the premises are situate, a petition representing the facts, and praying for an order authorizing and requiring the sheriff, or, if there be a legal exception to him, the coroner, of the county, for the time being, to execute and acknowledge a deed of conveyance to the petitioner or petitioners, of the lands,

1 vol. 115, §9. 3 vol. 33, 34, chap. 14. 6 vol. 149.

Deeds, how made when the officer who sold is dead or out of office, or when the purchaser is dead.

CHAPTER XIX
1827.

tenements or hereditaments so sold, or a just part or proportion thereof; and such court, or the chancellor, upon such petition being preferred, shall have cognizance of the case, and thereupon may make such order as prayed for in the petition, or such other order touching the conveyance of said lands, tenements or hereditaments, as shall be according to justice and equity: a deed executed pursuant to such order shall be good and effectual to pass to the grantee or grantees therein, all the title and estate to and in the premises therein contained, which, in pursuance of the sale, and of the execution or order by virtue whereof such sale was made, can or ought to be passed; but if a person or persons to whom a deed shall be executed pursuant to such order, shall not be entitled to the same according to justice and equity, or if a greater estate be conveyed to a grantee or grantees than he, she or they are justly entitled to, such deed or order shall not prejudice any person having right, but such deed may be decreed to be upon trust, or any person having right may be otherwise relieved according to equity and good conscience. An order being made on such petition as aforesaid, and duly certified under the seal of the court and the hand of the clerk, prothonotary or register, the said petition and order shall be recorded in "the office for recording of deeds," in the county wherein the premises are situate; and such record, or a certified copy thereof, shall be competent evidence of said petition and order. In case of a writ of *liberari facias*, the executing of the writ and the return thereupon shall be a legal title without any deed or other act.

3 vol. 35.

Such deeds shall not prejudice others having title.

Record of the petition and order for sale.

The return on a writ of *liberari facias* to be evidence of title.

Repeal.

1 vol. 78.
3 vol. 33, 31.
6 vol. 78.
6 vol. 149.

SEC. 3. *And be it further enacted*, That the ninth section of the act entitled "An act for taking lands in execution for payment of debts," and the supplement to the said act passed January 26, 1798, and the act entitled "An act for securing to purchasers at sheriffs' sale the quiet possession of their purchases," and the first section of the act entitled "An act concerning deeds for lands, tenements and hereditaments sold in execution of judgments or decrees in certain cases," be and are hereby repealed; but all acts, deeds and proceedings which have been had, executed, or done, pursuant to either of the said acts or sections, before the passing of this act, shall continue and be as firm, valid and effectual, to all intents and purposes, as if this act had not been passed.

Saving.

PASSED AT DOVER,
January 29, 1827.

CHAPTER XX.

CHAPTER XX.
1827.

AN ACT *requiring the State-treasurer to give security for the faithful performance of his official duties.*

State-treasurer's bond,—to be approved by the Governour.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That the State-treasurer, before entering upon the execution of his office, shall, with two or more sufficient sureties, become bound to the State of Delaware, by a joint and several obligation, to be, together with the sureties therein, approved by the Governour, in the penal sum of thirty thousand dollars, lawful money of the United States of America, with condition according to the following form:

Form of the bond.

"The condition of the above written obligation is such, that if the above named ——— ———, who is *State-treasurer* for the State of Delaware and the *Trustee of the Fund for establishing Schools in the State of Delaware*, shall well and truly account for all money which shall come to his hands as such State-treasurer, or as the Trustee of the Fund for establishing schools in the State of Delaware, or with which he, as such Treasurer or Trustee, shall be legally chargeable, either for the default of any collector or collectors whom he shall appoint, or otherwise, howsoever; and shall and do well and diligently execute his office of State-treasurer as aforesaid, and duly and faithfully fulfil and perform all the trusts and duties to the said office appertaining, and also all the duties incumbent upon him as the Trustee of the Fund for establishing schools in the State of Delaware, and if the said ——— ———, or his executors or administrators shall and do, faithfully and without delay, pay to his successor in office the just balances remaining of all the money which shall come to his hands as State-treasurer as aforesaid, or as the Trustee of the Fund for establishing schools in the State of Delaware, or with which he, as such Treasurer or Trustee, shall be legally chargeable, after deducting all payments by him made made according to law, and all allowances made to him by law, and all legal fees, and shall also deliver to his successor in office all books, securities, muniments and papers to the said office in any wise belonging, safe and undefaced, then the said obligation shall be void, otherwise the same shall remain in full force:"

To which obligation there shall be subjoined a warrant of attorney to confess judgment thereon.

And the said obligation shall be recorded by the Se-

Bond to be recorded and filed in the Secretary's office, and a copy sent to auditor.

cretary of State, in the register of the official acts and proceedings of the Governour, and shall be kept on file in his office: And a copy of the said obligation, certified by the Secretary of State, under his hand and seal of office, shall be immediately transmitted to the auditor of accounts, and said copy, or said record or a copy thereof, in case of the loss of the original obligation, shall be competent evidence: and the Secretary of State shall also immediately certify the approval of said obligation to the General Assembly, if in session at the time.

When the approval to be certified to the legislature.

How the bond shall be proceeded on.

The said obligation shall be proceeded upon by the direction of the General Assembly, the Governour or the Auditor of Accounts.

Bond to be given in 7 days, or another person appointed.

SEC. 2. *And be it further enacted*, That if any person who shall be appointed State-treasurer shall not, within seven days next ensuing the day on which he shall be so appointed, become bound with sureties as directed and prescribed in the preceding section, the appointment shall be absolutely void, and another person shall be appointed.

Vacancy, how supplied.

SEC. 3. *And be it further enacted*, That if the office of State-treasurer shall become vacant after the adjournment without day of the Senate and House of Representatives, either by the death, removal out of the State, resignation or inability of the State-treasurer, or by the failure of the State-treasurer to become bound with sureties, as directed and prescribed by this act, or by the omission of the legislature to appoint pursuant to the third section of the eighth article of the constitution of this State, the governour shall have power to fill the vacancy by appointing a State-treasurer; and every State-treasurer so appointed shall be within the provisions and intent of the first and second sections of this act.

Repeals.
2 vol. 1092.
2 vol. 1298.
2 vol. 1186, 1187.
3 vol. 66.
4 vol. 332.

SEC. 4. *And be it further enacted*, That the "Act requiring the State-treasurer to give security," and the sixth section of the "Act to create a fund sufficient to establish schools in this State," and the ninth and eleventh sections of the "Act to establish a fund for the support of government," passed February 7, 1794, and the second section of the "Act enjoining certain duties on the State-treasurer, and for other purposes therein mentioned," and the eighth section of the "Act making provision for the support of government for the year of our Lord one thousand eight hundred and ten, and for the more effectual ordering, assessing, levying and collecting all such taxes as may be granted by the General

Assembly," be and are hereby repealed, except so far as shall concern any bond heretofore executed by any State-treasurer pursuant to the said acts or sections, or either of them; and every such bond shall remain valid and effectual as if this act had not been passed: *And provided*, that no act or section repealed by any or either of the aforesaid acts or sections shall, by this repeal, be revived. Exception.

PASSED AT DOVER, *January* 29, 1827.

CHAPTER XXI.

AN ACT *prohibiting the owners of stone horses from suffering the same to go at large.*

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That the owner or keeper of a stone horse of the age of eighteen months or upwards, who shall suffer the same to be at large out of such owner's or keeper's enclosed ground, shall be answerable for all damages which shall happen in consequence of such horse so being at large: and if any owner or keeper of such horse, after being admonished to confine said horse, shall suffer the same to go at large out of such owner's or keeper's enclosed ground, every such owner or keeper shall forfeit and pay, to any person who will sue for the same, the sum of five dollars, to be recovered with costs of suit, before any justice of the peace for the county wherein such horse shall be suffered to go at large. Liability of owners of stoned horses running at large.

SEC. 2. *And be it further enacted*, That the "Act to prevent stoned horses under size from running at large within this government," shall be and hereby is repealed from and after the first day of June next; but the act repealed by the said act shall not, by this act, be revived, but shall be repealed and continue null and void. Repeals.

PASSED AT DOVER, *January* 30, 1827.

CHAPTER XXII.
1827.

CHAPTER XXII.

AN ACT *to enable Samuel Hyatt, of Newcastle county, to pass to and from the State of Maryland, a certain slave named Moses.*

PASSED AT DOVER, *January* 30, 1827. } PRIVATE ACT.

CHAPTER XXIII.

AN ACT *to prevent swine running at large in the town of St. George's.*

No persons to suffer their hogs to run at large in the bounds of St. George's after 1st August next.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That from and after the first day of August next ensuing the passing of this act, no inhabitant or inhabitants within the bounds of the town of St. George's in the county of Newcastle, or other person or persons whatsoever, shall suffer or permit any of their hogs or swine to run at large within the limits or bounds of said town: and if any person or persons shall keep or suffer any of their hogs or swine to run at large, after the first day of August, within the bounds or limits aforesaid, the owner or owners of all such hogs or swine shall forfeit the same, or forfeit and pay the sum of one dollar for each hog kept or suffered to run at large as aforesaid, to be levied with costs, by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of any one justice of the peace of the said county of Newcastle,—one half whereof to be paid to any person or persons who will sue for the same, and the other half to the trustees of the school, to be by them appropriated to the education of poor children in said town.

Forfeiture.

Hogs running at large contrary to this act may be killed.

SEC. 2. *And be it enacted*, That it shall and may be lawful to and for any person or persons whatsoever, to shoot or kill all such hogs or swine so kept or permitted or suffered to run at large as aforesaid, within the bounds and limits aforesaid, and to give notice thereof, within three hours thereafter, to the owner or owners, or leave notice at his or her dwelling, provided however the owner or owners be known, and not otherwise.

Notice to owners.

SEC. 3. *And be it enacted*, That if any suit or action

shall be commenced, brought or prosecuted against any person residing within the bounds aforesaid, for any act or thing by him, her or them done in pursuance of this act, it shall and may be lawful to and for the defendant or defendants in such suit or action, to plead the general issue and to give this act in evidence on the trial thereof, whereof all justices of the several courts in this State, are hereby strictly required and enjoined to take notice, and govern themselves accordingly.

Act may be given in evidence under the general issue.

PASSED AT DOVER, *January* 30, 1827.

CHAPTER XXIV.

AN ADDITIONAL SUPPLEMENT *to the act entitled "An act to enable the president, directors and company of the Commercial Bank of Delaware to close the concerns of that Bank.*

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That the corporation and body politic created and made by the act of the General Assembly of this State, entitled "An act to establish a Bank and to incorporate a company under the name of the President, Directors and Company of the Commercial Bank of Delaware," passed at Dover, on the ninth day of February, in the year of our Lord one thousand eight hundred and twelve, and the act to which this is a supplement, passed at Dover, on the sixth day of February, in the year of our Lord one thousand eight hundred and twenty-two, shall be continued and extended, by and under the same name of "The President, Directors and Company of the Commercial Bank of Delaware," from the first day of March next, until the first day of March, in the year of our Lord one thousand eight hundred and thirty, and no longer; and that the powers, privileges and immunities, heretofore granted to the said corporation by law, are hereby continued and extended to them, until the day and year last mentioned, to be used only for the settling and closig the concerns of said corporation, and not otherwise, and subject to the restrictions enacted by the act to which this is an additional supplement.

Corporation of the Commercial Bank continued,

(4 vol. 548.

(6 vol. 199.)

till 1 March, 1830.

SEC. 2. *And be it further enacted,* That, for the purpose of finally closing the concerns of the said Commer-

How debts due the Bank may be sold.

cial Bank of Delaware, the said president and directors, by and with the consent of a majority of the stockholders of the said bank, shall have full power and authority to sell and dispose of, by way of public vendue, (after due notice of the day, time and place of such intended sale shall have been given, by advertisements in two of the newspapers published in this State,) all the debts due the said Commercial Bank of Delaware, whether by note, bond, obligation, judgment, mortgage, or otherwise, and to make regular transfers and assignments of the same to the purchaser or purchasers thereof; and the consent of the stockholders of the said Commercial Bank of Delaware, that such sale shall take place and be effectuated, shall be ascertained in pursuance of, and upon the same principles contained in, the constitution of the said Commercial Bank of Delaware, which is comprised in the eleventh section of the act entitled "An act to establish a bank and incorporate a company under the name of the Commercial Bank of Delaware," passed at Dover, on the ninth day of February, in the year of our Lord one thousand eight hundred and twelve, to which this act is an additional supplement.

4 vol. 548.

If further extension ever prayed, bank shall exhibit its accounts, &c.

SEC. 3. *And be it further enacted*, That if the said corporation shall find it necessary to apply to the General Assembly for a further extension of their charter, they shall, with their petition or application for that purpose, exhibit a true copy of the accounts and statements, as is provided by the eighth section of the act to which this is an additional supplement.

6 vol. 202.

PASSED AT DOVER, *January* 30, 1827.

CHAPTER XXV.

AN ACT *for establishing the boundaries of the Town of Laurel, and for other purposes therein mentioned.*

Commissioners appointed:

SECTION 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That Kendal M. Lewis, John Tennant, William W. Green, Philip Matthews and Henry Bacon be and they are hereby nominated and appointed commissioners, who shall have full power and authority, and they, or any three of them, are hereby required and directed, as soon as conveniently may be after the passing

their duties.

of this act, taking with them a skilful surveyor, to be qualified upon his solemn oath or affirmation, to make an accurate survey of the town of Laurel aforesaid, and to ascertain and fix the boundaries of the same, and lay out, open and regulate the streets, lanes and alleys within the said town; and the said surveyor shall, under the superintendence and direction of the commissioners aforesaid, make out a careful plot or map of the survey so to be made as aforesaid, which plot or map shall contain an account of the boundaries of the said town, and the courses, width and names of the several streets, lanes and alleys, to be given by the commissioners aforesaid, or a majority of them, and the said plot or map shall be signed by the said surveyor and commissioners, and the same shall be lodged in the office for recording of deeds in Sussex county, there to be recorded or enrolled; which said plot or map, or the record thereof, shall be deemed, taken and received in all courts of law, or elsewhere within this government, to be evidence of the boundaries of the said town of Laurel, and of the courses, width and names of the several streets, lanes and alleys within the same.

Commissioners to establish landmarks.

SEC. 2. *And be it enacted*, That the said commissioners shall fix stones six inches below the surface, in the earth, in the centre or middle of the streets respectively, where they intersect one another, which stones, so set and fixed in the earth, in the middle of the streets aforesaid, as well as such posts and stones as shall, from time time, be hereafter set and fixed in the earth, by the commissioners herein or hereafter to be appointed, shall, in all cases, and in all courts of law within this government, be deemed, taken and allowed as land marks; and if any person or persons shall, at any time hereafter, wilfully pluck up or remove any of the said posts or marked stones, he or they so offending shall forfeit any sum not exceeding twenty dollars, to be recovered with costs by the commissioners, before any justice of the peace as provided in the "Act for the recovery of small debts," and applied to the expenses of carrying this act into execution.

Penalty for removing such landmarks.

Damages of such as may be injured, how assessed.

SEC. 3. *And be it enacted*, That the commissioners herein named, or a majority of them, shall ascertain and assess the damage sustained by the owner or owners through whose lands any of the said streets, lanes and alleys may run, and return the same, with their map or plot aforesaid; and if any person or persons shall not be satisfied with the damages assessed by the said commissioners,

CHAPTER XXV. 1827.

it shall and may be lawful for them to apply to the prothonotary of said county of Sussex, for a writ of venire facias, to be directed to the sheriff of said county, for the purpose of summoning seven freeholders of the county, to ascertain and assess the said damage, who shall either increase, lower or confirm the damage returned by the said commissioners, as to them shall seem right,—whose decision shall be final: and the said sheriff shall return the said writ to the next term after issuing the same, with the return of the said freeholders summoned as aforesaid, or a majority of them. under the hands and seals of the said freeholders and sheriff respectively: and the sheriff and freeholders, summoned as aforesaid, shall be allowed the like fees as are, in other cases. to be paid by the person or persons suing out the writ, in case the damages shall not be increased, and if the damages shall be increased, to be paid by the commissioners.

Commissioners, when and how elected.

SEC. 4. *And be it enacted*, That the commissioners appointed by this act shall continue in office until the first Monday in December next, on which day, and on the same day annually in future, the white male freeholders or taxables in the said town of Laurel shall meet at the public house now occupied by Nancy Martin, in the said town, and the electors, between the hours of twelve o'clock, noon. and four in the afternoon, having first appointed two or more discreet persons to be judges of such election, shall proceed to choose, by ballot. a like number of discreet persons, who shall be styled "Commissioners of the town of Laurel." And the said commissioners appointed by this act, as well as those hereafter to be appointed in manner aforesaid, shall have full power and authority, and they are hereby required and directed, to lay out the proper pavements and gutters for carrying off the water, at the expense of the proprietors of the ground in front of which such pavements and gutters are made; and upon application made to them by either of the parties to enter upon the lands of any person or persons, in order to lay out the foundation and regulate the walls to be built between party and party, within the said town, as the breadth or thickness thereof; which foundation shall be laid equally upon the lands of the persons between whom such party walls shall be made, and the first builder shall be reimbursed one moiety of the charge of such party wall, or for so much thereof as the next builder may have occasion to make use of; before such next builder shall any wise use or break into the said wall, and the charge or value thereof shall be set by the said commissioners, or any three of them: *Provided*,

Their style.

To lay out pavements and gutters, and regulate party walls.

that nothing in this act shall be construed to extend to abrogate, annul or alter any contract that hath heretofore been or may be made by the owners of adjoining lands.

SEC. 5. *And whereas*, it may so happen that there are at present dwelling-houses and other buildings erected which do project on the streets of the said town, but which cannot be removed without greatly injuring the same; *Be it therefore enacted*, That when such houses or buildings as aforesaid shall fall down by reason of decay, or otherwise be destroyed, that then and in such case, if the owner or owners of any such house or building as aforesaid, or if any person or persons in other cases, shall begin to lay the foundation of any party wall or other building as aforesaid, before the same be viewed and directed by the said commissioners, or some three of them, or shall build contrary to such directions, every such person, as well employer as master builder, shall forfeit and pay the sum of one hundred dollars each, besides costs of suit, to be recovered by the commissioners of the town of Laurel, for the time being, to be applied towards the expenses of executing this act.

Penalty for building or making party walls without the direction of the commissioners in certain cases.

SEC. 6. *And be it enacted*, That the commissioners for the time being, or any three of them, shall have power and authority, at any time, to cause to be removed any wall, house or building which may be, either in whole or in part, upon any of the streets, lanes or alleys of the said town, and to assess the damages to the owner or owners, which shall be paid to them out of the funds in the hands of the treasurer of the said town: *Provided always*, That in no one case such damages shall exceed the sum of one hundred dollars, and which damages shall be paid before any such wall, house or building shall be removed.

Commissioners may remove walls or buildings on the streets.

Proviso.

SEC. 7. *And be it enacted*, That the said commissioners, for their trouble in and about the premises, shall be paid by the party or parties concerned in such foundation or erecting such party walls, or other building as aforesaid, the sum of one dollar each and mileage.

Compensation of commissioners, in certain cases.

SEC. 8. *And be it enacted*, That the said commissioners, or any three of them, shall have full power to regulate all partition fences within the said town; and where the adjoining owners or possessors do improve or enclose their lots, *such fences shall be made in the manner generally used*, and kept in good order at the equal costs of the parties; and the said commissioners shall be the judges of the costs or charges to be borne by both or either of the

Partition fences, how regulated.

CHAPTER XXV. 1827.

said parties; and if either party, between whom such partition fence is or shall be made, on request of the other, shall neglect or refuse to pay his, her or their share or proportion of the expense of such partition fence, to be ascertained and fixed by the commissioners as aforesaid, and for keeping the same afterwards in repair, that then the party at whose costs the same was so made or repaired may recover the same before any justice of the peace for the county of Sussex, as debts of like amount are recovered by the laws of this State, and the said commissioners shall be paid by the party or parties between whom such partition fence is or shall be made, one dollar and no more.

Compensation of commissioners.

Commissioners to prevent encroachments on the streets.

SEC. 9. *And be it enacted*, That the said commissioners shall be and they are hereby authorized, empowered and required to guard against encroachments being made upon any of the streets in the said town, to be laid out and regulated in the manner as is herein before mentioned, and to remove or cause to be removed any such encroachments, if any at present exist or may hereafter be made, on said streets by reason of enclosures or otherwise, except so far as is excepted or reserved in respect to dwelling-houses and other buildings that may project on any of the streets as aforesaid; and if any person or persons shall encroach on any of the streets to be laid out and regulated as aforesaid, or shall commit any nuisance therein by obstructing the same, and do not remove such obstructions and encroachments forthwith, such person or persons so offending and being duly convicted thereof, in any court of general quarter sessions of the peace and jail delivery, shall be fined in any sum not exceeding fifty dollars, to be paid to the use of the State.

Penalty for not removing nuisances.

Expenses of executing this act, how assessed, levied and collected.

SEC. 10. *And be it enacted*, That the said commissioners herein appointed, or hereafter to be elected, or a majority of them, are hereby authorized and empowered to estimate and determine what sum or sums of money may be necessary to be raised for defraying the expense of making a map or plan of the said town, and recording the same, for the adjusting any matters of controversy relative to the bounds of said town, streets, lanes and alleys, for setting up and fixing landmarks, &c. and to cause the same to be collected from the inhabitants and the estates within the limits of the said town, from persons not residing within the same; and to this end, that the commissioners, or a majority of them, shall make a just rate or assessment on the persons and estates within the said town, to and for the uses aforesaid, and ascertain

the quota or share of the sum or sums of money to be paid by each person or estate, and make a fair list thereof, being first qualified faithfully to perform the said duty: *Provided*, that those persons who are not liable to be taxed for the relief of the poor, shall not be taxed or assessed by virtue of this act.

Proviso.

SEC. 11. *And be it enacted*, That the said commissioners, or a majority of them, shall cause to be set up, in two or more public places in the said town of Laurel, a duplicate of the assessment made in virtue of this act; and every person and owner of every estate within the said town so assessed shall, within thirty days after the said duplicate shall be set up as aforesaid, pay to the treasurer their respective quotas of the said assessment; and in case of neglect or refusal to pay the same, within the time before mentioned, the said treasurer is hereby authorized and empowered to cause the same to be levied and collected; and the said treasurer for the time being shall have, for such purpose, the same power and authority which the collectors of county rates and levies now have by law; and all laws in relation to the collection of county rates and levies are hereby extended to the said treasurer, to enable him to collect any and all sums and taxes which he shall or may be authorized to collect; and the said commissioners shall settle their accounts annually before a committee to be appointed by the electors of said town, at the town meeting.

Notice of assessment.

Treasurer's powers.

Electors to settle with commissioners.

SEC. 12. *And be it enacted*, That all monies raised by virtue of this act shall be paid by the treasurer to the order of a majority of the said commissioners; and the said treasurer shall settle his accounts with the said commissioners at least once in every year, and shall receive such compensation for his services as they may think necessary.

Treasurer to settle with, and pay over to commissioners.

His compensation.

SEC. 13. *And be it enacted*, That the aforesaid commissioners, or any commissioners hereafter elected, shall, before they enter upon the duties of their office, be sworn or affirmed, before some judge or justice of the peace, faithfully and impartially to perform the duty in them reposed by this act.

Qualification of commissioners.

SEC. 14. *And be it enacted*. That the aforesaid commissioners, or a majority of them, or any commissioners elected pursuant to this act, or a majority of them, when they may deem proper, shall appoint some fit person to be treasurer, to hold his office during the pleasure of the

Treasurer, how appointed.

His bond.

commissioners of the town of Laurel; and every treasurer appointed as aforesaid, before entering upon the duties of his office, shall give bond to the State of Delaware, with sufficient security, to be approved by said commissioners, in the penal sum of five hundred dollars, with condition for the faithful performance of the duty of his office, [*and] payment of the sum, or sums of money which may come to his hands, agreeably to the order or orders of the commissioners, or a majority of them, which bond may be put in suit for the use of those who may be aggrieved by the breach of the condition thereof, and for the use of the commissioners for the time being, or a majority of them, for neglect to collect the taxes imposed pursuant to this act.

PASSED AT DOVER, *January* 31, 1827.

CHAPTER XXVI.

AN ACT *allowing an additional justice of the peace to the county of Newcastle.*

Another justice of the peace to be appointed, and where to reside.

BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly, met,* two thirds of the members of each House consenting to and approving thereof, That the county of Newcastle shall be entitled to one justice of the peace, in addition to the number now allowed by law, who shall be appointed and continue to reside in the hundred of Red-Lion, and within at least one mile of Delaware City.

PASSED AT DOVER, *January* 31, 1827.

CHAPTER XXVII.

AN ACT *to prevent swine from running at large within the village of Cantwell's Bridge and certain limits therein mentioned.*

Limits established within which hogs shall not run at large.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That from and after the first day of May

* "Any" in the original.

next, no person or persons shall suffer any hogs or swine to go or be at large within the limits following; that is to say; beginning at the junction of Drawyer's and Appoquinimink creeks and running down the latter named creek to the mouth of Hangman's Creek, thence up said Hangman's creek to the road leading from Cantwell's Bridge to Taylor's Bridge, thence up said road to the State road leading from Cantwell's Bridge aforesaid to Smyrna, and crossing said State road, on the line of lands formerly the property of Thomas M'Kean, esquire, deceased, and the heirs of Doctor Richard C. Dale, deceased, to the head of a cripple and marsh, thence down said cripple and marsh, with the several water courses thereof, to Appoquinimink creek aforesaid, thence up said creek to a line of the lands of Robert Cochran, and the heirs of Ezekiel Hunn, deceased thence with said line, continuing the same course to the road leading from Cantwell's Bridge, to Middle-town, and pursuing the same course across said road to the head of Samuel Thomas's mill-pond, on Drawyer's creek aforesaid, thence down said pond, crossing the dam, and continuing the several courses of said creek, to the place of beginning.

Hogs running at large within the limits may be seized and sold.

SEC. 2. *And be it further enacted*, That it shall be the duty of any constable in St. George's or Appoquinimink hundreds, when within the said village or limits above mentioned, and informed of any such hog, hogs or swine going or being at large as aforesaid, and it shall and may be lawful for any other person or persons, to seize, pen up and safely keep all such hogs or swine so found or being at large as aforesaid; and the said constable, or other person having charge of the said hog, hogs or swine, shall, and they are hereby authorized and required, within two day's after such seizure, and after three day's public notice, in writing of the time and place of sale, set up in three of the most public places in said village, to sell and deliver the same to the highest bidder, and the proceeds thereof, if any, (after deducting one dollar for seizing and selling each hog and ten cents for each days feeding and keeping the same,—fifty cents of which to be retained by the said constable or person or persons who made seizure of said hog, hogs or swine and ten cents per day for the keeping of the same, and fifty cents to be paid to the trustees of the Cantwell's Bridge academy for the use of said academy,) shall be paid over to the owner or owners of said hog, hogs or swine: *Provided always, nevertheless*, that if the owner or owners of such hog, hogs or swine shall, at any time before the sale thereof, pay or tender to the constable or other person having charge

Proviso.

CHAPTER XXVII. 1827.

thereof, the sum of fifty cents for seizing each hog and ten cents per day for feeding and keeping the same, then and in such case the said constable, or other person having charge thereof, shall permit and suffer such owner or owners to take and carry away the same.

Penalty on constable.

SEC. 3. *And be it enacted*, That if any constable shall refuse or neglect to perform the duties enjoined upon him by this act, he shall forfeit and pay, for every such offence, the sum of five dollars, to any person or persons who will sue for the same, to be recovered as debts under fifty dollars are recoverable by law, one half of which sum shall be paid over to the trustees of the academy aforesaid, and the other half shall be retained by the person or persons suing for and recovering the same.

This act may be given in evidence under the general issue.

SEC. 4. *And be it enacted*, That if any person or persons shall be sued or prosecuted for any act done in pursuance of this act, it shall be lawful for such person or persons to plead the general issue and to give this act in evidence on the trial.

Hogs trespassing within the limits may be shot.

SEC. 5. *And be it enacted*, That it shall be lawful for any person or persons on whose premises the said hog, hogs or swine are trespassing, to shoot or kill any such hog, hogs or swine so suffered to run at large as aforesaid within the limits aforesaid; *provided* such person or persons shall give notice thereof, within five hours thereafter, to the owner or owners of such hog or hogs, or leave notice at his or her dwelling, if the owner or owners be known, but not otherwise.

Proviso.

PASSED AT DOVER, *January* 31, 1827.

CHAPTER XXVIII.

AN ACT *concerning public houses of entertainment, and the unlawful selling of liquor or strong drink.*

1 vol. 193, §4. Keepers of public houses suffering drinking at unseasonable hours, or disorderly conduct, gambling, &c. how punished.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That if any person, being the keeper of a public house of entertainment, tavern, inn, ale-house, ordinary or victualling house, shall suffer any person to continue drinking and tippling at unseasonable hours of the night in his or her house, or shall suffer any drunken

and disorderly person to remain in his or her house, or shall suffer any game whatever for money, liquor or other thing, or upon which money liquor or other thing shall be betted, to be played in his or her house or its dependencies, every such person so offending shall be deemed to be guilty of a misdemeanour, and, upon conviction thereof, shall forfeit and pay to the State a fine of ten dollars; and every such person so offending a second time, shall, upon conviction of such second offence, forfeit and pay to the State a fine of twenty dollars: and every such person so offending a third time, upon conviction of such third offence, shall forfeit and pay to the State a fine of thirty dollars, and shall forfeit his or her license, which shall be revoked, and shall be disqualified from receiving any such license for the space of three years next ensuing such conviction.

Penalty for selling liquor by small measure, without license.
1 vol. 194, §5.
3 vol. 244.
5 vol. 433, §7.
6 vol. 161.

SEC. 2. *And be it further enacted*, That if any person shall keep a public house of entertainment, tavern, inn, ale-house, ordinary or victualling house, without a valid and subsisting license therefor, or if any person, without such license, shall retail or sell, directly or indirectly, any wine, rum, brandy, gin, whiskey or any spirituous liquor, by any measure less than a quart, or any punch or other mixed liquor by any measure whatever; every person so offending shall be deemed to be guilty of a misdemeanour, and, upon conviction thereof, shall forfeit and pay to the State a fine of fourteen dollars.

Repeal.

1 vol. 193, 194, 195, 196.
3 vol. 244.
6 vol. 161.

SEC. 3. *And be it further enacted*, That the fourth, fifth, seventh, eighth and ninth sections of the act, entitled "An act regulating innholders, tavern keepers and other public house-keepers within this government, and impowering the justices to settle the rates of liquors," and the supplement to the said act, passed February 3, 1802, and the act entitled "An act for the suppression of tippling-houses, and for preventing the sale of liquors by unlawful measures," be and hereby are repealed,—except so far as shall concern any offences, that have heretofore been committed against the form of either of the said acts or sections, which offences shall be heard, determined and punished in the same manner and with the same penalties as if this act had not been passed; and all the provisions of the said acts and sections, now in force, shall so far as shall concern or relate to any such offences heretofore committed, remain in force.

PASSED AT DOVER, *February* 1, 1827.

CHAPTER XXIX.
1827.

CHAPTER XXIX.

AN ACT *ceding to the United States the sites for piers at Newcastle.*

Sites for piers ceded to U. S.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That all the jurisdiction, right and title of this State unto and over so much of the river Delaware at Newcastle as may be necessary to carry the above object into effect, be and the same is hereby ceded to the United States of America, *reserving always* the jurisdiction of this State as to the service of civil or criminal process over the premises hereby ceded; *and provided,* that the erection of the said piers be completed within six years from the passing of this act, and that the said United States will forever thereafter keep the said piers in good repair: otherwise the cession made by this act to be null and void.

Reservation & proviso.

PASSED AT DOVER, *February* 1, 1827.

CHAPTER XXX.

AN ACT *to establish a company under the name of "The Mispillion Navigation Company."*

Company established.

SEC. 1. BE IT ENATED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That a company shall be established for the improvement of the navigation of Mispillion creek; the capital stock of this company shall not exceed ten thousand dollars, divided into five hundred shares, each of twenty dollars.

Commissioners appointed.

SEC. 2. *And be it further enacted,* That Benjamin Potter, Spencer Williams, John Wallace, Lowder Layton and Joseph G. Oliver shall be commissioners, and they, or any two of them, are authorized to receive subscriptions to the said capital stock, and for that purpose to open books at such time and at such place in Milford as the said commissioners, or any two of them may appoint: and such books shall continue open there, at least two days, and afterwards until the said commissioners or a majority of them shall deem it proper to

Their powers and duties.

close the same: at least ten days notice of the time and place of opening such books shall be given, by advertisement in two of the newspapers published in this State. If more than ten thousand dollars shall be subscribed, on the two days aforesaid, the commissioners, or a majority of them, shall apportion the same amongst the subscribers, but shall deduct the excess from the largest subscriptions, so that no share be reduced while one remains larger; and if the whole amount shall not be subscribed at Milford, the commissioners, or a majority of them, may direct books to be opened at such time and such place as they may think proper, giving the notice required in this section; and the said books shall continue open at said place, as the said commissioners, or a majority of them, shall direct: subscriptions may be made by proxy, as well as in person, and the amount subscribed shall be paid as hereinafter prescribed.

Incorporation.

SEC. 3. *And be it further enacted*, That the subscribers to the capital stock aforesaid, their successors and assigns, shall be, and they are hereby created, a corporation by the name of "The Mispillion Navigation Company," and shall continue until the amount of capital stock subscribed and paid in, together with all costs and charges accruing in carrying the provisions of this act into effect, shall have been paid as is hereinafter provided, and by that name, shall have power and capacity to sue and be sued in courts of law and equity, to purchase, take, enjoy, sell and alien lands, tenements, hereditaments, goods, chattels, rights, credits and effects which may be connected with or conducive to the purpose for which said company is established, to have a common seal, to ordain by-laws for their own government, not repugnant to the constitution or laws of this State or of the United States, and to enjoy the franchises incident to a corporation; but it shall not be lawful for said corporation, and they shall not have power, to discount notes or bills, or to loan money on interest, or to exercise any banking powers whatever: the business and concerns of said corporation shall be managed by five directors: the directors shall be elected by the stockholders: the first election shall be held as hereinafter appointed; all the subsequent elections shall be held at the annual meeting of the stockholders; the directors shall continue in office till the annual meeting of the stockholders next succeeding their election, and until successors to them shall be duly chosen; but a vacancy, occasioned by death, resignation or inability to serve, in the office of a director, may be filled by appointment made by a majority of a board

Not to exercise any banking powers.

Directors and President.

of directors: the office of a director shall be vacated by his ceasing to be a stockholder: the directors shall choose one of their number to be president; they shall meet according to the by-laws of the corporation; any three of them shall form a board to do business, and if the president be absent, a president may be appointed *pro tem*: the directors shall have power to employ engineers and labourers, and agree upon and pay their wages; to appoint officers and agents, and agree upon and pay their salaries or compensation: to take bond from any officer or agent, as the by-laws shall require, or as may be deemed expedient, with or without surety; to make or cut such canal or canals for the improvement of said Mispillion creek, as may be deemed necessary to shorten the course or deepen the waters of the same, or to make or cut a new mouth at such place as the directors may select, or do all other such matters and things as they, or a majority of them, may consider necessary to the improvement of said Mispillion creek; and to do all acts requisite to effect and carry on the purpose for which the company is established: and to this end, to use and employ the capital stock and funds of the company under such regulations as the by-laws may prescribe; and to bind by their contracts, deeds or writings, under the seal of the corporation and the hand of the president, all the property and estate, common stock and joint funds of the corporation aforesaid, but not the persons or separate property of themselves or any of the stockholders; and further, the directors shall have power to make by-laws for the government of the said corporation, and regulating the management of the business and concerns thereof, and to revise, repeal and amend the same, subject always to the controul of the stockholders in regular meeting: the by-laws shall prescribe the officers of the corporation, other than those of president and directors, the bonds to be taken from officers, the place of holding the meetings of the stockholders, the manner of calling meetings, and the mode and regulations of assigning the shares of the capital stock; *Provided*, that all meetings of the stockholders and directors shall be held at some place in the town of Milford, where all the capital stock of said company shall be assigned, either in person or by proxy. There shall be an annual meeting of the stockholders on the first Monday of May in every year during the continuance of the corporation: if any election shall not be held at the annual meeting, or if a meeting shall not take place on the day appointed in any year, the corporation shall not for that cause be dissolved, but in such case, directors may be chosen at an occasional meeting, regularly held. The

Their meetings duties and powers.

Engineers and labourers.

By-laws.

Meetings to be held in Milford.

Annual meetings.

first annual meeting shall be held on the first Monday in May, in the year of our Lord one thousand eight hundred and twenty seven. In all meetings of the stockholders regularly held, those assembled may proceed to business: all elections of directors shall be by ballot, one vote for every share; absent stockholders may vote by proxy: a majority of votes given shall determine all questions: no director shall be entitled to receive or demand compensation for services, except the same shall be allowed by the stockholders at a regular meeting. The shares of the capital stock shall be personal property, and shall be assignable, subject to the regulation of the by-laws: the directors shall make yearly dividends of the clear profits of the business of the corporation, or such part of the clear profits as may be deemed advisable; the directors shall lay before the stockholders, every year, at their yearly meeting, a general account of the stock, funds, debts and credits of the corporation; and any by-laws by them made shall be open to the inspection of every stockholder.

Elections of directors.

Shares to be personal property and assignable.

Dividends.

Directors to lay accounts before stockholders.

SEC. 4. *And be it enacted*, That the subscribers, respectively, shall pay one half part of the amount payable upon all the shares, which they shall respectively subscribe to the capital stock aforesaid, on the day of the first meeting of the subscribers, to be held as hereinafter provided, to the directors, who shall then be chosen; and the other half part of said amount in such manner and at such time as the president and directors shall appoint, and either at one time, or in instalments as may be deemed expedient by the president and directors; and the president and directors shall give public notice of the manner and time, which they shall appoint for paying such other half part of said amount, by advertisements in two of the newspapers published in this State, at least thirty days before the time appointed for such payment, to be continued in such newspapers for at least three weeks; and if such subscribers or any or either of them shall neglect to make payment of the sum payable by him, her or them, for the space of thirty days after due notice as above, the president and directors may either declare the share or shares of any delinquent subscriber or subscribers forfeited, or may proceed to sue for and recover upon each and every share or shares, as like sums are recoverable at law.

Subscription money, how paid.

SEC. 5. *And be it enacted*, That as soon as the capital stock aforesaid, or four thousand dollars thereof, shall be subscribed, the commissioners aforesaid or a majority of them, shall call a general meeting of the stockholders, to

When general meeting to elect directors, make by-laws, &c shall be held.

CHAPTER XXX.
1827.

be held at Milford, on a day in such call to be appointed, and shall give notice of such call, and the time and place of such meeting, by advertisements to be inserted in two newspapers published in this State: and such notice shall also give information that one half of the sum subscribed is, on the day of such meeting, to be paid; and the subscribers who shall assemble at such meeting, shall have power to proceed to business, to elect directors, to make by laws, and to do all acts which the stockholders can do according to this charter.

Loan.

SEC. 6. *And be it enacted*, That the directors be and they are hereby authorized to contract for any loan or sum of money, not to exceed the balance of unsold stock, (should there be any,) in such manner as they may deem meet for the benefit of the corporation.

Assessment of damages to such as may be injured by canals, &c.

SEC. 7. *And be it enacted*, That the commissioners, or a majority of them, named in section two of this act, have full power and authority to view the grounds and marsh through which the said canal or canals shall have been laid off, and to assess and allow to the person or persons through whose lands or marsh the said canal or canals may pass, such damages as they shall think such person or persons may be entitled to, in consequence of the cutting and making of the said canal or canals; which damages shall be paid or tendered before the said improvement shall be commenced and undertaken: *Provided always*, that, in case any person or persons, through whose lands or marsh the said canal or canals may pass, shall be dissatisfied with the damages which shall be assessed by said commissioners, or with their decision, if no damages are assessed, it shall and may be lawful for him, her or them to appeal from the determination of the said commissioners to the supreme court held in and for the counties of Kent and Sussex, who are hereby authorized and required to appoint five substantial and disinterested freeholders, to go upon and view the said lands and marsh, whose duty it shall be to assess such damages, as they shall deem proper and right; which assessment, when made and returned under their hands or a majority of them, shall be final and conclusive: *Provided* the said appeal be made within six months after the damages assessed by the said commissioners shall be made known to the persons, respectively, in whose favour they are so assessed.

Appeal

Proviso

When and how the creek may be stopped

SEC. 8. *And be it enacted*, That it shall be the duty of the directors aforesaid, and they are hereby authori-

zed and empowered, as soon as the said canal or canals shall be completed, so that a vessel drawing five feet six inches water may pass through the same at a common tide, to stop or dam up said creek, at such place or places as they may deem expedient, so as to turn the waters of said creek through said canal or canals.

Penalty for injury to navigation.

SEC. 9. *And be it enacted*, That if any person or persons shall designedly fill up or obstruct the said canal or canals, when cut and made, or shall injure or obstruct the navigation of said creek, he she or they so offending shall incur a penalty of any sum not exceeding one hundred dollars, with full costs of prosecution, to be recovered by indictment in any court of general quarter sessions of the peace for Kent or Sussex counties.

Toll to be paid by vessels passing the canals.

SEC. 10. *And be it enacted*, That until the amount of capital stock, or the actual amount expended in cutting and making the said canal or canals, with all costs attending the same, with legal interest, shall be fully satisfied and paid, it shall and may be lawful for the directors aforesaid, or any person authorized by them, to demand and receive, from the master or commander of every vessel navigating said creek, the sum of three cents per ton for every time such vessel shall pass up the said creek, above the said canal or canals, or shall pass down the said creek from above the said canal or canals, and in case the master or commander of any vessel as aforesaid, shall neglect or refuse to pay the said sum of three cents per ton, for every ton she may measure, to the said directors, or to any person authorized by them to demand and receive the same as aforesaid, then and in every such case it shall and may be lawful for the said directors, or their agent, and they or their agent, are hereby authorized to issue a warrant in the name of the State of Delaware, directed to any constable in Kent or Sussex counties, commanding to levy the said sum, by distress and sale of any part of the rigging, tackle or furniture belonging to such vessel, and after retaining the sum or sums which may be due, and the costs which have occurred on the sale of said rigging, tackle or furniture, to return the balance of proceeds of such sale to the said master or commander of such vessel or to the owner or owners thereof. *Provided nevertheless*, that no toll shall be demanded from any flat, lighter or open boat passing or repassing the same, except the passing or repassing of the same shall be to freight or load vessels at or beyond the eastern end of said canal or canals.

How collected.

Proviso.

Rate of toll how ascertained.

SEC. 11. *And be it enacted*, That, for the purpose of ascertaining the amount or rate of toll each and every vessel may be liable to pay, under the provisions of this act, that it shall be the duty of each and every captain or commanding officer of any such vessel to produce to the treasurer, or other officer authorized to collect any such toll, the register or license of every such vessel, when demanded, under the penalty of five dollars, with costs of suit, to be recovered before any justice of the peace in and for Kent or Sussex counties, to be applied to the use and benefit of the canal or canals as aforesaid. And should there be no license or register of any such flat, lighter or open boat, which shall come within the provisions of this act, it shall and may be lawful for the directors, or their agent, to call upon some skilful person to measure the burthen thereof, and the said flat, lighter or open boat, when so measured, shall come within the provisions of this act, and be liable for amount of toll so rated.

Penalty for not producing the register or license.

Compensation of commissioners.

SEC. 12. *And be it enacted*, That every commissioner shall, for each and every day's service under the provisions of this act, receive one dollar.

Commissioners and directors to be sworn, or affirmed.

SEC. 13. *And be it enacted*, That every commissioner and director as aforesaid, before entering upon the duties of their respective offices, shall be sworn or affirmed, before some judge or justice of the peace, faithfully and impartially to perform the duties required of them by this act.

PASSED AT DOVER, *February* 1, 1827.

CHAPTER XXXI.

AN ACT *allowing for a limited time an additional Justice of the Peace and Constable to the County of Sussex.*

Additional justice of the peace to be appointed, &c.

BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, two thirds of the members of each House consenting to and approving thereof, That the county of Sussex shall be entitled to one justice of the peace, in addition to the number now allowed by law, and that he shall be appointed, and continue to reside, in the hundred of Northwestfork, and in the village of Seaford; *Provid-*

ed however, that this act, and the appointment of a justice of the peace under and in pursuance of its provisions shall continue and remain in force for seven years from the time of issuing the commission, and no longer.

Limitation of this act.

SEC. 2. *And be it further enacted*, That, in addition to the two constables now directed to be appointed in and for Northwestfork hundred, in the county of Sussex, there shall hereafter be one other constable appointed in and for said hundred, whose residence shall be in the village of Seaford.

Additional constable to be appointed.

PASSED AT DOVER, *February* 2, 1827.

CHAPTER XXXII.

AN ACT *to change the name of Guinea-Town, to the name of Williamsville.*

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That the village situated in Mispillion hundred, in Kent county and state aforesaid, now called and known by the name of Guinea-Town shall from and after the passing of this act be called, taken and known by the name of Williamsville; and that all acts of the General Assembly of this State, deeds and other instruments of writing, wherein Guinea-Town aforesaid is named, shall be construed and taken to relate to the said village hereby called Williamsville; and that in all legal or equitable proceedings which may have any relation to the said village, or in which it may hereafter be necessary to use the appellation of the same, it shall be called Williamsville instead of Guinea-Town.

Name of Guinea-Town hereafter to be Williamsville.

PASSED AT DOVER, *February* 2, 1827.

CHAPTER XXXIII.

1827.

CHAPTER XXXIII.

A FURTHER SUPPLEMENT *to the act entitled "An act to incorporate a company for making an artificial road from the borough of Wilmington, on the east side of the Brandywine bridge, to the Pennsylvania line, in the route leading to the city of Philadelphia.*

Toll.

4 vol. ch. 239, p. 627, 5 vol. ch. 1, p. 3, 5 vol. ch. 170, p. 303.

SECTION 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That any person or persons, who shall hereafter travel on the said road, or use it for any space or distance less than one mile, shall be charged and required to pay toll or tolls, as for one full and entire mile, and where such toll shall, according to the rate of tolls established by the act to which this is a supplement, amount to any sum less than one cent, the said company shall have a right to demand and receive for the said toll, one cent, any law, usage or custom to the contrary notwithstanding; and all the tolls demandable under this act, shall be collected in the same manner, and the toll-gatherers shall have the same power and authority as are provided in this behalf in the act to which this is a supplement: *Provided* that no toll shall be charged to the electors of Brandywine hundred on the days of general or special elections either in going to or returning from the polls.

Electors, when exempt from toll.

PASSED AT DOVER, *February* 2, 1827.

CHAPTER XXXIV.

AN ACT *concerning forcible entries and detainers, and also concerning tenants holding over their terms after notice to quit.*

Forcible entry or forcible detainer.

1 vol. 239, 4 Bl. Com. 148. 2 Bac. abridg. 555.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That no person shall enter into any house, lands or tenements, unless entry be given by law, and then not with force and a strong hand, but only in a peaceable manner; and that no person, who shall enter peaceably into any house, lands or tenements, shall deprive another of the possession thereof and unlawfully detain

the same with force and a strong hand.

SEC. 2. *And be it further enacted*, That any forcible entry or detainer, against the form of the preceding section, shall be cognizable before any two justices of the peace for the county wherein the premises are situate, who, upon complaint of the party injured, shall issue a warrant of summons, under their hands and seals respectively, the form of which warrant may be as follows; to wit:

Before whom cognizable.

——————— County ss. The state of Delaware to the sheriff of the said county greeting: We command you to summon (*defendant's name*) of said county to appear on (day of the week) the ——— day of ——— instant (or next) at ——— of the clock in the forenoon at ——— before (*names of the justices*) and (———,) two of our justices of the peace for the county aforesaid, to answer to (*plaintiff's name*) who complains, that he the said (*plaintiff's name*) on the ——— day of ——— in the year of our Lord one thousand, eight hundred and ——— was in the peaceable possession of (*here describe the premises*) situate in the county aforesaid; and that the said (*defendant's name*) on the same day and year,†† with force and a strong hand unlawfully entered into the said tenements and dispossessed the said (*plaintiff's name*) thereof, and that the said (*defendant's name*) still†† detains possession of the said tenements against the said (*plaintiff's name*) with force and a strong hand: And we do also command you to summons twelve judicious and lawful men, being freeholders of said county and impartial toward the parties, to appear at the same time and place herein-before appointed for the defendants appearance, before our said justices, to serve as jurors, and inquire of the truth of said complaint: And have you then there this warrant and a panel of the jurors by you summoned. Given at the county aforesaid, under the hands and seals of the justices aforesaid, the ——— day of ——— in the year of our Lord one thousand eight hundred and———.

Form of warrant for forcible entry.

——————— { SEAL. }

——————— { SEAL. }

If the complaint be of forcible detainer merely the warrant may be adapted thereto, by varying from the above form in omitting after the words "same day and year," all the words to the word "still," inclusive of said

Form of warrant for forcible detainer.

word, and in lieu thereof inserting as follows, viz.†† "entered into the said tenements and having deprived the said (*plaintiff's name*) of the possession thereof."

Limitations to warrant for forcible entries, and forcible detainers.

But a warrant shall not be issued as aforesaid, upon a complaint of forcible entry, after the expiration of one year from the time of the making of such entry, or upon a complaint of forcible detainer merely, after the defendant has been in continued possession of the premises for the space of two years; and it shall not be necessary to plead these limitations; but if on the trial it shall appear, that the warrant was issued after the time limited therefor, the verdict shall be given for the defendant.

Verdict.

SEC. 3. *And be it further enacted*, That the verdict, in a proceeding pursuant to the preceding section, if for the plaintiff, shall be reduced to writing, and annexed to the warrant, and signed by the jurors; and it may be according to the following form; viz:

Form of verdict for forcible entry.

"We, the subscribers, jurors duly sworn or affirmed to inquire diligently and impartially concerning the complaint stated in the warrant hereunto annexed, and to find a true verdict thereupon according to the evidence, upon our oath or affirmation, respectively, do find and say, that the plaintiff was in the peaceable possession of the tenements described in said complaint, and that the defendant has,†† with force and a strong hand, unlawfully entered into the said tenements and dispossessed the plaintiff thereof, and detained possession thereof against the plaintiff, as alleged in said complaint:"

Form of warrant for forcible detainer.

But if the case be of forcible detainer merely, the verdict may be adapted thereto by varying from said form in omitting the words "with force and a strong hand" and all the subsequent words to the end, and, in lieu thereof, inserting the following; viz.†† "entered into the said tenements and deprived the plaintiff of the possession thereof and with force and a strong hand unlawfully detained possession thereof against the plaintiff, as alleged in the complaint."

Verdict for part of the complaint available for that part.

A verdict finding a forcible entry into or a forcible detainer of part of the premises described in the complaint shall be available for such part; and, upon a complaint of forcible entry and detainer, a verdict finding a forcible detainer merely shall be sufficient.

Judgment.

Upon a verdict for the plaintiff, the justices shall give judgment, that the plaintiff have possession of the premises, and recover against the defendant costs of suit;

Warrant for possession and costs.

and a warrant for delivering possession, and for levying such costs, shall be awarded.

SEC. 4. *And be it further enacted*, That on a trial of forcible entry or detainer, the estate or merits of the title shall not be enquired of; but the possession and the forcible entry or detainer only shall be in question; and that any judgment or proceeding under this act, in such case, shall not affect the title to the premises, nor be any bar to an action for the recovery of damages on occasion of the forcible entry or detainer.

Title not to be enquired into, or affected.

The possession of a tenant for years, or a year, or a less time, or at will, holding under rent, or by express permission, shall be deemed the possession of the landlord to all intents and purposes, in respect to any proceeding under this act for forcible entry into, or detainer of, the demised premises; and in any such proceeding, upon complaint of the landlord, a defendant not coming into possession by contract with the tenant, shall not be allowed to set up the term or interest of the tenant, in bar to the landlord's right to sustain the proceeding or to have restitution of the premises; but if the term be not ended, the tenant shall have the election to proceed for the recovery of the possession; and to this end, the landlord shall not be allowed, except with the tenant's consent, to institute a proceeding until the expiration of ten days from the forcible entry or the commencement of the forcible detainer.

Possession of tenant to be landlord's &c.

SEC. 5. *And be it further enacted*, That if any person or persons, who shall have demised any house, lands or tenements, for a term of years, or a year, or less time, or at will, or his, her or their heirs or assigns, shall, three months or upwards, before the end of such term or estate, give notice in writing to the tenant or tenants in possession under such demise, to remove from the demised premises, it shall be the duty of such tenant or tenants, or any person or persons coming into possession under him, her or them, to deliver full possession of the said premises to the lessor or lessors, or his, her or their heirs or assigns, at the end of said term or estate; and any holding of the said premises, against the form of the preceding provision, shall be cognizable before any two justices of the peace for the county wherein the demised premises are situate, who, upon complaint of the party injured, shall issue a warrant of summons, under their hands and seals, the form of which warrant may be as follows; viz:

Proceedings against tenants holding over after notice to quit.
2 vol. 1153 §12, 3 vol. 288.

——————— County, ss. The State of Delaware, to the sheriff of said county, greeting: We command you to summon (*defendant's name*) of said county to appear on (*the day of the week*) the ——— ——— day of ——— ——— instant (*or next*) at ——— of the clock in

Form of warrant in case of tenant holding over.

CHAPTER XXXIV. 1827.

the forenoon, at ———————— before (*the names of*) and (*the justices*) two of our justices of the peace for said county, to answer to (*plaintiff's name*) who complains that the said (*plaintiff's name*) had demised (*here describe the premises*) situate in the said county, to the said (*defendant's name*) for the term of ———————— from the ———————— day of ———————— in the year of our Lord, one thousand eight hundred and ————, under rent: and that the said (*plaintiff's name*) on the ———————— day of ———————— last, gave notice in writing†† to the said ———————— to remove from the said demised premises†††; and that, altho' the said term is ended the said (*defendant's name*) has not delivered possession of said premises to the said (*plaintiff's name*) but unjustly withholds the same, to the damage of the said (*plaintiff's name*) who thereupon demands the sum of ———————— dollars: We also command you to summon twelve judicious and lawful men, being freeholders of said county and impartial towards the parties, to appear at the same time and place hereinbefore appointed for the defendant's appearance before our said justices, to serve as jurors and inquire of the truth of the complaint and of the damages; and have you then there this warrant and a panel of the jurors by you summoned.

Given at the county aforesaid under the hands and seals of said justices the ———————— day of ———————— in the year of our Lord one thousand eight hundred and ————.

———— ———— { SEAL. }

———— ———— { SEAL. }

What shall be stated where heirs or assigns of lessors are plaintiffs, or when lessee is not tenant in possession,

In cases in which heirs or assigns of lessors are plaintiffs, the derivation of the title from the lessor must be stated in the complaint: in cases in which the lessee is not tenant in possession at the time of notice given but another is such tenant, it shall be sufficient to insert in the complaint between the words "notice in writing" and the words "to remove" as follows, viz.†† to (the name of the tenant in possession at time of notice) *who was then tenant in possession of said premises under said demise;*

Or where the person to whom notice is given is not the person holding over.

and in cases in which the person to whom notice is given does not hold over, but the holding over is by another person, it shall be sufficient to insert in the complaint after the words "to remove from the said demised premises" as follows, viz.††† *since which (defendant's name) has come into the possession of said premises under the said*

(*tenant to whom notice was given.*) In every case not coming within the general statement contained in the preceding form, the said form must be varied from as the circumstances shall require.

Demise how laid.

In every case of a tenancy from year to year, whether being such at first, or being such in consequence of a continuing by consent to hold after the expiration of a prior term, the demise may be alleged to be for the term of one year from the commencement of the year of the tenancy in which the notice to remove is given; except such tenancy be created expressly by a written instrument, and then the demise must be laid according to the legal effect of the instrument.

Evidence of the demise.

SEC. 6. *And be it further enacted*, That a lease under seal or any written or parol letting, may be given in evidence under the general allegation of a demise stated as in the form in the preceding section; and any contract or consent pursuant to which a tenant shall enter into the possession of premises, under an agreement to pay or render rent therefor, shall be deemed a demise within the meaning of such allegation; and every tenancy, the term of which shall not be expressly limited, shall be deemed a tenancy from year to year, except of houses and lots usually let for a less time than a year; and any person who shall come into possession of the premises by collusion of the tenant, or by means of his possession, shall be deemed to come into possession under him, and to be tenant in possession under the demise, as fully as if such person had come into such possession by contract with such tenant or a transfer of the term.

6 vol. 298.

Notice to quit in cases of estates at will.

Any estate purely at will, shall end at the expiration of three months from the time of giving notice to remove, unless the notice shall appoint a more remote termination thereof, and in such case, it shall end at the time so appointed; but no estate shall be deemed to be an estate at will, which can inure or be construed to be a tenancy from year to year.

Proceedings by remainder-man, or reversioner on death of tenant for life, or tenant of other particular estate.

In case the lessor be tenant for life or for other particular estate, if such lessor die or the particular estate otherwise determine, while a tenant is in possession of the premises under a demise thereof, as aforesaid, made by such lessor, the person or persons entitled to the reversion or remainder immediately expectant upon the particular estate of such lessor, may give notice to such tenant in possession under such demise to remove, and may proceed under this act to obtain possession, in the same manner, and as effectually, as if the estate had come to

such person or persons entitled to such reversion or remainder, by descent or purchase from such lessor.

The benefit of notice to quit, shall pass with the estate, and be incident to a reversion or remainder.

In case the lessor give notice to remove,—if such lessor die or there be an alienation, or the particular estate determine as aforesaid before the tenant's removal, the benefit of such notice shall pass with the estate to such lessor's heirs or assigns; or if the lessor be tenant for life or for other particular estate, the benefit of such notice shall be incident to the reversion or remainder immediately expectant upon the particular estate of such lessor and shall pass with such reversion or remainder to the person or persons entitled thereto; and such heirs or assigns, or the person or persons entitled to such reversion or remainder, may proceed, upon the ground of such notice, as effectually as the lessor, if living, and there had been no alienation or no determination of the particular estate, could have done.

Title not to be enquired into, except, &c.

The tenant shall not be permitted to dispute his lessor's title, nor shall the estate or merits of the title, except the title derived by heirs or assigns from the lessor, or the title of persons being plaintiffs on the ground of their being entitled to a reversion or remainder as aforesaid, or except an alienation of the title or estate which the lessor had at the time of making the demise, be inquired into; but the tenant shall not be permitted to set up a lease made by the lessor to another tenant, nor any other alienation, unless he can shew some right or authority in himself to continue in the possession through or by means of such lease or alienation.

Form of verdict for plaintiff in cases of holding over.

SEC. 7. *And be it further enacted,* That the verdict in a proceeding under this act for holding demised premises over the term or estate, if for the plaintiff, shall be reduced to writing and annexed to the warrant and signed by the jurors; and it may be according to the following form, viz.:

"We, the subscribers jurors duly sworn, or affirmed, to inquire diligently and impartially concerning the complaint stated in the annexed warrant, and to find a true verdict thereupon according to the evidence, upon our oaths or affirmations respectively do find for the plaintiff, and we do assess the damages on occasion of the premises to the sum of ——————.

Judgment.

Upon a verdict for the plaintiff, the justices shall give judgment, that the plaintiff have possession of the premises and recover against the defendant the damages assessed by the jurors and costs of suit: and a warrant for delivering possession and levying the damages and costs shall be thereupon awarded,

Warrant for possession, damages and costs.

In such proceeding, the plaintiff shall not recover more than fifty dollars damages exclusive of costs; but the plaintiff may proceed before the justices for possession, waiving the demand for damages, which demand may be waived by being omitted or by being stricken from the warrant before the jurors are sworn, or affirmed, and in such case the proceeding before the justices shall not be a bar to an action at law to recover damages sustained by occasion of the holding over of the demised premises, and shall not have any effect in relation to such action, except that such proceeding shall preclude the plaintiff from recovering in such action at law, any costs, unless the damages of said plaintiff, exclusive of costs, shall be ascertained by verdict, or otherwise, to exceed fifty dollars. Waiving the demand for damages as aforesaid shall not release nor affect the costs of suit in the proceeding before the justices.

Damages not to exceed $50, but plaintiff may waive the damages here, and proceed for them at law.

SEC. 8. *And be it further enacted*, That in every case of forcible entry or detainer, or of holding over demised premises, there shall be between the day of issuing and the return day of the warrant of summons not less than four nor more than six intervening days, and such warrant shall be served on the day of issuing the same or the next day, upon the defendant, either personally, or by leaving a copy thereof at his usual place of abode; and if there be a legal exception to the sheriff, the warrant may be directed to the coroner.

Date and return day of warrant, and when warrant to be served.

The return day of the warrant of summons, shall be the day of trial; but the justices shall have power to adjourn the proceeding: such adjournment shall not be without sufficient cause supported by oath or affirmation, nor for more than four days nor after the jurors are sworn or affirmed. If an adjournment be granted, the party applying for it shall pay the costs arising on the day on which it is granted, unless the justices shall on the circumstances make special order, that the costs shall abide the event: except that if the warrant shall not be served on the day of issuing it, or the next day, upon the defendant, as before required, the application of the defendant for an adjournment shall be granted of course, and the sheriff or coroner, to whom the warrant was directed, shall pay the costs of the day, unless there were default in delivering the warrant, and then the plaintiff shall pay such costs. The justices may issue an execution directed to the sheriff or coroner or any constable, for levying costs payable according to this section.

Day of trial, adjournments &c.

Oath of jurors.

SEC. 9. *And be it further enacted*, That in all proceedings under this act, whether in cases of forcible entry or detainer, or of holding over demised premises, the justices, or one of them, shall administer to the jurors an oath or affirmation according to the following form; viz.; You do solemnly swear (or affirm) that you will diligently and impartially inquire concerning the complaint stated in this warrant and find a true verdict thereupon according to the evidence; so help you God, (or so you do solemnly affirm:) which oath or affirmation shall be administered in the presence of the parties; but if the defendant shall neglect to appear after service of the warrant, the cause may be proceeded in, notwithstanding such defendant's absence.

When cause may proceed in defendant's absence.

Defect of jurors how supplied.

If through default of jurors, challenges, or otherwise, there be a defect of jurors, the sheriff or coroner shall forthwith summon and return a sufficient number of judicious and lawful men, freeholders of the county, and impartial toward the parties, as jurors to fill up the panel.

Trial.

The allegations and proofs shall be made and exhibited to the jurors, under the superintendance of the justices, who shall decide upon the competency of witnesses and evidence, but the credibility of witnesses and the effect of evidence shall be determined by the jurors: the justices may charge the jurors on points of law.

Verdict for defendant, judgment, and execution for costs.

If the jurors find a verdict for the defendant, the justices shall make an entry of the finding and give judgment for the defendant for costs and grant execution directed to the sheriff or any constable of the county.

Attendance of witnesses, how compelled.

4 vol. 441, Sec. 1.

SEC. 10. *And be it further enacted*, That in any proceeding under this act, the justices, or either of them, shall have power to issue subpœnas directed to the sheriff or any constable of either of the counties of this State, for summoning witnesses; and if a witness, duly summoned with a subpœna, shall neglect to appear according to such subpœna, the justices shall have power to issue an attachment for contempt, against such witness, directed to the sheriff or any constable of either of the counties of this State, and to compel such witness to attend and give evidence, and, in their discretion, to order such witness to pay all costs upon such attachment and also, if deemed proper, a fine not exceeding twenty dollars, and to compel payment of such costs and fine by imprisonment, or to make such other order in respect to such costs or to the discharge of such attachment as shall be deemed just. It shall be the duty of the justices if it shall satisfactorily appear to them, that a witness has been summoned unnecessarily, and with a view to in-

Fees of a witness summoned to increase costs

crease the costs, to order the fees to be paid by the party, at whose instance such witness was summoned. to be paid by the party summoning him.

SEC. 11. *And be it further enacted*, That the form of a warrant for delivering possession and levying costs, or damages and costs, in a proceeding under this act, may be as follows, viz. Form of warrant for possession and costs, &c.

——— County, ss. The State of Delaware, to the sheriff of said county, greeting. We command you that pursuant to the judgment of (*the names*) and (*of the justices*) two of our justices of the peace for said county, in a proceeding at the suit of (*plaintiff's name*) against (*defendant's name*) you, without delay, cause the said (*plaintiff's name*) to have full possession of (*here describe the premises as in the warrant of summons or verdict*) situate in said county, and that you levy and make of the goods and chattels of the said (*defendant's name*) the sum of (*amount of damages and costs*) for the plaintiff's damages and costs of suit, and also your own fees upon this warrant; and return this warrant with a certificate under your hand of your doings hereon to our said justices in sixty days from the date hereof.

Given under the hands and seals of the justices aforesaid, at the county aforesaid, the ——— day of ——— in the year of our Lord one thousand eight hundred and ———

——— { SEAL. }

——— { SEAL. }

In a case of forcible entry or detainer the words in the above form "damages and" must be omitted. If there be a legal exception to the sheriff, the warrant shall be directed to the coroner. Warrant in case of forcible entry or detainer.

The damages with all the items of the costs shall be endorsed upon the said warrant, and the sheriff or coroner shall return thereon his own fees, stating each item thereof. The return may be made to either of the justices.

If by the return of said warrant it shall appear that the sheriff or coroner cannot find goods or chattels of the defendant whereof to levy and make all the damages and costs, the said justices shall upon the application of the plaintiff issue an execution, directed to any constable of the county, of the same form as prescribed for an execution by the "Act providing for the recovery of small debts" and returnable in like time, the clause relating to surety being omitted. Where goods, &c. cannot be found, execution how issued.

Jurors refusing to serve, how punished.

SEC. 12. *And be it further enacted*, That if any person summoned as a juror in a proceeding under this act, whether upon the warrant of summons or after the return thereof, to fill up the panel, shall refuse or neglect to appear and serve accordingly, the justices shall have power to issue an attachment for contempt against such person directed to the sheriff or coroner, and to order such person to pay all costs on such attachment and a fine not exceeding ten dollars, and to compel payment of such fine and costs by imprisonment.

Sheriff or coroner to attend trials under this act.

Penalty.

SEC. 13. *And be it further enacted*, That it shall be the duty of the sheriff or coroner serving a warrant of summons issued under this act, to attend before the justices at the return of such warrant and during the trial and until the verdict be given; and if any sheriff or coroner shall refuse or neglect to perform such duty, or if any sheriff, coroner, or other officer, to whom any process issued according to this act shall be directed and delivered, shall refuse or neglect duly to serve and return the same, the justices shall have power to issue an attachment for contempt against such sheriff, coroner, or other officer, directed to the coroner or any constable of the county, and to order such sheriff, coroner or other officer to pay all costs upon such attachment, and a fine not exceeding thirty dollars, and to compel payment of such fine and costs by imprisonment; and further, every such refusal or neglect shall be deemed a breach of the condition of the official recognisance or bond given by such sheriff, coroner or other officer.

What entries shall be made.

SEC. 14. *And be it further enacted*, That the justices in a proceeding under this act shall make an entry of every adjournment, of the names of the jurors sworn or affirmed, of the day on which they are sworn or affirmed, and of a short note of the verdict and judgment: but the oath or affirmation administered to the jurors need not be stated in the entry: it shall be sufficient to note that they were sworn or affirmed according to law.

Judgments under this act shall not be reversed for formal defects.

Certiorari not a supersedeas to execution.

Restitution when awarded.

SEC. 15. *And be it further enacted*, That a judgment in a proceeding under this act shall not be reversed for any formal defect, nor for any error, which the court upon the face of the proceedings shall deem to be amendable; and a certiorari shall not be a supersedeas to the issuing or executing of a warrant for delivering possession; and upon a reversal of a judgment, the court shall not award a writ of restitution unless they shall consider that according to the merits of the case such writ ought to be awarded.

SEC. 16. *And be it further enacted*, That in a proceeding under this act, witnesses shall have the same fees for attendance and mileage as are allowed to witnesses for attendance in court, and the sheriff, or other officer shall have the same fees for serving subpœna or attachment for contempt and mileage as allowed to the sheriff on like process issued from court, under the "Act for regulating fees," and in case of adjournment, each juror attending shall upon such adjournment be entitled to the same fee as upon joining in the inquisition or verdict; and the fees upon any execution, other than a warrant for delivering possession and levying costs and damages provided for under the aforesaid act, shall be the same as allowed on an execution issued by a justice of the peace under the "Act providing for the recovery of small debts."

Fees.
6 vol. 670.
6 vol. 654.
6 vol. 680.
6 vol. 475.

SEC. 17. *And be it further enacted*, That the "act against forcible entry, barratry, maintenance, champerty and embracery," and the twelfth section of the "act for the better regulation of distresses for rent and for other purposes therein mentioned," and the supplement to the said act passed at Dover January 26, 1803, and the first and second sections of the additional supplement to said act passed at Dover February 2, 1811, and the proviso of the fourth section of the further supplement to the said act passed at Dover February 3, 1823, shall be and hereby are repealed from and after the first day of June next.

Repeal.
1 vol. 239.
2 vol. 1153.
3 vol. 288.
4 vol. 441.
6 vol. 298.

PASSED AT DOVER, *February* 2, 1827.

CHAPTER XXXV.

AN ACT *to authorize James Smith to remove certain negro slaves from this State into the State of Maryland.*

PASSED AT DOVER, *February* 2, 1827.

PRIVATE ACT.

CHAPTER XXXVI. 1827.

CHAPTER XXXVI.

A SUPPLEMENT *to an act entitled "An act to incorporate the owners and possessors of Crane-Hook marsh, in the hundred and county of Newcastle."*

Taxes, how collected.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That it shall and may be lawful for the managers of the said Crane-Hook marsh company, to demand from each owner and possessor, all taxes and sums of money that have heretofore or that may hereafter be assessed by the said company; and in case of the neglect or refusal to pay the same for the space of twenty days after the time fixed for the payment thereof, it shall and may be lawful for the said treasurer to seize and rent out, or sell by public vendue, to the highest bidder, for so long a time and no longer, as will be requisite to discharge such taxes or sums, so much of the marsh or meadow ground within said banks belonging to or in possession of such delinquent owner or owners, (possession) as may suffice to discharge such assessment and all expenses attending the recovery thereof, having advertised the same, for the space of three weeks previous to the sale thereof, in three of the most public places in the neighbourhood wherein the said marsh or meadow lies or may be sold.

PASSED AT DOVER, *February 3, 1827.*

CHAPTER XXXVII.

AN ACT *regulating proceedings upon public recognisances and bonds and upon specialties containing a penal sum.*

Recognisances and public bonds in trust, for persons aggrieved, &c.

SECTION 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That every recognisance and bond which has been, or shall be acknowledged or executed pursuant to any law, or by the direction of the governour or of any court, by an executor, administrator, sheriff, or any other officer or person, to the State, with condition for the payment of money, or the execution or performance of any office, trust, or duties, shall be not only for the benefit

of the State, but also upon trust for every the persons and corporations that have been, or shall be injured by the breach of such condition: and every the said persons and corporations may, in the name of the State, but for his, her or their use, institute suit upon such recognisance or bond, and prosecute such suit to judgment and execution, and for that purpose may employ any attorney of the court wherein the suit shall be brought, who may, in the declaration and other pleadings, use his own name instead of the name of the attorney-general, and in case of execution by writ of elegit, the tenements and premises shall be delivered to the person or persons or corporation for whose use the judgment shall have been recovered, or to the executors or administrators of such person or persons, and the command of the writ shall be accordingly; the name of such executors or administrators, with the decease of the testator or intestate, may be suggested upon the record without *scire facias*, in term time or in vacation.

Proceedings thereon, how regulated.

SEC. 2. *And be it further enacted*, That in an action upon such recognisance or bond as aforesaid, or upon any bond or penal sum for the non-performance of any condition, covenants, or agreements, (except as hereinafter prescribed) judgment shall not be rendered for the penalty; but damages on occasion of the breaches complained of being assessed or ascertained, judgment shall be for the sum of such damages as debt, with costs of suit. Such recognisance, bond or penal sum shall not be extinguished by a judgment in an action thereon, if for a sum as debt less than the penalty, but shall remain as a security for any damages sustained, or that may be sustained, on occasion of other breaches; and for the recovery of such damages, actions may be instituted from time to time upon said recognisance, bond, or penal sum: but if several actions shall be brought upon the same recognisance, bond, or penal sum, and the court shall consider that the said actions or any two of them ought to be consolidated, they shall make a rule for that purpose, and they may disallow any part of the costs of the actions consolidated, or make any order concerning the costs which they may deem proper; and this power for consolidating actions and concerning the costs therein may be exercised although such actions may be for the use of different persons or corporations.

When judgment shall be entered for damages assessed, and not for the penalty in a recognisance or bond.

Judgment not to be extinguished, but remain as a security, &c.

Consolidation of actions.

In every action upon such recognisance, bond or penal sum as aforesaid, as many breaches as it shall be thought proper to insist upon shall be assigned. The breaches may be assigned in the declaration or other regular pleading, or by way of suggestion entered upon the record.

How breaches may be assigned, and damages inquired of.

CHAPTER XXXVII.

1827.

The jury upon the trial of the action shall assess the damages on occasion of the breaches assigned as the truth thereof shall appear. But if there be judgment for the plaintiff by default, or upon demurrer, or otherwise without trial by a jury, and without agreement for ascertaining the damages, the action may be put upon the trial-list, and the truth of the breaches assigned may be inquired of, and the damages on occasion thereof may be assessed by a jury, at the bar of the court in which the action shall be, such jury being drawn and sworn or affirmed, and giving their verdict as in common cases of trials by a jury; or a writ of inquiry may be issued, directed to the sheriff, unless there be a legal exception to him, and then to the coroner of the county, in substance commanding him, that by the oath or affirmation of twelve good and lawful men of his bailiwick, he inquire of the truth of the breaches assigned, and of the damages sustained on occasion thereof, and that he return the inquisition which he shall thereupon take under his seal and the seals of those upon whose oath or affirmation the same shall be taken, with the writ, on a return day in the writ to be specified: and in case of judgment for the plaintiff by default, or upon demurrer, or otherwise without trial by a jury, and without agreement for ascertaining the damages, the breaches may be assigned by way of suggestion entered upon the record after the judgment. Also, the damages may be ascertained by confession, by the report of referees, or otherwise, according to the agreement of parties, with or without a formal assignment of breaches; and if the condition, or agreement for non-performance whereof the action is brought, be merely for the payment of money, or interest, by instalments, or on different days, and there be judgment for the plaintiff by default, or upon demurrer, or otherwise without trial by a jury or agreement for ascertaining the damages, in such case the damages, or the amount justly due and payable according to such condition or agreement, may be ascertained as shall be ordered by the court.

No one to be made liable beyond the penalty.

Who shall be entitled to preference where the penalty is inadequate to cover all damages.

But any thing herein contained shall not be construed to make a recognisor, obligor, or other party, liable for damages beyond the penalty of his recognisance, bond, or specialty, or in any manner to extend, abridge, or alter the legal effect or operation of any recognisance or other instrument. If the penalty of a recognisance or bond acknowledged or executed as mentioned in the first section of this act shall not be adequate to cover all the damages sustained on occasion of the breaches of the condition thereof, and such damages shall be sustained by different persons or corporations, such persons or corpo-

rations shall stand in priority and preference according to the respective dates of commencing the actions for their uses respectively, except that a failure to use due diligence in prosecuting any action shall deprive it of the benefit of such priority, and postpone it to all the actions pending at the time of such failure happening: such failure shall be determined and certified by the court.

The foregoing provisions of this section shall be construed to extend to an action upon a bond or specialty in a penal sum, with condition for the payment of money or interest of money by instalments or on different days, unless such action shall be commenced after all the sums, whether for principal or interest which according to such condition can become payable, shall have become payable: but in every action commenced upon a bond or specialty in a penal sum. with such condition, after all the sums which according to such condition can become payable, whether for principal or interest, shall have become payable, and also in every action upon a bond or specialty in a penal sum with condition for the payment of money in a gross sum, judgment for the plaintiff shall be for the penalty and costs of suit, to be discharged upon the payment of the sum justly due, with interest and costs: which said sum justly due shall be found by the jury, if there be a trial by a jury, or otherwise shall be ascertained as shall be agreed by the parties, or ordered by the court.

When judgment shall be for the penalty &c.

Sec. 3. *Provided*, That the second section of this act, or any clause of said section, shall not extend to a warrant of attorney to confess judgment, nor to any action or judgment entered, or confessed, in pursuance of such warrant of attorney.

Sec. 2 not to extend to proceedings on a warrant of attorney, to confess judgment.

Sec. 4. *And be it declared and enacted*, That payment of the money contained in the condition of an obligation or any part thereof, and also payment of money due by judgment, single bill, or other specialty, or any part thereof, is and shall be pleadable in an action on such obligation, judgment, bill, or specialty, in order that the sum justly due may be determined, although such payment may not be evidenced by instrument under seal, or may not have been made strictly according to the condition.

Pleading payment.

Sec. 5. *And be it further enacted*, That if any recognisance or bond mentioned in the first section of this act shall, according to law, be recorded or deposited in any public office, a copy of such recognisance or bond, or of the record thereof, certified under the hand and official

Certified copies of certain bonds &c. to be evidence.

CHAPTER XXXVII. 1827.

seal of the officer in whose office the said recognisance, bond, or record shall be, shall be competent evidence; and it shall be the duty of such officer to make, certify and deliver such copy, upon demand, and upon payment or tender of the legal fees; but any court may, for sufficient cause, require the production of the original, and it shall be the duty of the officer to produce the same as required.

Production of original may be ordered.

Repeal.
1 vol. 87.
6 vol. 255.

SEC. 6. *And be it further enacted*, That the twelfth section of the act entitled "An act for establishing orphans' courts," and the act entitled "An act concerning suits upon administration and testamentary bonds" be and hereby are repealed; except as to proceedings that have been had and judgments that have been rendered according to the said section, or act repealed, which proceedings and judgments shall continue of the same nature, force, effect and operation in all respects, and proceedings thereon may be had in the same manner and form, and as amply and effectually, to all intents and purposes, as if this act had not been passed; or proceedings may be had upon any bond as prescribed by this act, notwithstanding judgment thereon shall have been rendered pursuant to the aforesaid section, or act repealed, in the same manner as if such judgment had been not for penalty, but for damages assessed, or found, as directed by this act.

6 vol. 608.
6 vol. 607.
2 vol. 1130, 1131.

SEC. 7. *And be it further enacted*, That the clause in these words viz. "and the record of every obligation made pursuant to this act or a certified copy thereof shall be admitted as competent evidence," of the first section of the "Act requiring certain officers to give security for the faithful performance of their official duties," and all the part of the second section of the said act, which said part begins with these words, viz: "That every obligation" and extends to and includes the words "pursuant to this act: Provided"—be, and hereby are repealed, and also that all that part of the first section of the "Act requiring sheriffs to give security," which said part begins with these words, viz: "which said recognisance shall be," and extends to the end of said first section be, and hereby is repealed; except as to all recognisances which have heretofore been entered into pursuant to said last mentioned act, as to all which recognisances the said part of said section shall continue unrepealed: but nevertheless the proceedings on said recognisances may be according to this act.

PASSED AT DOVER, *February* 3, 1827.

CHAPTER XXXVIII.

AN ACT *concerning the real estates of intestates.*

Descent of lands of intestates... 1 vol. 288, sec. 5, &c. 1 vol. 418. sec. 2, 3. 1 vol. 538. 2 vol. 1172. 4 vol. 271, §4. 5 vol. 146, ch. 82. 5 vol. 363, ch. 200. 6 vol. 91, ch. 71.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That when any person having title or any manner of right, legal or equitable, to any lands, tenements or hereditaments in fee simple, shall die intestate as to the same, such lands, tenements or hereditaments shall descend and pass in fee simple to the kindred, male and female, of said intestate, in coparcenary, according to the following course, that is to say: to every the children of the intestate, and the lawful issue of any such children who shall have died in the life time of the intestate, or such of them as there may be: but if there be no child of the intestate, nor lawful issue of any such child, then to every the brothers and sisters of the intestate of the whole blood, and the lawful issue of any such brothers and sisters who shall have died in the life time of the intestate, or such of them as there may be; or if there be none such, to every the brothers and sisters of the intestate of the half blood, and the lawful issue of any such brothers and sisters who shall have died in the life time of the intestate, or such of them as there may be: but if there be no brother or sister of the intestate, either of the whole or half blood, nor lawful issue of any such brother or sister, then to the father of the intestate; or if there be no father, to the mother of the intestate, and if there be no mother, then to the next of kin to the intestate in equal degree, and the lawful issue of any such kin who shall have died in the life time of the intestate, or such of them as there may be;—

1 vol. 538, §4.

Subject, however, in all the cases aforesaid, to the rights of the surviving husband or widow, when there shall be such, as follows; that is to say;

Curtesy.

† If the intestate leave a husband, who shall have had by said intestate during their marriage issue born alive, whether such issue have lived or died, such husband shall hold all such lands, tenements or hereditaments for the term of his life, as tenant by the curtesy. If the intestate leave a widow, then, if there be any child of the intestate or lawful issue of any such child, said widow shall have one third part of all such lands, tenements or hereditaments to hold to her for the term of her life, as tenant in dower; or if there be no child of the intestate nor lawful

Dower.

† Reference in the original to Co. Litt. sec. 35.

CHAPTER XXXVIII. 1827.

1 vol. 294, 295, sec. 13.

issue of any such child, the said widow shall have one moiety, or equal half part, of all such lands, tenements or hereditaments to hold to her for the term of her life, after the manner of tenant in dower; or if there be no kin or heir of the intestate, the said widow shall hold all such lands, tenements or hereditaments, for the term of her life. The foregoing provisions concerning brothers and sisters shall be subject to the following modification, that is to say; any lands, tenements, or hereditaments, to which the intestate shall have title or right as aforesaid, by descent, or devise from his or her parent or ancestor, if there be no lawful issue of the intestate, shall descend and pass to every the brothers and sisters of the intestate of the blood of his or her said parent or ancestor, and the lawful issue of any such brothers and sisters who shall have died in the life time of the intestate; but if there be none such, then according to said foregoing provisions, in the same manner as other lands, tenements, or hereditaments. The issue of children, brothers, sisters, or other kin, who shall have died in the life time of the intestate shall, in all cases, take according to † stocks, by right of representation, that is to say; the same share which such children, brothers, sisters, or other kin, if living would have taken: and this rule shall hold, although the descent shall be entirely to issue of deceased children, brothers, sisters, or other kin. The term "kin," as used in this act, shall be construed to signify kin by blood, or consanguinity, and the term "kindred" shall be construed to signify kindred by blood, or consanguinity: and the degrees of consanguinity shall be computed according to the method of the civil law: but collateral kindred claiming through a nearer common ancestor, shall be preferred to any collateral kindred claiming through a more remote common ancestor.

Distribution among collaterals.

1 vol. 538, § 4.

Representation.

"Kin" and "kindred" how construed.

Degrees of consanguinity how computed.

Partition of intestate's lands.

SEC. 2. *And be it further enacted*, That lands, tenements or hereditaments, which shall descend and pass to kindred of an intestate, according to this act, shall be liable to partition, so that each owner may have his, or her share, apportioned to him, or her in severalty, unless such partition would be detrimental to the interests of the owners; but if there be a tenant by the curtesy, such partition shall be postponed until his death, or other previous determination of his estate; and if there be a widow of the intestate, partition of her part, as such widow, shall be postponed until her death, or other previous determination of her estate; but after assigning the widow's part

† Reference in the original to 2 Blac. com. 217, ch. 14, rule 4.

of such lands, tenements or hereditaments, partition of the residue thereof may be made, or other proceedings may be had concerning said residue, in the same manner, and of the same effect, as if such residue were all the lands, tenements or hereditaments, which the intestate had left to descend and pass according to this act; and after the death of the widow, or other determination of her estate, partition of her said part may be made, or other proceedings concerning said part may be had, in the same manner, and of the same effect, as if such part were all the lands, tenements or hereditaments, which the intestate had left to descend and pass according to this act.

Such partition shall be fairly made between the parties entitled, according to their just proportions, respect being had to the true value of the lands, tenements or hereditaments; and the manner of making said partition shall be as follows, viz—if the parties entitled be children of the intestate, the lands, tenements or hereditaments, shall be divided into as many shares as there are children, and one share shall be assigned to each child: if the parties entitled to shares be, some of them, children of the intestate, and others, issue of deceased children, then the lands, tenements or hereditaments shall be divided into a number of shares equal to the number of such children, and deceased children, and the said shares shall be assigned, one to each child, and one to the issue of each deceased child; if the parties entitled to shares be, all, issue of deceased children of the intestate, then the lands, tenements or hereditaments shall be divided into a number of shares equal to the number of such deceased children, and one share shall be assigned to the issue of each deceased child, and each share assigned to the issue (if several) of a deceased child shall be subdivided among such issue after the same manner, and likewise if the parties entitled to shares be brothers, sisters, or other kindred of the intestate, or issue of deceased brothers, sisters, or other kindred, partition shall be made after the same manner; so that, in every division in which there are parties, or any party, claiming according to stocks, by right of representation, the representatives, however numerous, of one stock shall have one share proportionate to their aggregate interest, and such share if assigned to several, shall be subdivided among the parties to whom it is assigned after the same manner, and further subdivision, if necessary, shall be made until the share of each owner shall be apportioned to him, or her, in severalty; and the manner of partition shall be the same whether the deceased child, or other kindred, whose issue are parties to the partition,

Advancement of a child by intestate in his life time.

1 vol. 288. § 5.

died before or after the decease of the intestate. If any child of the intestate, or any issue of such child, shall have received any lands, tenements, or hereditaments as an advancement out of the intestate's estate, or by settlement of, or by way of gift from, the intestate in his or her life-time, or by means of purchase the consideration of which was paid or satisfied by the intestate, such lands, tenements or hereditaments, shall be estimated in the partition, or distribution of the intestate's real estate, or of the appraised value or proceeds of sale of the same, as part thereof, and shall be held by such child, or issue, for or towards his or her share of such estate, appraised value or proceeds; but such settlement, gift or other advancement of lands, tenements, or hereditaments shall not be considered in determining or assigning the widow's dower.†

Partition, how procured.

For procuring partition of any lands, tenements or hereditaments, which shall have descended and passed to kindred of an intestate, according to this act, any of said kindred, or the widow of the intestate, or any person entitled by purchase, or assignment, from any of said kindred, or said widow, to any part or share of said lands, tenements, or hereditaments, may prefer to the orphans' court of the county wherein such lands, tenements, or hereditaments are situate,—or if the said lands, tenements or hereditaments are situate in several counties, then, if the intestate resided in this State, to the orphans' court of the county of his or her last residence, or if the intestate did not reside in this State, to the orphans' court in either of the counties in which any of said lands, tenements, or hereditaments are situate,—a petition stating the death of the intestate, and the lands, tenements, or hereditaments, as to which he or she having title, or right as aforesaid, died intestate, and all the facts requisite to enable the court to determine how, and the parts and shares, into which, the said lands, tenements, or hereditaments should be divided, and the persons to whom such parts or shares should be assigned, and praying that partition of the said lands, tenements, or hereditaments may be made, or that the widow's part of the said lands, tenements, or hereditaments may be assigned to her, and that partition of the residue thereof may be made; and thereupon the said court, by an order, shall appoint five judicious and substantial freeholders to go to the said lands, tenements or hereditaments, and with the assistance of a skilful and impartial surveyor by them to be nominated, make partition thereof,—(or) assign to the widow her part there-

1 vol. 146. 147.

† Reference in the original, to Prec. in Cha. 182. 4, Ward vs. Lent.

of, and make partition of the residue thereof—among the parties entitled, in manner in said order to be prescribed, according to the form and effect of this act; in such order stating the widow's proportion (if any) and the divisions to be made, and the shares of the parties therein, and directing the said freeholders in the following particulars, viz.—if the said freeholders, or a majority of them, shall be of opinion, that the said lands, tenements, or hereditaments, or the said residue thereof, cannot be divided into the number of primary shares directed, without detriment to the parties, but can be advantageously divided into two or more parts, then they shall divide the same into so many and such parts, as they shall deem most suitable and convenient, and shall appraise each of the said parts at the true value thereof in money; and in like manner, if the said freeholders, or a majority of them, shall be of opinion, that any share assigned to several cannot be subdivided into the number of shares directed, without detriment to the parties, but can be advantageously subdivided into two or more parts, then they shall subdivide such share into so many and such parts as they shall deem most suitable and convenient, and shall appraise each of the said parts at the true value thereof in money: or if the said freeholders, or a majority of them, shall be of opinion, that no division can be made of said lands, tenements or hereditaments, or of said residue thereof, without detriment to the parties, then they shall make no division, but shall appraise the same at the true value thereof in money: and in like manner, if the said freeholders, or a majority of them, shall be of opinion, that any share assigned to several will not admit of any subdivision, without detriment to the parties, then they shall make no subdivision thereof, but shall appraise the same at the true value thereof in money: this direction for appraising shall not be extended to the widow's part, but her part shall always be assigned to her; and if at the time of making or renewing an order as aforesaid, all the parties entitled to shares in the partition be under the age of twenty-one years, then, unless some one of them will arrive to that age by the return of said order, there shall be no direction for a division into fewer parts than the number of shares, or for any appraisement: likewise, if several parties entitled, as representatives of one stock, to one share, shall all be under the age of twenty-one years, then, unless some one of them will arrive to that age by the return of the order, there shall be no direction for a subdivision of said share into fewer parts than the number of shares, or for any appraisement thereof; but in lieu of such direction, there shall be an instruction,

5 vol. 146, 147.
Partition and appraisement.

5 vol. 148, sec. 2.

Widow's part shall not be appraised.
1 vol. 418.

Minors.

CHAPTER XXXVIII.

1827.

not to proceed to make the partition or subdivision, unless the same can be made without detriment to the interests of the parties; and any division, or subdivision into fewer parts than the number of shares, although proper, and any appraisement, shall be deferred until there shall be a party in interest of the age of twenty-one years desirous thereof:—and the said freeholders, or a majority of them, shall return to the next orphans' court of the same county, after the making or renewing of such order, their proceedings thereupon, duly certified under their hands, with such draught or draughts as they may have required annexed thereto, and if partition shall not have been made as prescribed by the order, because of the opinion of the freeholders, or a majority of them, that the same could not be made without detriment to the parties, such opinion, as well as the proceedings thereupon, shall be certified in the return; and if by the return it shall appear, that the said freeholders, or a majority of them, are of opinion, that no division of the said lands, tenements or hereditaments, or said residue thereof, can be made without detriment to the parties, and that they have accordingly appraised the same, as directed in such case, and if said return shall be approved by the said orphans' court, then the value according to the said appraisement shall be substituted in the place of the said lands, tenements or hereditaments, or said residue thereof for distribution, and the said orphans' court shall assign the whole of the said lands, tenements or hereditaments, or said residue to one of the parties entitled who will accept the same, and either pay to the other parties entitled their just and proportionable shares respectively of said value, or, with sufficient surety or sureties to be approved by the said court, enter into recognisance to be taken and acknowledged in said court, to the State, in a penal sum to be determined by said court, with condition (in substance) to pay to the other parties entitled severally, or their executors, administrators or assigns, respectively, their respective just and proportionable shares of the said value, with interest from such time as the said court shall determine, in such manner and at such time, as may, by the direction of the said court, be prescribed and appointed in said condition: in such assignment the said court shall give preference to the parties entitled, according to the following order, that is to say; sons of the intestate shall be preferred to daughters of the intestate; brothers of the intestate shall be preferred to sisters of the intestate; and of other kindred of the intestate, of the same degree, males shall be preferred to females: and sons among themselves, daughters among themselves, broth-

Return of freeholders.

Assignment of the whole to party accepting at the appraisement.

Recognizance.

Who shall be entitled to preference in the assignment.

ers among themselves, and sisters among themselves, and of other kindred of the same degree, males among themselves, and females among themselves, shall be preferred according to seniority, the olden to the younger: issue of deceased children, brothers, sisters, or other kin shall have preference according to stocks, by right of representation, that is to say; the issue shall have the same preference which would have been given to the parent if living; and this, whether the parent died before or after the decease of the intestate; and if there be several issue of the same parent, they shall among them have preference according to the same order, that is to say; males to females, and among males or females, the older to the younger; or if by the said return it shall appear, that the said freeholders or a majority of them are of opinion, that the said lands, tenements or hereditaments, or the said residue thereof, cannot be divided into the number of primary shares directed without detriment to the parties, and that they have divided the same into two or more parts and have appraised said parts, as directed in such case, and if said return shall be approved by the said orphans' court, then the value according to the said appraisement shall be partially substituted in the place of the said lands, tenements, or hereditaments, or said residue for distribution, and the said orphan's court shall assign one of the said parts to one of the parties entitled who shall choose the same, and another of the said parts to another of the said parties who shall choose the same, and so on until every part shall be assigned, if the parties respectively or either of them will accept the same; and the party to whom any part shall be assigned shall pay to the other parties entitled, severally, their just and proportionable shares, respectively, of the excess of the value of said part, according to the appraisement thereof, beyond the just share of said assignee of the aggregate values of all said parts, or shall with surety or sureties enter into recognisance with condition to pay such excess in manner and form as herein before prescribed in case of acceptance of the whole premises: the court shall give preference to the parties entitled and admit them to choose the said parts, according to the order herein before prescribed: but a party having chosen and a part being assigned to him or her,* pursuant to such choice, shall not be admitted to choose another part, except by virtue of another right, until all the other parties shall have had privilege of choice; and the order of preference shall, in this respect, be modified accordingly; or if by the aforesaid re-

5 vol. 146, 7.

Assignment of different parcels at the appraisement.

6 vol. 94, sec. 2.

Recognizance of the assignee of a part.

Preference in the assignment of part of an intestate's lands.

* "Party" in the original.

Assignment of a share or parts of a share at the appraisement.

turn it shall appear concerning a share assigned to several, either,—1st, that it is the opinion of the said freeholders, or a majority of them, that it will not admit of any subdivision without detriment to the parties, and that they have appraised the same, or,—2d, that it is the opinion of the said freeholders, or a majority of them, that it cannot be subdivided into the number of shares directed without detriment to the parties, but that they have subdivided it into two or more parts and appraised said parts, and if such return shall be approved by the said orphans' court, the value according to said appraisement shall be substituted in place of the share for distribution, and the said court shall assign, in the first case, the whole of the said share to one of the parties entitled who will accept the same, and in the second case, the several parts, each to a party who shall choose the same; and the party or parties to whom such assignment shall be made, shall either pay, or with surety or sureties enter into recognisance with condition to pay, to the other parties entitled, their respective just and proportionable shares of said value, or the excess of said value: and preference shall be given in respect to such assignment as herein before prescribed in like particulars, concerning the said lands, tenements or hereditaments, or said residue thereof.

When a new order shall be issued, in consequence of a return on a former one without partition or appraisement.

If in consequence of the infancy of the parties, or otherwise howsoever, an order shall be returned without partition, division, subdivision, or appraisement made of any lands, tenements or hereditaments, or of the residue thereof, after assigning the widow's part, the orphans' court, upon the petition of any party or parties interested, shall, by an order, appoint five freeholders, with the powers and directions herein before prescribed in this behalf, to make partition or subdivision as the case may require, and if partition or subdivision cannot be made into the number of shares stated, to make division or subdivision into fewer parts and appraise said parts, or if no division or subdivision can be made, to appraise the premises, or generally to do whatever may be requisite in the particular case to effect the partition, division, subdivision, or appraisement of the premises as herein before prescribed: such order and the return thereupon shall be of the same nature, force and effect as an original order and the return thereon, within the foregoing provisions; and the freeholders thereby appointed shall not be precluded by a return upon the former order, *that partition or subdivision cannot be made without detriment to the interest of the parties*, from considering the propriety of, and making, partition or subdivision; but if an order

be returned without partition, division, subdivision or appraisement, in consequence of the opinion of the freeholders, *that partition or subdivision could not be made without detriment to the interests of the parties* and of no further proceeding being directed because of the infancy of the parties, a subsequent order shall not be made except upon the petition of a party interested, of the age of twenty-one years.

Proceedings where the party entitled to the acceptance of appraised premises refuses or neglects to accept.

If a party entitled, according to the order of preference, to the acceptance or choice of any appraised premises, will not accept or choose the same and comply with the terms prescribed by this act in such case, the party next in order shall be admitted to such acceptance or choice; and if any party shall apply to be admitted to the acceptance or choice of any appraised premises, pursuant to this act, and there shall be a party who shall stand prior, according to the order of preference, to the party so applying, and who shall not have declined to accept or choose the said premises, the said orphans' court, upon the request of the party so applying, shall grant a rule upon such prior party or upon all prior parties if there be several, to appear in said court on some certain day in said rule to be appointed, and claim the preference that may be due to him, her or them of accepting or choosing said premises; and the said court shall direct, that the said rule shall be served upon any party therein, residing in the county wherein such appraised premises are situate, by a copy thereof being delivered to such party, or left at his or her usual place of abode, and in case of an infant party, such service shall be upon the guardian, and in case of no guardian, upon the person with whom he or she resides; and if any party named or described in said rule do not reside in said county, then, either that a copy of said rule shall be published for six successive weeks in some newspaper or newspapers printed in this State, and designated by said court for that purpose, the first publication to be at least sixty days before the day of appearance, or that said rule shall, as to any such party, be served in any manner which the said court may deem proper to appoint; and such direction being complied with, unless the prior party or parties named or described in such rule, or his, her or their heirs or assigns shall appear according to said rule, and accept or choose said appraised premises, and comply with the terms prescribed by this act in such case, such prior party or parties shall be deemed to have abandoned the preference due to him, her or them, and the party so applying shall he admitted to the acceptance or choice of said premises: but any party under the age of twenty-one years, or any party inca-

A party under 21, or non compos, shall be passed by, in the order of preference.

pable, because of idiocy or other incompetency of mind, of accepting or choosing, shall be passed by in the order of preference, and the party next in order admitted, and the said orphans' court shall have jurisdiction to try and determine the fact of infancy, idiocy or other incompetency of mind, whenever the same shall come in question in administering this act.

The assignee of a share shall have the same right of acceptance which the original holder could have.

The right of acceptance or choice of a party according to the order of preference shall be incident to his or her share, and pass with it, and the assignee or owner of a share by a derivative title shall represent the original taker of said share, and have all the rights and privileges which such taker, if continuing the owner, would have.

Assignment may be to the husband of a woman entitled to accept

If a married woman be entitled to the acceptance or choice of appraised premises, the assignment may be made to her husband upon his entering into such recognizance as herein before prescribed.

Order for sale of appraised premises which none of the parties will accept.

But if it shall so happen, in any case, that none of the parties entitled shall accept or choose the lands, tenements or hereditaments which shall have been appraised as aforesaid, or any part or parts which shall have been laid off in any division or subdivision and appraised as aforesaid, the said orphans' court shall have power to make an order, that the said lands, tenements or hereditaments, or the said part or parts be sold at public auction to the highest and best bidder or bidders; and the said court shall assign to the purchaser or purchasers the premises sold to him, her or them, pursuant to such order, he, she or they paying to the parties entitled their just and proportionable shares of the purchase money respectively, or with sufficient surety or sureties, to be approved by said court, entering into recognizance to be taken and acknowledged in said court, to the State, in a penal sum to be determined by said court, with condition to pay to the parties entitled, severally, or their respective executors, administrators or assigns, their just and proportionable shares of the said purchase money, respectively, with interest from such time as said court shall determine, in such manner and time as may, by direction of said court, be prescribed and appointed in said condition: such order shall be made upon the application of the parties entitled, if all said parties shall join in said application; but if all the parties entitled shall not join in such application, the court shall, upon the application of any one or more of the said parties, grant a rule upon the other parties to appear in said court on some day in said rule to be appointed, and show if they have any cause, why such order shall not be made; and the court shall direct that such rule be served upon every party upon whom it

Assignment to purchaser.

Order for sale of appraised premises, how procured.

is made, if residing in the county wherein the premises are situate, by a copy thereof delivered to such party, or left at his or her usual place of abode; or in case of a minor, upon the guardian of such minor or other person with whom such minor resides as aforesaid; and if any party named or described in said rule do not reside in said county, then either that a copy of said rule shall be published for six successive weeks in some newspaper or newspapers printed in this State and designated by said court for that purpose, the first publication to be at least sixty days before the day of appearance, or that said rule shall, as to any such party, be served or published in any manner which the said court shall deem proper to prescribe; and such direction being complied with, such order shall be made, unless sufficient cause shall appear against making it: and the said court on hearing such rule, or upon the application of any one or more of the parties entitled, in its discretion, may order that partition of premises appraised, which none of the parties shall accept or choose, shall be made among the parties according to their just interests, stating in such order the share of each party, and appoint five freeholders to make said partition, who may nominate a surveyor to assist them; but upon such application a summons shall be issued for summoning the parties not joining in said application to appear and show if they have any objection to said partition; and if said parties, or any of them, do not reside in the county wherein the premises are situate, the court may direct a summons for them, or may grant a rule upon them to appear and show if they have any objection to said partition, and direct such publication of said rule as may be deemed reasonable, and upon such direction for publication being complied with may proceed in the same manner as if a summons were served.

Court may order partition instead of a sale of appraised premises.

In case of a division or subdivision into fewer parts than the number of shares directed, and an appraisement of said parts, a party to whom one of said parts shall be assigned, if the value thereof be equal to his or her share of the aggregate amount of said appraisement, shall be debarred of all right and interest in and to the other parts, which shall belong to the other parties exclusively of the party to whom the assignment is made, and if the value of the part assigned be not equal to the share of the party to whom the assignment is made of the aggregate amount of said appraisement, he or she shall have a claim and interest in and upon the other parts proportionate to the deficiency and no greater. Upon this principle the value or proceeds of sale of such other parts shall be distributed or partition of said parts shall be made; but a party to

One accepting part of the land at an appraised value shall be barred of his claim on the residue to the amount of that value:

but he may in some cases accept the residue or a part of it.

whom a part is assigned after the other parties, and if none of them shall accept or choose the other parts, shall have privilege to choose said parts or either of them and have the same assigned to him or her, paying or securing the shares of the value as herein prescribed. The person or persons to whom (whether as one of the parties entitled to accept or choose, or as purchaser or purchasers at a sale pursuant to an order) any lands, tenements or hereditaments shall be assigned as aforesaid, by virtue of such assignment shall take all the estate, title and claim which the intestate at the time of his or her death had in law or equity, in or to said lands, tenements, or hereditaments, with the benefit of all acts and matters done after the death of the intestate for perfecting or securing the title, and shall hold the same paramount to all incumbrances created or suffered by, and to all right and claim of the heirs of the intestate, or any person claiming from or under them.

Estate of an assignee or purchaser,

free from incumbrances against heirs, &c.

Lien of recognisances under this act.

Every recognizance entered into pursuant to this act, shall be a lien upon all the lands, tenements and hereditaments of the recognizors, respectively, within the the county wherein the said recognizance is taken, which they shall have at the time of said recognizance, or at any time after while it remains in force: and if such recognizance shall, by order of the court in which it is taken, be recorded in the orphans' court of another county pursuant to this act, it shall be a lien upon all the lands, tenements and hereditaments of the recognizors respectively, within such other county, which they shall have at the time of the recording of said recognizance, or at any time after, while it shall remain in force; and the lien of said recognizance upon the lands, tenements, or hereditaments assigned, (shares of the value or proceeds of sale whereof are secured by said recognizance,) shall have preference to any judgment entered or recovered against the person or persons to whom said lands, tenements or hereditaments are assigned, or any lien created or suffered by the said person or persons or any of them, although such judgment shall have been entered or recovered, or such lien shall have been created or suffered before said recognizance was entered into: and the sums due by said recognizance shall be paid before any such judgment or lien out of the proceeds of any sale of the said lands, tenements or hereditaments.

Recognizances recorded in another county to be liens where recorded.

Recognizances preferred to judgments.

The jurisdiction of the orphans' court to extend to all the lands of an intestate, although in different counties.

The jurisdiction of the orphans' court to which any petition shall be preferred as herein before prescribed, and the authority of the freeholders appointed on such petition, shall extend to all the lands, tenements and hereditaments, which the intestate shall have left to descend

and pass according to this act, although situate in several counties: but the said court, upon the application of the parties, or any of them, may specially restrict the authority of the freeholders to lands, tenements or hereditaments situate in the county wherein such petition shall be preferred, if this shall be adjudged to be for the benefit of the parties. The authority of the freeholders appointed to make partition of premises appraised which none of the parties shall accept or choose, shall extend to all the premises within the scope of the order, although situate in several counties. If all the lands, tenements or hereditaments be situate in, or if the authority of the freeholders is restricted to one county, the court shall appoint freeholders residing in such county; in any other case the court may select freeholders from one county, or from different counties, according to its discretion. The said orphans' court shall order such part of its proceedings as shall concern lands, tenements, or hereditaments in another county than that wherein the petition is preferred, to be certified to, and recorded in, the orphans' court of such other county; and such record shall receive credit and have force as an original record.

Acts of a majority of freeholders to be valid.

The acts of a majority of the freeholders appointed pursuant to any provision of this act, shall be as valid as if concurred in, and done by, all of them; and the proceedings of said freeholders, or of a majority of them, being approved by the court, shall remain firm and stable.

Freeholders and surveyor how sworn.

The freeholders appointed pursuant to any provision of this act, and the surveyor nominated by them shall, before entering upon the lands, tenements, or hereditaments, for the purpose of executing the order, be sworn, or affirmed,—that is to say, the freeholders to perform the duties incumbent upon them according to such order, and the surveyor to perform the service to which he is called —faithfully, and impartially, according to the best of their skill and judgment respectively; which oath or affirmation may be taken before the chancellor or any judge of this State, or any justice of the peace for either county of this State, or a burgess of the borough of Wilmington: and either of the freeholders named in an order shall have authority to administer said oath or affirmation to any other of said freeholders, or to the surveyor by them nominated.

How minors shall apply for partition, &c.

A minor may, by his or her guardian, prefer a petition for partition, or for the assignment of the widow's part; also a minor by his or her guardian may make application for the sale or for the partition of appraised premises which none of the parties will accept. But in no case shall partition, assignment, or sale be made by virtue of

What possession necessary to

to obtain partition, assignment, or sale.

this act except of such lands, tenements or hereditaments as were in the actual possession of the intestate at the time of his or her death, or shall have come to the possession of those claiming under him or her, at the time said partition is prayed.

Costs.

The costs of any proceedings pursuant to the foregoing provisions of this act shall be contributed by the parties according to their respective proportions of the estate which is the subject of the proceedings; except that the orphan's court may direct that the widow or person entitled to her part shall contribute a greater or less proportion of such costs, if this shall be deemed just and equitable. The orphans' court may make an order for the payment of the costs; and if the estate be appraised, and the same or any part thereof accepted, or sold, the said court may order all the costs which the parties entitled to the value or proceeds of the estate or part so accepted or sold are liable to contribute, to be paid out of such value or proceeds; and in that case, the balance of the said value or proceeds, after deducting such costs, shall be the value or proceeds to be paid or secured to the parties as herein before prescribed. The said court shall have power to compel obedience to any order for the payment of costs by attachment for contempt, and imprisonment.

Widow's part may be alone assigned.

Upon the petition of the widow, or any person entitled to her part, an order may be made merely for assigning part, without extending to the residue; but in that case all the costs shall be paid by the petitioner.

Provisions of the second section extended to cases of intestacy before this act, &c.

Sec. 3. *And be it further enacted*, That all the provisions of the second section of this act, and the powers thereby granted, shall extend, and hereby are extended, to all lands, tenements and hereditaments, as to which the owner thereof has died intestate before the passing of this act, if partition of the said lands, tenements or hereditaments have not been made and confirmed, or if the same lands, tenements or hereditaments have not been appraised and accepted; but no proceeding which has been had, or which shall be had, according to law, touching such lands, tenements or hereditaments, shall be hereby annulled or superseded: but such proceeding shall remain valid, and also such proceedings shall be of the same force and effect, as if had under the said second section of this act, so as to be the foundation of any further proceeding authorised by said section.

Proceedings under this act, not to affect any liability of an in-

Sec. 4. *Provided*, That nothing in this act, and no proceeding under it, shall affect, in any manner, any lien or incumbrance existing at the time of the intestate's death,

upon any lands, tenements or hereditaments, which shall descend and pass according to this act, or any liability according to law of said lands, tenements, or hereditaments, to the payment of debts or demands outstanding against the intestate. testate's lands for debt, &c.

SEC. 5. *And be it further enacted*, That any person aggrieved by any order or decree of the orphans' court touching any the premises may appeal therefrom to the supreme court, and any such order or decree shall not be drawn in question except upon appeal. Appeal.

SEC. 6. *And be it further enacted*, That the fifth, sixth, seventh, eighth, ninth and twelfth sections of the "Act for the better settling intestates' estates," and the second and third sections of the "Act for the amending the laws relating to testamentary affairs and for the better settling intestates' estates," and the first, second, third, fourth and fifth sections of the "Act for making perpetual a former act entitled "An act for the amending the laws relating to testamentary affairs, and for the better settling intestate's estates," except such parts thereof as are hereby altered and amended, and the supplementary act to an act entitiled "An act for the better settling intestates' estates," and the fourth and fifth sections of the "Supplement to an act entitled an act concerning written and nuncupative wills," passed at Dover, January 30, 1809, and the "Act to amend the intestate laws of this State," and the first section of the supplement to the said act, passed at Dover, 6 February, 1818, and the first and second sections of the "Act for the better regulation of the division of intestate's lands into portions or allotments; for their final division in cases of non-acceptance, and to amend the act entitled "An act for the partition of lands and tenements among joint tenants and tenants in common," shall be, and hereby are repealed from and after the first day of May next; except so far as shall concern any lands, tenements or hereditaments, as to which the owner thereof has died intestate before the passing of this act, the title to or estate in which said lands, tenements, or hereditaments, shall not be in any manner affected by this repeal; and also, except so far as shall concern any proceedings or matters which have been, or before the said first day of May next, shall be had, done or transacted: which proceedings, acts and matters shall not be affected by this repeal, but shall remain valid and be of the same force and effect as if this act had not been passed: and any proceedings which on the said first day of May next shall have been commenced under the aforesaid acts

Repeal.
1 vol. 284.
1 vol. 417.
1 vol. 537.
2 vol. 1172.
4 vol. 270.
5 vol. 146.
5 vol. 363.
6 vol. 91.
Saving.

now in force, or any of them, may be carried on and completed according to the said acts now in force, in the same manner as if said acts were not hereby repealed:—*And provided*, that no act or section repealed by the aforesaid acts, or any of them, shall by this repeal be revived.

Proviso.

PASSED AT DOVER, *February* 5, 1827.

CHAPTER XXXIX.

AN ACT *concerning gaols and the treatment of persons under arrests.*

Sheriff shall have charge of the gaol.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That the sheriff of each county in this State shall have charge and custody of the gaol in his county, and shall safely and securely keep the same either personally, or by a keeper whom he shall appoint, and for whose behaviour he shall be responsible; but the sheriff shall not directly nor indirectly demand nor receive rent for the occupation of the gaol or any appurtenances thereto, nor any compensation, gift or reward for appointing a person to be keeper of the gaol, nor any portion of the emoluments accruing to the keeper by him appointed.

He shall receive no reward for appointing a keeper.

Work house.

1 vol. 135, 346. 4 vol. 78.

SEC. 2. *And be it further enacted*, That the gaol in each county may be used as a work-house, and the keeper of the gaol shall be overseer of the work-house, except that in Newcastle county the overseer shall be appointed as prescribed by law.

Fuel and bedding for prisoners.

SEC. 3. *And be it further enacted*, That fuel and bedding, for the accommodation of persons confined in gaol, shall be furnished at the expense of the county, and this expense shall be defrayed as other demands upon the county.

Board of prisoners.

SEC. 4. *And be it further enacted*, That the sheriff or keeper of the gaol supplying persons therein confined with board, shall have right to demand and receive for the board of each person so supplied, payment at a certain rate for every day's board; which rate shall be the same as is now customary or established for board in said gaol,

or such as shall be established by the levy-court and court of appeals in each county, which rate the said levy-court and court of appeals in each county shall have power to regulate and determine from time to time, as may be deemed proper. The amount so demandable for the board of any person shall be paid by such person, who may be detained in prison till the payment thereof, except persons whom the court shall order to be discharged without the qualification upon payment of costs, or the law requires to be discharged without directing the costs to be first paid, and also except every person who shall be committed as a witness for want of security to appear and give evidence, and every person committed upon charge of a crime or misdemeanour as to whom a bill shall be returned "ignoramus" or not true, or who shall be acquitted upon trial; and the amount so demandable as aforesaid for the board of all such excepted persons, and of every other person, who shall not be able to pay the same, shall be a demand upon the county wherein the gaol in which the board is supplied is situate, and shall be defrayed as other demands upon said county. In every case, in which a court shall order a person to be discharged upon payment of costs, and in every case of the conviction of a person of a crime or misdemeanour, the sum demandable as aforesaid for the board of such person, shall be added to and be a part of the costs of the case. But all persons confined in any gaol, except convicts, shall be permitted without restraint or difficulty to procure their food, at their own cost, whence they please, and to send for the same, and to have and use any clothes, bedding, or necessaries belonging to them free of all charge and without the same being purloined or detained. A sheriff or other person having the care or keeping of a gaol shall not keep a tavern, ale-house, or public house of entertainment, and shall not directly or indirectly sell or dispose of to any person or persons under arrest, or confined in gaol, any beer, ale, porter, cider, wine, whiskey, rum, brandy, or other fermented, expressed or spiritous liquor.

1 vol. 204

1 vol. 205. §14.

Spirituous liquors not to be disposed of in gaols &c.
1 vol. 206. §18.

SEC. 5. *And be it further enacted*, That a prson arrested by virtue of any process whatever, shall not without his or her free and declared consent be carried to any tavern, ale-house, or other public victualling or drinking house: and that a sheriff, under sheriff, coroner, constable, keeper of a gaol, or other officer shall not directly nor indirectly demand or receive from any person arrested or in custody any reward or gratuity for ease or favour, nor any fee or charge not allowed by law.

No person arrested shall be carried to public house, &c. without his consent.
1 vol. 204. §13.

Ease or favour.

Commissioners of gaols; 3 vol. 393.

SEC. 6. *And be it further enacted,* That the levy-court and court of appeal in each county, at their meeting in March every year, shall appoint three substantial and judicious persons of their county to be commissioners of the gaol of said county, to serve for one year, to commence on the second Tuesday in April next ensuing their appointments; and if the place of any commissioner become vacant by death, resignation, removal, refusal, or otherwise, the said courts shall supply the vacancy. Every commissioner, before acting, shall take an oath or affirmation to perform the duties of his office with fidelity; which oath or affirmation either commissioner shall have authority to administer to another, and it may be administered by a judge or justice of the peace. The said commissioners shall meet at the gaol on the first Tuesday of April, July, October and January, and at other times, if occasion require, and every two of them shall constitute a board. The said board shall inquire into the state and condition of the gaol and work-house: they may direct clothing or bedding to be furnished for any person therein confined, if they shall deem the same necessary for his or her health, and that the same ought to be furnished at public expense; and for defraying the cost thereof they may draw orders upon the county treasurer, who shall pay the same out of any money in his hands not appropriated to other purposes, and the levy-courts and courts of appeal shall make provision for such orders: each order shall specify the articles furnished and the cost of each item: also, the said board may make ordinances and regulations, and give directions for the governing and well ordering of the said gaol and work-house, and for the cleanliness of all persons confined therein, and for the employment of the convicts; and these ordinances, regulations and directions, if not repugnant to the constitution or laws of the United States, or of this State, shall be obeyed; and the said board may, for reasonable cause by them to be specified, direct the sheriff to remove any keeper of the gaol, and the sheriff shall observe such direction. Each commissioner shall be allowed two dollars for every day's attendance; but the entire allowance to any commissioner in one year shall not exceed ten dollars. This section shall not be in operation in New-Castle county, while the act "for the better regulation of the gaol and work-house in the county of New-Castle, and for other purposes," shall remain in force.

Their oath, &c.

Time of meetings, quorum, powers and duties.

3 vol. 394. sec. 4.

5 vol. 349.

Compensation of commissioners.

Restriction. 4 vol. 77.

Penalty.

SEC. 7. *And be it further enacted,* That if any sheriff, under sheriff, keeper of a gaol, coroner, constable, or other officer, shall offend against this act, in any particu-

lar, every such offender shall be deemed guilty of a misdemeanour, and upon conviction thereof shall forfeit and pay to the State a fine not less than twenty dollars nor exceeding two hundred dollars.

Receipts to be given for money paid by or for prisoners, &c.

SEC. 8. *And be it further enacted*, That any sheriff or keeper of a gaol receiving money from any person during his or her confinement, or at the time of his or her discharge from prison, shall give to such person a receipt therefor, specifying the cause for which the payment is made, and if there be several items, each shall be distinctly mentioned in the receipt; and a like receipt shall be given to any person paying money on account of any charges or expenses accruing in a gaol, whether for board or otherwise: and if any sheriff or keeper of a gaol shall not observe and comply with the preceding clause, he shall be deemed guilty of a misdemeanour, and upon conviction thereof he shall forfeit and pay to the State a fine not less than ten dollars, nor exceeding fifty dollars.

Penalty.

Repeal:—
1 vol. 134, 5:
1 vol. 204.
1 vol. 196:
1 vol. 345:
3 vol. 392:
5 vol. 349:

SEC. 9. *And be it further enacted*, That "the act for bailing prisoners and about imprisonments," and the thirteenth, fourteenth, fifteenth, sixteenth, seventeenth and eighteenth sections of the act "for the relief of insolvent debtors within this government," and the act "for empowering the justices of the peace within the respective counties of this government to appoint proper officers for the regulating and governing such work-houses and houses of correction as shall hereafter be built within the same; and for the regulating and governing of the gaols of the said respective counties until such work-houses and houses of correction are built," and the act "for the better regulation of the gaols within this State and for other purposes," and the supplement to the said act, be and are hereby repealed, except so far as shall concern any offences heretofore committed against the said acts or sections, or any matters or things heretofore omitted or done in contravention of, or pursuant to, the said acts or sections or any of them; in respect to all which offences, matters and things this repeal shall have no effect.

PASSED AT DOVER, *February* 5, 1827.

CHAPTER XL.

1827.

CHAPTER XL.

AN ACT *to authorize and empower Levi Cathel, of Worcester county, in the State of Maryland, to remove from this State to the State of Maryland certain negro slaves therein named.*

PASSED AT DOVER, *February 5*, 1827. } PRIVATE ACT.

CHAPTER XLI.

AN ACT *concerning apprentices and servants.*

Minors may be bound apprentices, or servants &c. 1 vol. 210. 2 vol. 955. S. 18. 4 vol. 468. S. 4. 6 vol. 318. 321. sec. 4, and 8.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That minors may be bound apprentices to trades or otherwise, or servants, males till the age of twenty-one years, females till the age of eighteen years; but no white person shall be bound as a servant.

Who may bind minors as apprentices, &c. 1 vol. 211. sec. 3

SEC. 2. *And be it further enacted*, That the father, or if the father do not reside in this State, or if there be no father, the guardian, or if there also be no guardian, the mother, of a minor shall have power to bind such minor an apprentice or servant as aforesaid in the presence and with the approbation of a justice of the peace for the county wherein the person or persons to whom such minor is bound, reside; and any minor of the age of fourteen years or upwards, having no father or guardian within this State, may bind him or herself an apprentice or servant as aforesaid in the presence and with the approbation of any two justices of the peace of the county wherein the person or persons to whom such minor binds him or herself reside.

2 vol. 995. sec. 18. 4 vol. 468. sec. 4. 6 vol. 318. sec. 4.

And any two justices of the peace, or any two trustees of the poor, in and for either of the counties of this State, shall have power to bind any minor who has no parent residing in this State, and who has not property sufficient for his or her maintenance, and any minor who has not parents able to maintain him or her, and bring him or her up to industry and suitable employment, an apprentice or servant as aforesaid.

Illegitimate children.

No man shall be deemed to be the father or parent of an illegitimate child in the construction of any of the preceding provisions; but in the application or administer-

ing of said provisions, an illegitimate child shall be regarded as having no father; the mother of an illegitimate child shall have the same power and privilege in respect to such child, as if the said child were legitimate. Any two justices of the peace, or two trustees of the poor of either county of this State, upon the application of the putative father of a bastard child, may in their discretion issue process directed to any constable of their county, commanding him to bring before them at a time and place therein appointed such child, and the mother or persons having charge thereof, and they shall have power to bind such child an apprentice or servant as aforesaid, if they shall deem it expedient.

Binding a bastard, not to affect the security to indemnify the county.

The binding of a bastard child an apprentice or servant shall not in any manner affect the security given by the putative father or the mother to indemnify the county.

Negro or mulatto children having no parents able to maintain them, how bound, &c.

SEC. 3. *And be it further enacted*, That any two justices of the peace, or any two trustees of the poor in and for either of the counties of this State, upon receiving information of any negro or mulatto child or children within their county having no parents in this State, or who have not parents able to maintain them and bring them up to industry and in suitable employment, shall issue process under their hands and seals, directed to any constable of their county, commanding him to bring before them at a time and place therein appointed said child or children, and also the parent or parents, if there be such; and the said justices or the said trustees, upon the parties or such of them as can be found being brought pursuant to said process, shall enquire into their condition and circumstances; and if it shall appear to be a proper case for binding such child or children according to the preceding section, the said justices or trustees shall exercise the power vested in them by said section, unless they shall deem such exercise under the circumstances inexpedient; but the determination of any two justices or trustees not to exercise said power in any case shall not preclude other justices or trustees from taking cognizance of the same case.

Duty of constables.

It shall be the duty of every constable knowing of any such child or children, to give information of the same to two justices of the peace, or two trustees of the poor of the county wherein such child or children are; and for such information concerning each child that shall be bound in consequence thereof, the constable shall be entitled to receive from the master or mistress one dollar.

Duty of trustees of the poor.

It shall also be the duty of every trustee of the poor knowing of any such child or children, to give informa-

Process need not be issued, if the minor appear without it.

tion of the same to some other trustee of the poor or to a justice of the peace: the preceding provision shall not be so construed as that process, as aforesaid, must be issued before the power or authority of binding herein before given to two justices of the peace, or to two trustees of the poor, can be exercised, but such power or authority may be exercised in every case proper for the exercise thereof, if the minor appears, or is peaceably brought before such justices or trustees without any process.

Negro or mulatto children above ten years, not to be bound if their parents give security to indemnify the county.

If the parent or parents of any negro or mulatto child or children above the age of ten years who shall be brought before two justices of the peace or two trustees of the poor to be bound apprentices or servants by virtue of this act shall offer sufficient security, to be approved by the said justices or trustees for indemnifying the county against the maintenance of such child or children, and shall pay to the constable and justices (or trustees) the same fees as are allowed to him and them for binding, then the said justices or trustees shall not bind such child or children, but shall take a bond from such parent or parents with one or more sufficient surety or sureties, in the name of the trustees of the poor of the county wherein the proceedings are had, in a penal sum equal to two hundred dollars for each child named therein, conditioned for indemnifying the county against the maintenance of such child or children, which bond shall be for the use of the poor of said county and deposited with the trustees of said poor: and upon the application of such parent or parents the said binding shall be postponed for five days, at the expiration of which time if security be not given as aforesaid the said justices or trustees shall proceed to bind such child or children according to the preceding provisions of this act.

Manner and form of binding, and what shall be set forth in the indenture or deed.

SEC. 4. *And be it further enacted*, That such binding as aforesaid shall be by indenture or deed poll.

The age of the minor shall be ascertained, as nearly as practicable, and inserted in the indenture or deed; but such insertion shall not be conclusive, and the true age may be enquired of and determined. An indenture or deed shall not be void in consequence of a mistake concerning the age of the minor (except as to any excess of the term of apprenticeship or servitude over the age of twenty-one years of a male, or eighteen years of a female) unless the minor shall have bound him or herself, when under the age of fourteen years.

Such indenture or deed shall be executed, in the case of a binding by two justices of the peace, or two trustees of the poor, under the hand and seal of each justice, or of

each trustee; or in case of a binding by the father, guardian, mother or minor, under his or her hand and seal, and in every case, under the hand and seal of the person or persons, respectively, to whom the minor is bound. The minor bound need not be a party to the indenture or deed, except in the case of a minor binding him or herself.

Every such indenture or deed shall, among such other terms as may be deemed proper in the case, contain stipulations on the part of the master or mistress, in case of a white child, to give to the minor reasonable education in reading and writing, to well support and clothe him or her, and at the regular expiration of his or her apprenticeship or servitude, to furnish him or her with two suits of clothes suitable to his or her condition, or in case of a black child, besides the above stipulation for support and clothing, to pay such sum of money as may be deemed proper, if inexpedient to stipulate for education in reading and writing as aforesaid; and in the case of a white boy, there shall be added to the said stipulation respecting education the clause, "*and in arithmetic to the single rule of three inclusive, excluding vulgar and decimal fractions.*"

Any consideration advanced to the father or mother shall be truly set forth in the indenture or deed. The presence and approbation of a justice or of two justices of the peace, when required by law, must appear by some certificate or note under the hand of such justice or justices respectively upon the deed or indenture. Such certificate may be according to the following form, viz. ——— county, ss. This indenture (or deed) was executed in the presence and with the approbation of the subscriber (or subscribers) a justice (or two of the justices) of the peace, (or a justice of the peace and a trustee of the poor) for ——— county aforesaid, this ——— day of ———, 18——

——— ———

——— ———

Such indenture or deed executed by two justices of the peace, or trustees of the poor, need not express any proceedings before, or adjudication by, such justices or trustees, nor contain any averment of the circumstances or condition of the minor or his or her parents.

Deed or indenture of apprenticeship to be recorded.

The justice or justices of the peace or trustees of the poor approving or executing any indenture or deed of apprenticeship or servitude shall, within sixty days after the execution thereof, deliver or cause to be delivered such indenture or deed safely, to the recorder of deeds for the county wherein the same is executed. The said

CHAPTER XL.
18..

recorder shall immediately record the said indenture or deed with the note or certificate of approval or other endorsement in the "office for recording of deeds" in said county, in a book to be used for the purpose of recording such indentures and deeds and no other, and shall keep two indexes to said book, one of the names of the masters and mistresses, and the other of the names of the apprentices and servants, and shall immediately after recording an indenture or deed, enter said names in the indexes respectively. A blank shall be left after the record of each indenture or deed, for the purpose of recording assignments and other matters affecting the said indenture or deed and required by law to be recorded. Such record or a certified copy thereof shall be competent evidence for all purposes. The recorder shall preserve the original indenture or deed in a file in which all such indentures and deeds for the year shall be placed in alphabetical order, with a label of the year. If any justice of the peace, trustee of the poor, or recorder of deeds shall neglect or refuse to perform the duty above in this section enjoined upon him, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the State a fine not exceeding fifty dollars; and he shall also be answerable to every party injured by such neglect or refusal for all damages on occasion thereof, to be recovered, with costs of suit, in an action on the case.

Penalty.

Indentures &c. of apprenticeship, when and how assignable.

Sec. 5. *And be it further enacted*, That if by such indenture or deed as aforesaid, or by any indenture or deed executed pnrsuant to this act, a minor be bound an apprentice or servant to any person or persons, and his, her or their executors, administrators and assigns, such apprentice or servant may be assigned from person to person, by assignment executed in the presence and with the approbation of any judge either of the supreme court or of the court of common pleas, or any two justices of the peace, or two trustees of the poor for the county wherein the person or persons to whom the assignment is made reside: and the person or persons to whom such assignment is made, as well as the person or persons making it, shall set his, her or their respective hand and seal to the assignment. Such apprentice or servant shall also be transmissible to the executors and administrators of the original master or mistress, or of any assignee: which executors or administrators may retain or assign such apprentice or servant. But if the master, whether original or assignee, of a female apprence or servant bound as mentioned in this section, die leaving a widow, such apprentice or servant shall be transmitted to such widow

Apprentices and servants transmissible to executors and administrators.

Female servants &c. transmitted to the widow.

instead of the executors or administrators, and such widow shall have the said apprentice or servant during the residue of the term, if the said widow shall so long live, without being accountable to the estate of the husband; provided that the said widow shall be capable of fulfilling and shall fulfil the covenants and stipulations on the part of the original master or mistress, and provided that the husband shall not have directed a different disposal of such apprentice or servant.

Rights and liabilities of assignees &c. of apprentices and servants.

Assignees, executors and administrators, and widows, respectively, shall take and hold apprentices and servants assigned or transmitted as aforesaid, and shall be masters or mistresses of such apprentices or servants respectively upon the terms of the original binding, and shall be liable to all the covenants and stipulations contained in the indentures or deeds of apprenticeship or servitude on the part of the original masters or mistresses, and remaining to be performed; and no assignment shall be made except to a suitable person capable of fulfilling such terms, covenants, and stipulations on the part of the master or mistress, nor shall executors or administrators, if not thus suitable and capable, retain an apprentice or servant, but shall assign him or her, or release him or her from the indenture or deed of apprenticeship or servitude.

Certificate of approval requisite in case of assignment of an apprentice. See s. p. 4. 98.

The presence and approbation of the judge or justices or trustees, required by this section, must appear by some note or certificate under hand, in like manner as hereinbefore prescribed in relation to the execution of the indenture or deed.

Record of assignment and certificate of approval.

The assignment with the certificate or note of approval, must be recorded with the indenture or deed, and for that purpose the assignee shall deliver the same to the recorder within sixty days after the execution thereof, or the assignment shall be void.

In cases of binding, by or before two justices or trustees, or of their approval of a binding or assignment, they must act together.

SEC. 6. *And be it further enacted*, That whenever two justices of the peace, or two trustees of the poor, bind an apprentice or servant, or two justices of the peace approve a binding or an assignment, they must be together and execute the indenture or deed, or sign the note or certificate in the presence of each other.

Minor not to be bound or assigned to a non-resident, except &c.

SEC. 7. *And be it further enacted*, That a minor shall not be bound an apprentice or servant to any person not having at the time a known or settled residence in this State; and an apprentice or servant bound according to this act shall not be assigned to any person not having at the time a known and settled residence in this State, except the assignment be assented to by the father, or if there be no

CHAPTER XLI.

1827.

father, by the guardian, or if there be neither father nor guardian, by the apprentice or servant being above the age of fourteen years, and also advised and approved by one of the judges of the supreme court or court of common pleas, or two justices of the peace, or two trustees of the poor.

Rights and authority of the master.

SEC. 8. *And be it further enacted*, That the person or persons to whom an apprentice or servant shall be bound, assigned, or transmitted, shall have right to the faithful services of such apprentice or servant during the term of apprenticeship or servitude, or the residue thereof to come, after such assignment or transmission, and in pursuance of such right shall have the custody and keeping of such apprentice or servant, and authority to take and hold him or her, and to enforce his or her orderly and industrious behaviour and obedience to lawful commands by moderate correction, and by suitable and sufficient means.

Compensation of a master on re-taking a runaway servant or apprentice. 1 vol. 211, s. 5. 6 vol. 326, ch. 198.

SEC. 9. *And be it further enacted*, That if any apprentice or servant shall run away, or without leave absent him or herself from the service of his or her master or mistress, such master or mistress, upon recovering such apprentice or servant, may carry him or her before the supreme court or the court of common pleas, in the county wherein the said master or mistress resides, and the said court shall inquire into the circumstances of the case, and shall thereupon adjudge such apprentice or servant to serve his or her master or mistress after the expiration of the original term of apprenticeship or servitude, for such further time as the said court shall deem sufficient compensation to the said master or mistress under such circumstances.

Compensation of a master paying judgment and costs in case of conviction of his apprentice or servant.

Also, if upon a conviction of an apprentice or servant of any offence, judgment be given against him or her for any fine, or penalty, or costs, the court giving such judgment shall have power to adjudge the said apprentice or servant to serve his or her master or mistress, after the expiration of the original term of his or her apprenticeship or servitude, for such further time as the court shall deem sufficient to compensate such master or mistress for satisfying such judgment, upon condition the said master or mistress shall satisfy the same, which condition shall be annexed to said adjudication; and if the said master or mistress shall satisfy said judgment, entry to that effect shall be made upon the record, and the adjudication shall be absolute.

SEC. 10. *And be it further enacted*, That any person adjudged as aforesaid, shall be bound as effectually by the adjudication as by the indenture or deed of his or her apprenticeship or servitude, and the effect of such adjudication shall be to extend his or her said apprenticeship or servitude, with all the incidents thereto, to the end of the time prescribed by the adjudication, during which time the person so adjudged shall continue an apprentice or servant upon the terms of the original binding, and shall be assignable and transmissible (if such were the form of said binding) in the same manner and under the same restrictions and rules, as during the original term of apprenticeship or servitude, and shall in like manner as during said term, be liable to be adjudged to serve a further time in the cases set forth in the last preceding section, and shall accordingly be within the provisions of said section; and the indenture or deed of apprenticeship or servitude, and the adjudication, shall be construed together, and the construction thereof shall be the same, for all intents and purposes, as if the term of apprenticeship or servitude had been lawfully limited in the indenture or deed, to expire at the expiration of the time prescribed by the adjudication. A duly certified copy of every adjudication shall be recorded with the indenture or deed to which it has relation.

Effect and operation of an adjudication to serve beyond the term of the original binding.

Record of adjudication.

The provisions of this section shall extend to every adjudication, whether made during the original term of apprenticeship or servitude, or the time prescribed by the adjudication.

SEC. 11. *And be it further enacted*, That if any master or mistress shall assign any such apprentice or servant as aforesaid, to any person not residing in this State, except as herein before prescribed for that purpose, or shall remove or attempt to remove any such apprentice or servant from this State, except in pursuance of an assignment authorised by this act, every such master or mistress shall thereupon forfeit, and be divested of, all right and authority to or over the said apprentice or servant, and shall be answerable to the said apprentice or servant in an action on the case for all damages on occasion of such removal or attempt at removal; except that a mariner or a waterman being master of an apprentice or servant, bound or assigned to him as a mariner or waterman, may lawfully employ such apprentice or servant in passing or sailing from one place, state or country to another, according to the nature of his calling; and that a person occupying lands through which the line of this State runs, may lawfully employ his or her apprentice or

Liability for assigning apprentices, &c. to non-residents, or removing them from the State &c.
1 vol. 383.

Exceptions.

CHAPTER XLI.
1827.

servant upon every part of said lands as may be convenient; and that a master or mistress may lawfully send his or her apprentice or servant to an adjoining State upon an errand, to return directly; and that a master or mistress going to another State upon a visit, or for a temporary purpose, may take his or her apprentice or servant for his or her attendance; such apprentice or servant being duly brought back to this State; but such visit or purpose shall not come within this exception, if it occasion an absence of more than ninety days, unless a judge of the supreme court or of the court of common pleas, or two justices of the peace, or two trustees of the poor shall have approved the taking of the apprentice or servant on the occasion of said visit or purpose; nor shall this exception avail in any case, unless it shall appear that the employing, sending, carrying or taking the apprentice or servant was in good faith.

Apprentices or servants, within the provisions of chap. 362, vol. 6, p. 708.

6 vol. 715.

SEC. 12. *And be it further enacted*, That any negro or mulatto being an apprentice or servant according to this act, shall be deemed to be a free negro or mulatto within all the provisions of the "act providing for the punishment of certain crimes and misdemeanours," and especially the provision of the said act against kidnapping; and if the master or mistress of any negro or mulatto, being an apprentice or servant according to this act, shall sell, dispose of, or deliver such negro or mulatto apprentice or servant, with intent that said negro or mulatto apprentice or servant shall be carried, sent, or removed from this State and reduced to slavery; or if the master or mistress of any such negro or mulatto apprentice or servant, shall fraudulently send, carry, decoy or remove such negro or mulatto apprentice or servant from this State into any other State or country, with intent that the said negro or mulatto apprentice or slave shall be sold or disposed of as a slave, or reduced to slavery, every such master or mistress so offending, and his or her counsellors and abettors, shall be deemed guilty of felony, and upon conviction thereof shall incur and suffer all the pains and penalties to which a person convicted of kidnapping and carrying away a free negro or free mulatto from this State into any other State or country is, according to the said act before in this section mentioned, (in case of the first offence,) liable.

Apprehension and commitment of runaway apprentices or servants.

SEC. 13. *And be it further enacted*, That any person, being an apprentice or servant according to this act, who shall run away from his or her master or mistress, may be secured in any gaol in this State, and it shall be the duty

of a justice of the peace, upon proper application supported by oath or affirmation, to issue a warrant for the apprehension or commitment of such run away apprentice or servant. If the master or mistress of any apprentice or servant so committed, shall not pay the legal charges and take such apprentice or servant within twenty days from the day of commitment, exclusive, such apprentice or servant shall, at the expiration of said term, be discharged from prison. But it shall be the duty of the sheriff, immediately upon such commitment, to give notice thereof by letter sent to the master or mistress, if known, by mail, or other safe conveyance, or by advertisements in the newspapers printed in this State, if the master or mistress be unknown.

Duty of justice.

Duty of sheriff.

Relief how obtained on complaint of an apprentice or servant, against his master.
1 vol. 313.
3 vol. 263.

SEC. 14. *And be it further enacted*, That if any person, being an apprentice or servant according to this act, or being held as an apprentice or servant by virtue or colour of any indenture or deed of apprenticeship or servitude, shall have cause of complaint against his or her master or mistress, for cruelty, ill-usage, treatment not conformable to the terms of the binding, breach of contract, the invalidity of the binding or of an assignment, or other sufficient matter, such person may prefer a petition to the supreme court or the court of common pleas, or any judge of either of the said courts, or the chancellor, in the county wherein the master or mistress resides; but if the master or mistress do not reside in this State, then in any county, setting forth such cause of complaint and praying relief; and the court to which, or the chancellor or judge to whom, such petition shall be preferred, shall thereupon issue a summons directed to the sheriff or any constable of the county, for summoning the master or mistress to appear at a certain time and place in said summons mentioned, to answer such complaint; and the said court, chancellor or judge, shall have power to discharge the petitioner from his or her apprenticeship or servitude, or to order the master or mistress to assign the petitioner to some other master or mistress, if the apprentice or servant be assignable, and also to order the master or mistress complained against to pay the costs, and to compel obedience to any such order as aforesaid, by attachment and imprisonment. And the said court, chancellor or judge may annex to and make a part of any order or decree in the premises, any terms which shall be deemed just or equitable: or the said court, chancellor or judge may give directions concerning the treatment of the petitioner. And if the said court, chancellor or judge shall be of opinion that for the invalidity

CHAPTER XLI. 1827.

of an indenture or deed of apprenticeship or servitude, or of an assignment thereof, or for other cause, a petitioner ought to be discharged, but that he or she ought, nevertheless, to be bound as an apprentice or servant, in such case the said court, chancellor or judge shall have power, after pronouncing such discharge, to proceed and bind the said petitioner an apprentice or servant, by indenture or deed executed, *in case the binding be by the court*, under the seal of the court and hand of the clerk, or *in case the binding be by the chancellor or a judge*, under his hand and seal, and in each case under the hand and seal of the master or mistress, to whom the said court, chancellor or judge shall so bind the petitioner; to which binding and indenture or deed, the first, fourth and fifth sections of this act, and all other the provisions of this act shall extend and apply.

If an apprentice or servant be incapable of service, the indenture &c. may be annulled.

If an apprentice or servant shall, through sickness or otherwise, be incapable of the service or occupation to which he or she is bound, the supreme court, or the court of common pleas, or the chancellor in the court of chancery, shall have jurisdiction of the subject, and may, upon a sufficient case appearing, annul the indenture or deed of apprenticeship or servitude.

Record of discharge, or annulment of indenture.

A certified copy of every discharge of an apprentice or servant, and of every annulment of an indenture or deed of apprenticeship, shall be recorded with the indenture or deed to which it has relation.

Binding apprentices &c. or assigning them not conformably to this act after the first June next, to be void.

SEC. 15. *And be it further enacted*, That any binding of a minor as an apprentice or servant, and any assignment of a person being, according to this act, an apprentice or servant, made or executed after the first day of June, in the year of our Lord one thousand eight hundred and twenty-seven, and not authorized by, and conformable to, this act, shall be void.

Penalty for employing, dealing with or harbouring the apprentice of another, or for promoting the running away of an apprentice, or for concealing or assisting a runaway apprentice, &c.

SEC. 16. *And be it further enacted*, That if any person or persons shall, knowingly, employ or deal with any apprentice or servant, without the consent of his or her master or mistress, or shall without such consent, knowingly harbour an apprentice or servant, except in distress of weather or on some extraordinary occasion, or shall promote or facilitate the running away of any apprentice or servant, from the service of his or her master or mistress, or shall conceal a runaway apprentice or servant, or assist a runaway apprentice or servant to elude his or her master or mistress, or shall in any manner wittingly encourage or countenance any apprentice or servant to disobey the lawful orders or neglect the lawful

business of his or her master or mistress, every such person shall forfeit and pay to such master or mistress, a sum not exceeding fifty dollars, to be recovered with costs of suit before any justice of the peace for either of the counties of this State; and the proceeding shall be according to the "Act providing for the recovery of small debts;" all the provisions of which are hereby extended to this cause of action; and such person shall be further answerable to the master or mistress injured by such misconduct, for all damages on occasion of such injury, to be recovered with costs of suit, in an action on the case.

Form of proceeding.

SEC. 17. *And be it further enacted*, That if the terms of the binding of a minor, as an apprentice or servant, shall not extend to the executors, administrators and assigns, of the master or mistress, such apprentice or servant shall not be assignable or transmissible; and upon the decease of the master or mistress, the apprenticeship or servitude shall expire. But in case of a binding to several, if one or more of the persons to whom the binding shall be made, die, leaving any one or more of such persons surviving, the apprentice or servant shall be subject to the right of survivorship, and pass to the survivors or survivor.

When an apprentice or servant shall not be assignable or transmissible.

Apprentices and servants subject to right of survivership.

SEC. 18. *And be it further enacted*, That the term "servant," as used in this act, shall be construed to signify a person being a servant by means of a binding or adjudication pursuant to this act, and shall not comprehend any person being a servant according to the effect or operation of any other law of this State; except that a minor who has been, or before the first day of June next, shall be, by a lawful and valid binding, although not under this act, bound as a servant, shall be deemed a servant within the provisions of this act.

The term "servant" how construed.

SEC. 19. *And be it further enacted*, That one trustee of the poor and one justice of the peace acting together, shall have the same power and authority to bind apprentices and servants, as by this act are given to two justices of the peace, or two trustees of the poor, and such binding shall be within the provisions of this act.

Binding may be by one justice of the peace and one trustee of the poor.

SEC. 20. *And be it further enacted*, That the act entitled "An act for the better regulation of servants and slaves within this government," and the supplementary act to the said act, and the fifth and sixth sections of the further supplement to the said act, passed October, 1760, and the eighteenth section of the act entitled, "An act for the

Repeal.
1 vol. 210.
1 vol. 313.
1 vol. 388.

2 vol. 995. 3 vol. 263. 4 vol. 468. 6 vol. 318, 321. 6 vol. 326.

better relief of the poor," passed January 29, 1791, and the additional supplement to the said act, passed at Dover, Jnnuary 18, 1803, and the fourth section of the "Act enjoining certain duties on justices of the peace, trustees of the poor, and constables;" and the fourth and eighth sections of the further supplement to the act "for the better relief of the poor," passed at Dover, February 6, 1823, and the "Act concerning apprentices," be and are hereby repealed, from and after the first day of June next; except so far as shall concern any indenture, deed or act which has been, or before the first day of June next, shall be, done or executed for binding any apprentice or servant; which indenture, deed, or act, shall not be affected by this repeal, but shall remain as valid and effectual as if the said acts and sections above in this section mentioned had not been repealed: and the validity, force, or effect of any judgment, act, matter or thing rendered, done or transacted pursuant to said acts or sections, shall not be impaired or affected by this repeal: and that the said acts and sections now in force shall continue in force for the recovery of all penalties and forfeitures heretofore incurred by force of, and for the punishment of all crimes and offences heretofore committed against, the said acts and sections, or either of them; and no act or section repealed by either of the said acts or sections hereby repealed, shall by this repeal be revived.

Exception.

PASSED AT DOVER, *February* 5, 1827.

CHAPTER XLII.

A FURTHER SUPPLEMENT *to an act entitled "An act to enable the owners and possessors of the several tracts of meadow, marsh and cripple on Augustine creek and Silver-Run, in Newcastle county, to make and keep the banks, dams and sluices in repair, and to raise a fund to defray the yearly expenses accruing thereon."*

Preamble.

WHEREAS, an act has been formerly passed, authorizing the owners of marsh, meadow and cripple on both sides of the St. Augustine creek, in St. George's hundred, Newcastle county, Delaware, to stop, embank and drain the same and for other purposes relating thereto, and which experience has proved to be inadequate to the

purposes of keeping up and repairing the banks, dams, sluices and water courses, and defraying the expenses thereof:

Commissioners appointed; their duties and powers.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That William Kennedy, Samuel Carpenter, John M. Woods, John Higgins and John Sutton be and are hereby appointed commissioners of the St. Augustine marsh company, whose duty it shall be when called upon by the managers of the said company for the time being, after being sworn or affirmed, faithfully and impartially to execute the duties hereinafter required of them, and they shall, if to them it be deemed necessary, and to the interest of the said company, enter upon the marsh, meadow and cripple within the enclosure of the present bank, and take with them a skilful surveyor, who shall also be sworn or affirmed, and who shall ascertain the quantity of marsh, meadow and cripple of each and every owner, and make a true plot of the same, under the direction of the said commissioners, or a majority of them; and it shall also be the duty of the said commissioners, after a plot has been made by the surveyor, to proceed to assess and rate the value of each and every owner's part or parcel of marsh, meadow or cripple, agreeably to quantity, quality, situation, &c.; and when the aforesaid rate or assessment is made out by the commissioners, they shall return the same, with the plot aforesaid, to the recorder's office for the county of Newcastle, Delaware, and have the same recorded there: it shall also be the duty of the said commissioners, at the request of one or more of the owners of the said marsh, meadow or cripple, (on a day by them to be appointed within one month after such request, or notice shall be given to the other owners or possessors by the person or persons making such request, by advertisements affixed at three public places in said hundred,) for them, or a majority of them, to enter upon and lay out, if to them it be judged necessary, any canals or water-courses for draining the aforesaid marsh, meadow or cripple on the St. Augustine creek, and also vacate any such canals or water courses as they may deem prejudicial to the interests of said company.

Compensation of commissioners.

SEC. 2. *And be it enacted*, That the said commissioners shall be allowed the sum of one dollar each for every day they attend on the service of the company, to be paid out of the common stock or fund, (together with the costs and expenses of procuring this act,) by the treasurer, to such owner or owners as shall advance the same.

Meeting of marsh owners, their elections of managers, treasurer, &c.

SEC. 3. *And be it enacted*, That all and every of the owners or possessors of the said tract of meadow, marsh or cripple, on both sides the St. Augustine creek, for the time being, or at any time or times hereafter, or so many of them as shall think proper, may meet and assemble yearly after the publication of this act, on the second Tuesday in March, at the house of Adam Diehl, junior, in St. George's hundred, or such other convenient place as shall hereafter be appointed by the managers, and then and there, by a majortty of votes, choose, by ballot, three suitable persons, owners or possessors, to be managers, and one proper person, who shall also be an owner, to be treasurer, for the year next ensuing: provided that each owner or possessor paying tax shall be allowed one vote; each owner or possessor whose customary tax, when laid agreeably to the rate of assessment, shall amount to twenty dollars, shall be entitled to two votes, and so on, one extra vote for every ten dollars tax, until it shall arrive to fifty dollars; and after it amounts to fifty dollars one other vote for every twenty dollars; which privilege, if objected to by the parties present, shall be ascertained by referring to the treasurer's book, or to a receipt for the last tax paid; and if, through neglect, refusal or inability, any of the owners or possessors shall omit paying their proportion of the taxes, for more than one year after the same shall have been due, the said delinquents shall be debarred the privilege of voting in the affairs of this company, until the same shall be paid: and the said owners or possessors shall proceed, in the same manner, to elect a proper person or persons to fill the vacancy of any of the commissioners that may occur by death, removal from the State, resignation or otherwise: said commissioners are to be neither owners or possessors of the marsh, meadow or cripple aforesaid, and the managers hereafter chosen shall give ten days' notice of the place of meeting.

Voting.

Vacancy among commissioners how supplied.

Penalty on manager refusing to act:

SEC. 4. *And be it enacted*, That if any of the said owners elected managers aforesaid, shall, on due notice given him or them in writing, of his or their respective election, refuse, or shall afterwards neglect, to do the duty required of him or them by this act, he or they so refusing or neglecting, shall severally forfeit and pay to the treasurer for the time being the sum of twelve dollars, to be added to the common stock,—unless such person shall have served three years next before the election,—to be recovered in the manner herein after directed for the recovery of moneys payable to the treasurer; and the other managers shall proceed in their duty without him so refusing or neglecting, or if he or they think proper,

and the rest may act without him or choose another.

may choose another of the owners or possessors to supply the place of such manager so refusing or neglecting as aforesaid, until the next ensuing election: and if any person hereafter elected treasurer shall refuse or neglect to take upon himself the duties, or to give the securities, required, or shall afterwards misbehave himself, or be rendered incapable of fulfilling the duties of said office, in either of these cases the managers for the time being shall choose another person who is an owner or possessor, and not being a manager, to be treasurer until the next ensuing election; and if at any time or times hereafter it shall so happen that all the owners or possessors chosen for managers or treasurer shall refuse or neglect to do the duties required of them by this act, in such case the managers for the year preceding shall continue in office and do and perform all the duties required of managers until the next general election.

If treasurer do not act, managers shall choose another, &c.

SEC. 5. *And be it enacted*, That every treasurer hereafter chosen shall, before he takes upon himself the execution of his office, enter into an obligation with at least one sufficient surety, to the managers, in double the value that doth or probably may come into his hands during the continuation of his office, as near as may be estimated by the managers, conditioned that he will once in three months or oftener, if required, render his account to the said managers, and well and truly account and settle with them for and concerning all monies that are or shall come into his hands by virtue of this act or belonging to the owners of said tract, and pay the balance on such settlement as appears to be in his hands, to such person or persons for such services as the said managers for the time being, or any two of them, shall order and direct and not otherwise; and that he will at the expiration of his office deliver up and pay the balance of the monies then remaining in his hands, with the books and accounts concerning the same, and all other papers and writings in his keeping belonging to the owners of the said tract, unto his successor to the said office, and that he will do and execute all other things as treasurer to the said owners according to the true sense and meaning of this act.

Bond of the treasurer.

SEC. 6. *And be it enacted*, That the owners and possessors of meadow, marsh and cripple on both sides of the St. Augustine creek, from henceforth shall be called "the St. Augustine marsh company," and the costs and charges of making and supporting the banks, sluices and public drains which the commissioners or a majority of them shall judge necessary and direct, shall be paid by all

Style of the company.

Expense of supporting the banks, &c. how paid.

CHAPTER XLII. 1827.

the owners and possessors of the tract aforesaid, according to the number of acres they and every of them hold and occupy (respect being had to the quality thereof) according to the rate of assessment to be made by the said commissioners or a majority of them; and all other costs and charges shall be paid in the same proportion.

Laying taxes, &c.

Sec. 7. *And be it enacted,* That it shall and may be lawful for the managers of the said company hereafter to be chosen, as often as they shall see occasion to lay such taxes on every acre of marsh, meadow and cripple contained in the said tract, within the bank, according to the general rate of assessment to be made as aforesaid, as they shall see proper or judge necessary for making supporting, repairing and keeping in good order and substantial repair the banks, dams and sluices and public drains and all and every other work and conveniences they shall or may judge necessary; and all and every assessment made or tax laid by the managers under this act shall become due and payable from the respective owners or possessors in proportion to the several rates as aforesaid, to the treasurer for the time being, in three months from the time of making or laying the same, of which public notice shall be given by the managers within one month after laying the same, by advertisements affixed at two or more public places in St. George's hundred, wherein shall be specified the sum laid, what it will amount to in the dollar according to the general rule aforesaid, and the time when the same shall become due: so always and provided, that the sum of one hundred dollars shall in the begining of every year remain in the treasurer's hands, ready to be applied in the premises as occasion may require; of all which sums of money and all other monies coming into his hands as treasurer, the said treasurer shall, in books to be provided at the expense of the company for that purpose, keep just, true and distinct accounts, and shall pay and deliver the same according to the directions and orders of the managers for the time being, or some two of them, and not otherwise; and the managers, or two of them, shall furnish to the treasurer a list of the names of the several owners and possessors, and of each owner's and possessor's rate or dollarage, noting from time to time, the several changes, alterations, transfers, and alienations of right in the several parts and parcels thereof, as may come to their knowledge, and acquaint the treasurer with every tax laid, the amount thereof, and when the same will become due, and within one month of laying the same.

Proviso.

Collection of taxes.

SEC. 8. *And be it enacted*, That for the better ordering, levying and collecting of taxes which may be hereafter laid for the improvement of the aforesaid marshes, meadows and cripples, that the treasurer who may be hereafter elected and for the time being, after having received due notice from the managers, as before specified, of each owner's or possessor's proportion of the aforesaid taxes, he the said treasurer, shall call upon and receive from each owner or possessor his or their proportion of the aforesaid taxes: and in case of the neglect or refusal of any of the owners or possessors to pay his or their proportion of said taxes, it shall and may be lawful for him the said treasurer, and he is hereby authorized, empowered and required, to levy, by distress and sale of the goods and chattels of the owners or possessors so refusing or neglecting, which may be found on said marshes, and also of the grass or timber which may be growing on said land, or which may hereafter be growing, and make sale thereof, after advertising the same at least ten days; and if the aforesaid means be insufficient to pay said taxes, it shall and may be lawful for the treasurer to levy, by distress and sale of the aforesaid marsh, meadow and cripple of said delinquent owner or possessor, or of any personal property of his or theirs which may be found elsewhere, rendering the overplus, if any, to the owners thereof, after all reasonable charges shall have been deducted.

Treasurer's fees, in case a taxable refuses to pay, &c.

SEC. 9. *And be it enacted*, That if any treasurer shall be obliged to enforce the collection of the taxes, by distress and sale, he shall receive the same fees as a constable is entitled to by law for the like services, in the recovery of debts under fifty dollars, and any person whose property shall be liable to the payment of said taxes, or any part thereof, may discharge the same at any time before the day of sale of the property distrained, and in such case the treasurer shall receive for his trouble one half of the fees he would be entitled to, and no more.

Managers to have the disposal of the funds.

SEC. 10. *And be it enacted*, That the managers for the time being, or a majority of them, shall have the power of disposing of all money or monies paid to the treasurer by virtue of this act, and the orders of any two of the managers on the treasurer for the time being, shall be good vouchers, and shall indemnify him, the said treasurer, for the payment and delivery of the monies and effects committed to his care by virtue of this act.

Regulation of drains between different owners.

SEC. 11. *And be it enacted*, That all lines, drains and water-courses between different owners or possessors, shall be cut at least eight feet wide and three feet deep, if the nature of the land will permit, and shall be made and scoured by equal proportions of labour and expense of the adjoining owners or possessors; and if any of the said owners or possessors, upon reasonable notice given, shall neglect or refuse to open and scour their or any of their parts of such line, drains or water-courses, it shall and may be lawful for the managers, or any two of them, and they are hereby required, to cause the same to be opened and scoured, and to adjust and pay the expense thereof out of the common stock, and charge that expense to that delinquent owner or possessor; and if, within five days afterwards, the same is not paid, it shall and may be lawful for the treasurer for the time being to recover the same with interest and cost, in the manner monies assessed are recoverable by this act, any law, custom or usage to the contrary notwithstanding.

Managers to lay sluices, &c.

SEC. 12. *And be it enacted*, That it shall and may be lawful for the managers hereafter to be chosen, and they are hereby empowered, authorized and required, to enter into and upon the said tract and premises, and take with them such workmen, horses, carts, barrows and tools as they shall deem proper, as soon as conveniently may be, after the passing of this act and the return of the commissioners aforesaid, and then and there to lay such sluice or sluices us may be deemed necessary for draining said meadows, dig and carry mud or earth from the most convenient places for keeping the banks, dams, sluices, &c. in good and sufficient repair: *Provided*, that they shall on no occasion cut mud within less than twenty feet of the tide bank; and the said managers for the time being shall purchase such suitable materials for the bank, sluice or sluices, and for opening and scouring such canal or canals, as shall by the said commissioners be recommended and directed; and the said managers for the time being, in every year are hereby further empowered and required to enter upon and inspect, at least eight times in each year, the condition of the banks, dams, sluices and public drains, and shall cause the same, with such other works and conveniencies as they shall think necessary, to be kept in good order and sufficient repair, and may, from time to time, add as much to the size of the bank as they may think necessary to keep out all tides.

Proviso.

Managers to inspect banks, &c. eight times in each year.

Draining and discharging wa-

SEC. 13. *And be it enacted*, That all and every of the said owners and possessors shall be permitted to dis-

charge the waters of their respective lands through their natural channels, or by direct courses across the lands of any other of the said owners or possessors, as the respective managers from time to time shall judge convenient, into the public drains or canals best suiting to discharge the said waters; and it is hereby required that all such owners or possessors, through whose lands it is necessary to discharge such waters, shall open and scour the same as often as is necessary to keep them in good order for draining off the waters from the aforesaid lands; and in case of the neglect or refusal of any of the owners or possessors, through whose lands the aforesaid waters are to pass, to cut and scour said drains and ditches, for the benefit of the owners or possessors so requiring a passage for their waters, it shall and may be lawful for the parties so aggrieved to proceed in the same manner as specified in the eleventh section of this act, and the managers for the time being are required to proceed and act in the manner therein directed.

ters through lands of others.

SEC. 14. *And be it enacted*, That the managers shall be allowed, by the company, the sum of one dollar each, for every day they shall attend upon the public work or service of the company; and the treasurer shall have and receive at the rate of five per cent. for all the monies received and paid away under the directions of this act: and the managers, for the more orderly execution of their duty and trust, are hereby required to meet at least every six months, and consult concerning the matters hereby committed to their care, and shall cause fair and just minutes of their proceedings to be kept in a book, to be provided at the expense of the company for that purpose, and the resolutions of the managers, or any two of them, shall be entered on their minutes and taken as the resolution of the whole; to which minutes, and also to the treasurer's books, all persons concerned shall have free access at all seasonable times; and at the expiration of each year the managers and treasurer respectively shall adjust and settle their accounts with the owners and possessors, or such of them as shall attend the annual election, on the second Tuesday in March, in order to ascertain what sum or sums of money is due to and from the company.

Compensation of managers and treasurer.

Meetings and other duties of managers.

SEC. 15. *And be it enacted*, That if any person or persons shall wilfully cut through, break down, or damage said banks, sluice or sluices, public drains or canals, or shall let in any tide-water to annoy or injure any part or parts of the said tract, he shall forfeit and pay treble damages, to be recovered in the name of the treasurer for the

Penalty for injuring the banks and sluices, &c. or letting in tide water.

CHAPTER XLII. 1827.

time being, by suit or action; which damages, when levied and collected, shall be added to the common stock, for the use and benefit of the company.

Repeal.

SEC. 16. *And be it further enacted*, That the act formerly passed, and all the supplements thereto, as it regards the stopping, embanking and draining the St. Augustine creek marsh, meadow and cripple, shall and are hereby made null and void, and of no effect, after the passing of this act, except such part or parts as concerns the collecting of taxes heretofore laid, and which are now due to the company, and also all debts which may be now due from the company; which said part or parts shall be and remain in full force until the settlement of such accounts, and no longer.

Saving.

PASSED AT DOVER, *February* 6, 1827.

CHAPTER XLIII.

AN ACT *to authorize Miers Burton, executor of Benjamin Burton, deceased, to sell and convey certain lands of the said Benjamin Burton, of which the said Benjamin died intestate.*

PASSED AT DOVER, *February* 6, 1827.

PRIVATE ACT.

CHAPTER XLIV.

AN ACT *to empower Jonathan Hamilton, Robert Hargadine and Samuel Henderson, guardians to certain minors, to sell and convey certain lands belonging to said minors.*

PASSED AT DOVER, *February* 6, 1827.

PRIVATE ACT.

CHAPTER XLV.

A SUPPLEMENT *to the act entitled "An act regulating the general election."*

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That the electors of the hundred of Saint George's, being the eighth election district of the county of Newcastle, shall hereafter hold their general and special elections at the house in the village of Cantwell's bridge, now occupied as a tavern by William Williams, in said county, any law, usage or custom to the contrary notwithstanding.

Site of election in St. George's hundred, changed.

PASSED AT DOVER, *February 7, 1827.*

CHAPTER XLVI.

AN ACT *authorizing John Robertson to bring into this State a slave from the State of Maryland.*

PASSED AT DOVER, *February 7, 1827.*

PRIVATE ACT.

CHAPTER XLVII.

AN ACT *relating to the Farmer's Bank of the State of Delaware and the Bank of Smyrna.*

SEC. 1 BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That negotiable notes drawn in any form may be discounted or collected by the Farmers' Bank of the State of Delaware, at Dover, Wilmington, Newcastle or Georgetown.

Negotiable notes drawn in any form may be discounted by the Farmers' Bank.

SEC. 2. *And be it enacted*, That the privilege hereby granted to the Farmers' Bank and its branches, be and the same is hereby granted to the Bank of Smyrna.

Same privilege granted to the Bank of Smyrna.

PASSED AT DOVER, *February 7, 1827.*

CHAPTER XLVIII.
1827.

CHAPTER XLVIII.

AN ACT *appropriating the money in the Treasury of this State.*

Appropriation for paying officers of the State, &c.;

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That the money now in the treasury of this State shall be applied in the following manner; that is to say: so much as may be necessary shall be applied to the payment of the salaries due, and to become due, to the governour, chancellor, judges of the supreme court and judges of the court of common pleas, attorney-general, secretary of state, and auditor of accounts; and so much thereof as may be necessary shall be applied to the payment of the daily allowance and mileage of the general assembly, their clerks, officers and contingent expenses, and for printing the laws and journals of the present session; and the residue thereof shall be applied to the payment of any other claims for which provision has been or may be made by law.

printing laws and journals;

and claims of citizens.

PASSED AT DOVER, *February 7,* 1827.

CHAPTER XLIX.

AN ACT *concerning posthumous children, and the effect of a will as to a child born or a wife married after the making of it.*

Infant in the mother's womb to take as a living child, &c. 1 vol. 294, s. 13.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That an infant in the mother's womb shall be regarded as a living child, and shall take any estate and property, real or personal, by descent, transmission, gift, limitation, or otherwise, in the same manner as if absolutely born, provided such infant shall be afterwards born alive; but if a child be not born alive the effect shall be the same to all intents and purposes as if no such child had ever existed.†

A child born after a will made by the parent, and unprovided

SEC. 2. *And be it further enacted,* That the child or children of a deceased parent, who shall, before the birth of such child or children, have made his or her last will

†Reference in the original to 1 Black. com. 130; 2 do. 169; 5 T. R. 63.

and testament, and who shall not have made provision for such child or children, by will or otherwise, shall have the same portion or portions, respectively, of such parent's real and personal estate as such child or children would have been entitled to, if his, her or their said parent had died intestate; to the raising of which said portion or portions, the devisees and legatees shall proportionably contribute, out of the estate or parts devised or bequeathed to them, respectively, by said last will and testament, unless such parent shall have left other estate sufficient to make up such portion or portions.

for, shall have the same share of the estate as if the parent had died intestate. 1 vol. 294, s. 13.

And the widow of a person who shall, before his marriage with her, have made his last will and testament, and who shall not have made provision for her by will or otherwise, shall have the same part of his estate, real and personal, as she would have been entitled to if he had died intestate; and said part shall be assigned and distributed to her in the same manner as if he had died intestate, except that where there are several legatees of such personal estate, or several devisees of such real estate, such distribution and assignment to the widow shall be so made that each legatee or devisee shall contribute a just proportion thereof.

The widow of one who before marriage has made a will not providing for her, shall have the same share of his estate as if he had died intestate.

And any last will and testament, which shall be made by a person having at the time no lawful issue, and which shall contain no provision for any child or children that he or she may have, shall, if he or she leave a child, at the time of his or her death, be revoked.

A will made by one having no lawful issue at the time, and not providing for a child, shall be revoked if he leave a child.

Sec. 3. *And be it further enacted*, That the thirteenth section of the "Act for the better settling intestates' estates," and the fourth section of the "Act for the amending the laws relating to testamentary affairs, and for the better settling intestates' estates," be and are hereby repealed; except so far as shall concern any acts or matters which have been done or transacted, or have happened, before the passing of this act, and any title which has heretofore accrued, or become vested, which title shall not be affected by this repeal.

Repeal. 1 vol. 294. 1 vol. 419.

Saving.

Passed at Dover, *February* 7, 1827.

CHAPTER L.

1827.

CHAPTER L.

AN ACT *concerning certain crimes and offences committed by slaves, and for the security of slaves properly demeaning themselves.*

Slaves committing, or abetting, the commission of, a crime made capital by the act 8th February, 1826, shall suffer death.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That if any negro or mulatto slave shall commit any crime which, according to the act entitled "An act providing for the punishment of certain crimes and misdemeanours," passed at Dover eighth of February one thousand eight hundred and twenty-six, is punishable with death, or shall abet, assist, counsel or procure any other person or persons, whether free or slave, to commit any such crime, every negro or mulatto slave so offending shall be deemed guilty of felony and upon conviction thereof shall suffer death; and all the provisions of the said act concerning crimes punishable with death, and touching proceedings in respect to such crimes and the trial and punishment thereof, shall extend to and include slaves; except in the case of a conviction of a slave of manslaughter, in which case, if the slave pray the benefit of this act, then, in lieu of judgment of death, the court shall render judgment, if the conviction be of manslaughter of the first degree, that the slave so convicted shall be publicly whipped with any number of lashes, not less than forty nor exceding sixty, upon the bare back, shall be set on the pillory for the space of one hour, and shall be exported from this State and never permitted to return to the same; and if the conviction be of manslaughter of the second degree, that the slave so convicted shall be whipped with any number of lashes not less than twenty nor more than forty, upon the bare back, and for the second offence, the same judgment as upon a conviction of manslaughter of the first degree.

Punishment for manslaughter committed by slaves.

Value of a slave found guilty of a capital crime, shall be assessed by the jury, and two-thirds of it allowed to the owner.
1 vol. 103, s. 3.

The value of a slave found guilty of a crime punishable with death, except manslaughter, shall be assessed by the jury, and if the punishment of death shall be inflicted, two-thirds of such assessed value shall be allowed to the owner of said slave by the levy-court and court of appeal of the county wherein the crime shall have been committed.

Certain offences of slaves made felonies, and punishishable by whipping.

SEC. 2. *And be it further enacted,* That if any negro or mulatto slave shall, with violence, make an assault upon any person, whether free or slave, with intent to commit murder, or shall wilfully and maliciously admin-

ister to any person, or cause or occasion any person, whether free or slave, to take any deadly poison or noxious and destructive substance, or shall make an assault upon any white woman or maid, with intent to commit a rape, or shall maliciously and by lying in wait cut out or disable the tongue, slit, cut or bite off the nose, lip or ear of any person, or maim any person, whether free or slave, or shall in the day time, break and enter the dwelling-house of another, with intent to commit murder, rape, larceny or any other felony, whether such intent be executed or not, or shall commit the crime of robbery, or shall with violence make an assault upon any person, whether free or slave, with intent to commit robbery, or shall wilfully and maliciously burn or set on fire any magazine, church, meeting-house or school-house or any ship, vessel, mill, ware-house, store, granary, shop, barn, stable, out house or other building, except a dwelling and such other building whereof the wilful and malicious burning is punishable with death, or shall wilfully and maliciously burn or set on fire any wheat or other grain or hay in the stack, or shall wilfully and maliciously attempt to set fire to any dwelling-house or other building, ship or vessel, wheat or other grain, or hay in the stack, or shall abet, assist, counsel or procure any person or persons to commit either of the said crimes, every negro or mulatto slave offending in either of the said particulars, shall be deemed guilty of felony, and upon conviction thereof shall be publickly whipped with sixty lashes on the bare back, shall be set on the pillory for the space of one hour, and shall be exported from this State and never suffered to return to the same.

pillory and exporting.

1 vol. 104.
2 vol. 1324.

SEC. 3. *And be it further enacted,* That if any negro or mulatto slave shall commit any crime mentioned in the aforesaid act entitled "An act providing for the punishment of certain crimes and misdemeanours," and deemed, according to said act, to be felony, except the crimes included within the two preceding sections and the crime of larceny herein after to be provided for, or shall abet, assist, counsel or procure any person or persons, whether free or slave, to commit any such crime, except as before excepted, or if a negro or mulatto slave knowing that a crime amounting to felony has been committed, shall give any aid to the offender or offenders, whether free or slave or either of them, with the intent, and for the purpose, that he, she or they may avoid arrest or may escape from arrest, prison, trial or execution, or if any negro or mulatto slave shall enter into any plot or conspiracy, every negro or mulatto slave offending in ei-

Other offences of slaves made felonies and punishable by whipping and, at the discretion of the court, by pillory and exporting.

CHAPTER L. 1827.

ther of said particulars, shall be deemed guilty of felony, and, upon conviction thereof, shall be publickly whipped with any number of lashes not less than thirty nor exceeding sixty, and further, at the discretion of the court, may be set on the pillory for the space of one hour, and also, at the discretion of the court, may be exported from this State, and never suffered to return to the same: *Provided*, that a slave aiding a master or mistress, who shall have committed a felony, to avoid arrest or to escape, shall not be punishable within the foregoing provision in that behalf unless such slave shall break a prison or forcibly resist or obstruct the execution of legal process.

Proviso.

Jurisdiction of the courts of quarter sessions.

SEC. 4. *And be it further enacted*, That the courts of general quarter sessions of the peace and gaol delivery, within the several counties, shall have jurisdiction of all the crimes mentioned or included in the second and third sections of this act; which said crimes shall be enquired of, heard and determined in the same manner, and by the same modes of proceeding, as other crimes whereof the said courts have jurisdiction.

When a slave sentenced to be exported, shall be delivered to his master.

SEC. 5. *And be it further enacted*, That whenever sentence shall be, that any negro or mulatto slave shall be exported from this State and never suffered to return to the same, the said slave shall, at any time within ten days after the time appointed for the inflicting of the corporal punishment, to which said slave shall be sentenced, be delivered to the master or mistress of the said slave, or to his or her agent, provided such master or mistress or agent shall pay the costs of the prosecution against said slave, and the prison fees and expenses arising from the imprisonment of said slave, or shall give sufficient security for the payment thereof in six months; *and provided further*, that such master or mistress, or any substantial freeholder for him or her, shall execute a bond to the State, in the penalty of five hundred dollars, with condition to be void, if the said slave shall, forthwith, and without being suffered to be at large in this State, be exported from this State and so disposed of as to afford a reasonable precaution against the return of said slave to this State; which bond, the clerk of the court wherein the judgment shall be, is authorized to take; and he shall record the same, and preserve the original in his office; but if the said costs, fees and expenses shall not be paid or secured, and such bond executed and taken, by or on behalf of the master or mistress of such slave, within the ten days before allowed for said purposes, the privilege of the master or mistress to receive such slave shall be

When a slave sentenced to be exported, shall be sold by the sheriff.

forfeited, and the sheriff shall sell said slave at public vendue to the highest and best bidder or bidders and shall apply the purchase money in payment of the costs of prosecution, prison fees and charges, and other just expenses, and the balance, if any, to the master or mistress.

Proceedings in case a slave exported shall after return to this State.

If any slave exported pursuant to sentence as aforesaid, shall at any time or times return to this State, every such slave shall be arrested and shall be committed to the gaol of the county wherein the judgment shall be given, and public notice of such commitment shall be given by the sheriff in two of the newspapers published in this State, by advertisements to be continued for the space of sixty days; and if within the space of sixty days next after the issuing of the first advertisement, the person having right, or the agent of such person, shall not prove such right, pay charges and take the slave, the sheriff shall sell the said slave at public vendue, to the highest and best bidder or bidders, and shall pay any balance of the purchase money, after satisfying costs and charges, to the owner of such slave, if demanded within six months, and if not, then to the treasurer of the county as money of said county; but a justice of the peace, in case of application, on the part of a person claiming such slave, for further time to make proof of right to such slave, may direct a postponement of the sale for any time not exceeding twenty days.

Proceedings when a slave for whose exportation bond has been given, or who has been sold for exportation, is not exported within twenty days.

If within twenty days after the execution of bond by or on behalf of a master or mistress as aforesaid, or within twenty days after any sale pursuant to this section, the slave shall not be exported from this State, the right of the master or mistress or purchaser shall be forfeited, and the sheriff shall proceed to sell said slave in the same manner as if no bond had been given or no sale had been made; and in every case of failure to export the slave within twenty days after the day of sale, the sale shall become void, and the sheriff shall proceed to sell as if no sale had been made, until the slave shall be exported, as required by the judgment given; and the slave shall not be delivered to the purchaser or purchasers, pursuant to any sale, until such purchaser or purchasers shall give bond in the same penalty, and with the same condition, as herein before required from the master or mistress. The sheriff shall certify every sale to the clerk of the court wherein the judgment shall be: bond from a purchaser or purchasers shall be taken by the sheriff and returned to said clerk, who shall record the same, and preserve the original in his office.

Penalty for obstructing &c. the exporting of

If any person or persons shall hinder, molest or obstruct any person or persons in or from exporting from

slaves sentenced to be exported.

this State any slave, which shall be under sentence to be exported as aforesaid, or shall wittingly harbour or conceal any slave, which, being under such sentence shall escape, return or otherwise be at large in this State, every person so offending upon conviction thereof shall forfeit and pay to the State a fine of five hundred dollars, and shall also be liable to the party aggrieved for all damages sustained, to be recovered by the proper action.

Proceedings in cases of slaves stealing or assisting to steal, or receiving or concealing, or aiding in concealing, stolen goods, &c.

SEC. 6. *And be it further enacted*, That if any negro or mulatto slave shall feloniously steal, take and carry away any personal property, or shall assist or abet any person or persons, free or slave, to feloniously steal, take and carry away, any personal property, or shall receive or conceal, or aid in or abet the concealing of any personal property which shall have been stolen or taken by robbery, knowing the same to be stolen or taken by robbery, every negro or mulatto slave so offending shall be tried by any two justices of the peace for the county in which the offence shall have been committed, and, upon conviction before such justices of such offence, shall be whipped with any number of lashes not less than twenty nor more than forty, upon the bare back; and upon such conviction, the justices shall tax the costs of prosecution, and if the personal property stolen, or taken by robbery, or any part thereof, or the value thereof, shall not have been restored, shall assess the value of said property, or of the part which or the value whereof shall not have been restored, and the said justices shall make an order, that, unless the master or mistress of the slave so convicted shall pay the said costs, and also shall pay to the owner or owners of said property said assessed value, within twenty days after the conviction, the slave shall be sold by the sheriff of the county, at public vendue, to any person or persons residing within this State, for the best price that can be obtained, and the said slave shall be committed to the public gaol of the county, to be there detained until said order shall be executed: the costs and assessed value shall be paid out of the purchase money, and the balance of said money, if any, shall be paid to the master or mistress of the slave; if there be not sufficient to pay the costs and the assessed value, the costs shall be first satisfied: such sale shall transfer the slave, by a good right, to the purchaser or purchasers against the demand of any person having right prior to such sale; but shall not impair any right secured by manumission or otherwise to the slave to be free at a future day: it shall be the duty of the constable to whom process issued upon a complaint against a slave for an offence against this section shall be

Trial.

Whipping.

Costs and value of property stolen, how recovered.

Sale.

Notice to the master.

delivered, to deliver to the master or mistress of said slave a copy, certified by said constable, of said process, if said master or mistress cannot be conveniently seen so as to be served personally, to leave such copy at his or her usual place of abode; and the justices issuing the process shall endorse thereon a direction to this effect; and the trial of the slave shall not proceed without the appearance of the master or mistress, or of some person for him or her, unless the constable shall make oath or affirmation, either that he has delivered a copy, by him certified, of said process, to the master or mistress of said slave, or that he has left such copy at the usual place of of abode of such master or mistress, or that he inquired for and could not find such master or mistress, nor ascertain that he or she had a place of abode in the county; which oath or affirmation shall be reduced to writing, and signed by the constable, and certified by the justices, or one of them, and shall be filed; the justices, in the record of conviction, shall state, that the master or mistress did or did not appear as the case shall be; and in case of non-appearance, the oath or affirmation of the constable shall be annexed to, and deemed part of, the record of conviction; the master or mistress shall have right to redeem any slave sold pursuant to this section at any time within one year from the day of sale, by paying to the purchaser or purchasers, or his, her or their executors, administrators or assigns the purchase money paid for such slave.

The master may pay the purchase money and redeem his slave at any time within one year.

The phrase "personal property" as used in this section shall be construed to signify goods, personal chattels effects, bank notes or bills, bills of exchange, promissory notes, checks, orders, bonds and any written contracts for the payment of money or delivery of goods, wares and merchandize.

Construction of the phrase "personal property," as used in this section.

SEC. 7. *And be it further enacted*, That of every sale of a slave, pursuant to the foregoing sections of this act, like notice shall be given as is required by law of the disposal of a person as a servant.

Notice of the sale of a slave.

SEC. 8. *And be it further enacted*, That if any negro or mulatto slave shall join, or be willingly present at, any riot, rout or unlawful assembly, or shall commit an assault and battery upon any white person, or shall without special permission of his or her master or mistress, presume to carry any gun, pistol, sword, dirk, or other unusual or dangerous weapon or arms, every negro or mulatto slave so offending, and being thereof convicted, before any justice of the peace for the county in which the offence shall be committed, shall be whipped with not

Punishment of slaves joining in or present at a riot, rout or unlawful assembly, or committing assault and battery on a white, or carrying dangerous weapons, &c.

less than ten nor more than forty lashes, publickly, upon the bare back.

Proceedings against a slave guilty of assault and battery on a negro. 2 vol. 1324. 1 vol. 436.

If any negro or mulatto slave shall commit an assault and battery upon any other negro or mulatto, whether free or slave, every negro or mulatto slave so offending, and being convicted thereof before any justice of the peace for the county in which the offence shall be committed, shall be publickly whipped, with any number of lashes not exceeding thirty, upon the bare back; but the justice may order that, upon payment of a fine not exceeding ten dollars, and by him to be limited, the corporal punishment shall be remitted.

Master to pay costs.

In every case of a conviction under this section, the justice shall give judgment in favour of the State, against the master or mistress of the slave convicted, for the costs of prosecution, and may issue execution upon such judgment, in like manner as upon a judgment for debt.

Penalty for exporting or attempting to export a slave from this state, or selling or transferring, purchasing or receiving for the purpose, &c. 2 vol. 884, 943. 4 vol. 339, s. 5.

SEC. 9. *And be it further enacted*, That if any person or persons shall export, or attempt to export, directly or indirectly, any negro or mulatto slave, from this State to any other State or country, or shall sell or transfer, purchase or receive, any negro or mulatto slave, with intent, or for the purpose, that such slave shall be exported from this State to any other State or country, or shall fraudulently decoy any negro or mulatto slave from this State to any other State or country, with intent there to sell, or in any manner dispose of, such slave, or shall abet or procure any person or persons to export, or to attempt to export or to decoy, any negro or mulatto slave as aforesaid, every person so offending shall be deemed to be guilty of a misdemeanor, and, upon conviction thereof, shall forfeit and pay to the State a fine of five hundred dollars: and if any person or persons shall bring into this State any negro or mulatto slave to be held, sold or disposed of, or to reside within this State, every person so offending shall be deemed to be guilty of a misdemeanor, and upon conviction thereof, shall forfeit and pay to the State a fine of one hundred dollars; except that any person removing, with his or her family, from this State to any other State or territory, to reside, may lawfully remove his or her slaves to such State or territory, and that any person moving into this State and settling therein, may lawfully bring, at the time of his or her removal, or within one year afterward, any slave the property of such person at the time of his or her removal: and that any slave which shall, by virtue of a bequest by or in the course of distribution of the estate of any deceased person, who, at the time of his or her death was an inhabitant of any other State or ter-

Penalty for bringing slaves into this State. 2 vol. 886.

Exceptions. Persons removing into, or out of the State. 2 vol. 888.

Slaves becoming the property of an inhabitant by bequest,

ritory, or by means of marriage, with a woman an inhabitant of any other State or territory, become the property of an inhabitant of this State, may be lawfully brought into this State, by or on behalf of such inhabitant or his or her executors or administrators, within one year after the right to take the said slave shall be complete; and that any slave belonging to any inhabitant of another State or territory, if lawfully within this State, may be seized and sold by virtue of an execution or attachment, *bona fide* issued at the suit of any inhabitant of this State, against the owner or owners of such slave; and that a slave escaping from this State may be lawfully brought back; and that any person travelling trough this State, or coming into this State upon a visit or for a transient purpose, or making a temporary stay within this State, may lawfully bring into this State, and keep, any slave or slaves for his or her attendance, and carry back the same; and that any person or persons occupying a farm or tract of land, through which the line of the State runs, may lawfully employ his, her or their slaves upon every part of such farm, or tract of land, and pass and repass them over said line for that purpose; and that the supreme court, or the court of common pleas, in term time, may make an order permitting the owner or owners of any slave to export such slave from this State, and that such owner or owners, or his, her or their executors, administrators or assigns may, pursuant to such order, and at any time within six months from the date thereof, export such slave from this State, or sell the same for the purpose of exportation.

heirship, or marriage. 2 vol. 941, s. 1.

Slaves sold on execution or attachment. 2 vol. 941, s. 2.

Runaway slaves.

Persons travelling with slaves. 2 vol. 888.

Persons occupying land through which the State line runs. 6 vol. 184.

Persons permitted by court in term time to export slaves. 2 vol. 1094, s. 3. 2 vol. 885, 943. 4 vol. 339, s. 5.

Every negro or mulatto slave, which shall be exported, or attempted to be exported from this State, or sold, transferred, purchased or received, with intent, or for the purpose, that such slave shall be exported from this State, or fraudulently decoyed from this State, or brought into this State against the form or effect of this section, except as before excepted, shall thereupon become and be free; except that the right of the owner or owners of a slave shall not be impaired nor affected by the commission of a misdemeanor against the form of this section, if it shall satisfactorily appear that such owner, or either of the owners, (if there be more than one,) was not implicated in, nor privy nor accessary to, said misdeameanor: *Provided*, that nothing in this section shall be construed to include or extend to any negro or mulatto slave sentenced to be exported from this State, or any negro or mulatto slave escaping from any other State or territory into this State, or to oppugn or affect any privilege heretofore

Slaves exported &c. to be thereupon free.

Saving of the rights of the master when not implicated, &c.

Proviso.

granted or allowed, by any act of assembly, to any person in respect to any slave or slaves.

Penalty, if any vessel or boat be prepared or stationed in any harbour &c. for the purpose of exporting slaves &c.

SEC. 10. *And be it further enacted*, That if any vessel or boat shall be brought into, or prepared or stationed in, any harbour or place within the limits of this State, with intent or for the purpose of receiving on board any negro or mulatto slave, to be exported from this State against the form of the eighth section of this act, except as therein excepted, the captain, master or commander of such vessel or boat, and every the owner, factor, agent or other person, who shall wittingly abet, procure or be concerned in, the bringing, preparing or stationing of such vessel or boat, with the intent or for the purpose aforesaid, shall each forfeit the sum of one thousand dollars, the one moiety thereof to the State, and the other moiety to any person who shall sue for the same, to be recovered, with costs of suit, in the supreme court or court of common pleas, by action of debt: every such vessel or boat shall be liable for any penalty thereupon incurred; and in proceeding for any penalty under this section, upon affidavit made by the person suing therefor, or any other credible person, before any judge or justice of the peace, or clerk or prothonotary of the court in which the action is to be instituted, or his deputy, and filed in the office of such clerk or prothonotary, it shall be in the election of the person suing to have issued a writ of capias against the defendant, upon which he may be arrested and held to special bail, or a writ of attachment against the vessel or boat in respect to which the cause of action shall arise: if a writ of attachment shall be issued, the defendant may, with sufficient surety or sureties, to be approved, before the return of the writ, by the sheriff, and, after such return, by the court, or any judge thereof, execute to the State a bond in the penalty of two thousand dollars, with condition to be void if the defendant shall fully satisfy the debt and costs, which shall be recovered in the plea mentioned in said writ; upon executing such bond, the property shall be restored: otherwise, the property attached shall be held, or the court, if it shall be deemed to be for the interest of all parties, may order the same to be sold at public vendue by the sheriff, who shall give like notice of such sale as required by law of the sale of goods under execution; the money shall be disposed of as the court shall direct: any bond given shall be filed with the writ, and shall be recorded among the records of the action; the defendant may appear, plead and go to trial: and if judgment be for him, the vessel or boat attached, or in case of a sale thereof, the

Proceeding by capias, or attachment.

purchase money shall be restored, without charge to the owner; if the defendant shall not appear at the first term, judgment shall be given against him by default, unless the court shall deem proper to allow further time for appearance: the property attached, if not sold under order of court, may be taken and sold on execution against the defendant; or if the property have been sold under an order, the purchase money shall be applied to such execution; if there be a surplus, it shall be restored to the owner of the property.

Who shall be deemed a slave within this act.

SEC. 11. *And be it further enacted*, That the term "slave," as used in this act shall be construed to signify a slave for a limited time according to the act entitled "An act concerning free negroes and mulattoes," passed at Dover February first, one thousand eight hundred and ten, as well as a slave for life or indefinitely; and any negro or mulatto being deemed to be a slave according to the said act, or otherwise according to the laws of this State, shall be deemed and taken to be a slave in construing or applying any provision of this act; but a person disposed of as a servant pursuant to any judgment, sentence or order of any court, shall not be deemed to be a slave within any provision of this act.

Repeal.

SEC. 12. *And be it further enacted*, That the act entitled "An act for the trial of negroes," and the first, second, seventh and tenth sections of the act entitled "An act to prevent the exportation of slaves and for other purposes," and the supplement and the additional supplement to the said act, both passed February third, one thousand seven hundred and eighty-nine, and the second, third and fourth sections of the "Act to punish the practice of kidnapping free negroes and free mulattoes, and for other purposes," and the fifth, eighth and ninth sections of the "Act concerning negro and mulatto slaves," and all that part, beginning with the words "and be it enacted," and ending with the words "notwithstanding and," of the fifth section of the "Act concerning negro and mulatto slaves," and the clause in these words; viz.: "slaves shall be prosecuted and tried, for offences not capital, as already provided by other acts of the General Assembly," of the twelfth section of the "Act providing for the punishment of certain crimes and misdemeanours," shall be, and hereby are, annulled and repealed from and after the first day of July next: *Provided*, that no act or section repealed by any of the said acts or sections hereby repealed, shall, by this repeal be revived; *and also provided*, that all and every the crimes and of-

1 vol. 102.
2 vol. 884.
2 vol. 941, 942.
2 vol. 1093.
2 vol. 1321, 1322, 1323, 1324.
4 vol. 337.
6 vol. 741.
Proviso.

CHAPTER L. 1827.

fences which have been, or on or before the first day of July next shall be, committed against any the said acts or sections above in this section mentioned, and now in force, shall be heard, determined and punished in the same manner, and with the same penalty, pains and punishment as if this act had not been passed: and the said acts and sections now in force, shall, in respect to all acts and matters which have been, or on or before the first day of July next shall be, done or transacted, and for the recovery of all penalties which have been, or on or before the first day of July next, shall be incurred, continue in force as fully and amply, to all intents and purposes, as if this act had not been passed.

This act to be in operation from the first of July next.

SEC. 13. *And be it further enacted,* That this act shall commence and be in operation from and after the first day of July next.

PASSED AT DOVER, *February* 7, 1827.

CHAPTER LI.

AN ACT *authorizing Richard Holding to work his slaves both in the State of Maryland and in the State of Delaware.*

PASSED AT DOVER, *February* 7, 1827. PRIVATE ACT.

CHAPTER LII.

AN ACT *to dissolve the bonds of matrimony between Mary Countice and her husband John S. Countice.*

PASSED AT DOVER, *February* 8, 1827. PRIVATE ACT.

CHAPTER LIII.

CHAPTER LIII.

1827.

AN ACT *authorizing a lottery for building an Academy and Masonic Hall in Georgetown, Sussex county, and for finishing the Episcopal Church therein.*

Lottery to raise ten thousand dollars authorized.

SEC. 1 BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That it shall be lawful to institute, carry on and draw a lottery, in one or more classes, for the purpose of raising, clear of all charges and expenses, ten thousand dollars, to be paid to the managers hereafter named, or to the majority of them or the survivres of them, or a majority of the survivers, or any other person whom they shall appoint to receive the same, to be applied by such managers to the building an academy and masonic hall in the town aforesaid, and the balance, if any, to the finishing St. Paul's Episcopal church in said town.

Application of money so raised.

Managers.

SEC. 2. *And be it further enacted*, That Jehu Stockley, Thomas Robinson, sen'r., and Philip Short, esquires, be, and are hereby appointed, managers of said lottery, and they, or a majority of them, or the survivers of them, or a majority of the survivers, shall have power and authority to conduct and draw said lottery, and the different classes thereof, to devise and determine the scheme thereof, to appoint any agent or agents for the sale of tickets, or otherwise, and to do all acts requisite for effecting the premises.

Managers may sell the lottery or any class thereof.

SEC. 3. *And be it further enacted*, That the managers aforesaid, or a majority of them, or the survivers of them, or a majority of the survivers, shall have power and authority to sell or dispose of said lottery, or any class or classes thereof; and the person or persons to whom any such sale or disposal shall be made, may exercise, in relation to the said lottery, or the class or classes thereof so sold or disposed of, the power and authority herein before conferred: and it shall be the duty of such person or persons issuing tickets, to pay to the holders of such tickets drawing prizes respectively, the prizes to which they shall, by virtue of their tickets, respectively, be entitled, upon demand, subject always to any deduction that shall have been stipulated in the scheme: but if a prize drawn in any class of said lottery shall not be demanded within one year next after the completing of the drawing of such class, it shall be deemed and taken to be abandoned, and shall be paid to the managers aforesaid, or to the majori-

Prizes payable on demand; but taken to be abandoned if not demanded within one year.

ty of them, or to the survivers of them, or the majority of them, to be applied as directed by the first section of this act; provided notice of such drawing, and of the prizes drawn, and numbers entitled to them, shall have been published within thirty days next after completing said drawing, in a newspaper printed in Philadelphia, Wilmington and in Baltimore: and if any class of said lottery shall not be drawn within three years next after publication of the scheme thereof or beginning to sell tickets therein, it shall be the duty of such person or persons as aforesaid, issuing tickets as aforesaid, to refund to the holders of such tickets, respectively, the money received for such tickets; and before any person or persons to whom any such sale or disposal as aforesaid shall be made shall begin to sell tickets, or to act under the authority or license of this act, such person or persons shall give bond, with surety or sureties, to be approved by the attorney-general, in the penalty of fifteen thousand dollars, to the State of Delaware, with condition for the true and faithful performance of all the duties enjoined or that shall be incumbent upon such person or persons according to this act.

Notice of drawing.

Money received for tickets to be refunded unless the class be drawn in three years after publishing the scheme, &c.

Vendee, &c. of the lottery shall give bond.

Managers drawing lottery to pay prizes on demand, if the demand be within a year, &c.

SEC. 4. *And be it further enacted*, That if the managers aforesaid, or a majority of them, or the survivers of them, or a majority of the survivers, shall not sell or dispose of said lottery, or if any class thereof shall remain unsold and undisposed of, and if the said managers, or a majority of them, or the survivers of them, or a majority of the survivers, shall in consequence proceed themselves to conduct and draw said lottery, or any class thereof, it shall be the duty of such acting managers issuing tickets drawing prizes to pay to the holders of such tickets, respectively, the prizes that, by virtue of their tickets, they shall be respectively entitled to, upon demand, subject to any stipulated deduction as aforesaid; and prizes not demanded within a year after completing the drawing of a class, shall be deemed to be abandoned, provided such notice as aforesaid be published as aforesaid: and if any class, shall not be drawn within three years after publishing the scheme thereof or beginning to sell tickets therein, it shall be the duty of the acting managers issuing such tickets to refund the money received for said tickets to the holders respectively; and also, in such case, the acting managers shall give bond to the State, in the same penalty as aforesaid, with like condition as aforesaid, and also for the application of the money raised by said lottery, or any class thereof, according to the first section of this act.

Notice of drawing.

Money received for tickets issued by managers, when refunded.

Bond of managers.

SEC. 5. *And be it enacted*, That all money which shall be raised or obtained, clear of charges and expenses, by or for the lottery aforesaid, or any class thereof, shall be applied for the use and purposes in the first section of this act mentioned; and if not so applied within three years after raising or receiving the same, it shall belong to and be paid to the trustees of the poor of Sussex county, for the use of the poor in said county.

Money raised, to be paid to the use of the poor, unless applied within three years to building the academy, masonic hall and church.

SEC. 6. *And be it enacted*, That the bonds before required shall be transmitted to the auditor of accounts, and filed in his office, and said bonds shall be held upon trust for every person and persons concerned or aggrieved by the breach of the conditions, and may be proceeded upon accordingly, for the use of such persons.

Bonds before required, to be sent to auditor, and shall be in trust for persons aggrieved, &c.

PASSED AT DOVER, *February* 8, 1827.

CHAPTER LIV.

AN ACT *to incorporate the Washington Beneficial Society of Wilmington, Delaware, for the relief of the members thereof, their widows and orphan children.*

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That David Webster, William Kennard, John Guyer, John Flinn, Anthony Cary, John T. Robinson, Charles Farra, Isaac Spear, James S. Robinson, Joseph Robinson, Charles D. Groom, William Baggs, Asea Poinsett and David Robinett, jun'r, and such other persons as are, or hereafter shall become, members of the "Washington Beneficial Society of Wilmington, Delaware for the relief of the members thereof, their widows and orphan children," be, and for fourteen years hereafter shall be, by virtue of this act, one body politic and corporate, in fact and in law, and shall have continuance for fourteen years, by the name, style and title of "The Washington Beneficial Society of Wilmington, Delaware, for the relief of the members thereof, their widows and orphan children."

Incorporation.

SEC. 2. *And be it enacted*, That the said corporation, and their successors, shall, for fourteen years hereafter, be able and capable in law to purchase, receive and hold

Rights and privileges of the corporation.

CHAPTER LIV.
1827.

any lands, tenements, rents, goods or chattels, or any property whatsoever, which may be given, devised or conveyed to them, and also to grant, let, sell or assign the same, and to do all other matters touching the same, by the name and title aforesaid; and they shall have a common seal, may sue and be sued, plead and be impleaded, in any court of law or equity in this State, in all manner of actions, suits, complaints, pleas, causes and matters whatsoever, and of what nature or kind soever.

Power to appoint officers, make bye-laws, &c.

SEC. 3. *And be it enacted*, That the members of this society shall have power to appoint such officers as they may deem necessary or proper to conduct the affairs of the society, and from time to time to make and establish such by-laws, rules and ordinances, not contrary or repugnant to the laws and constitution of this State or of the United States, as they shall deem necessary and proper for the good government of the society.

Revenue of the corporation not to exceed $5,000.

SEC. 4. *And be it further enacted*, That it shall not be lawful for the said corporation, and it shall not have power to have, possess nor in any manner hold, goods, chattels, rights or credits, lands or tenements, or property of any kind, the clear yearly income or revenue of which shall exceed five thousand dollars.

PASSED AT DOVER, *February* 8, 1827.

CHAPTER LV.

AN ADDITIONAL SUPPLEMENT *to an act entitled "An act providing for the election of constables and concerning elections of assessors and inspectors," passed at Dover 28th January*, 1823.

ch. 165, vol. 6, p. 263.

No person to hold the office of constable for more than three years in any term of six years.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That from and after the passing of this act, it shall not be lawful for any person to hold the office of constable, in any of the hundreds of the respective counties of this State, for more than three years out of any term of six years, nor shall any person having held such office heretofore, hereafter be appointed to said office for any time by which he will have held the same for more than three years within the term of six years from

the first day of October, in the year of our Lord one thousand eight hundred and twenty-three.

PASSED AT DOVER, *February* 8, 1827.

CHAPTER LVI.

A FURTHER SUPPLEMENT *to the act entitled "An act for the interchange of laws."*

4 vol. 521.
5 vol. 368.
6 vol. 238.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That the governour be and he is hereby empowered and required to transmit to the executive authority of each of the Territories of the United States, and to the executive authority of each State of the United States, which has not heretofore been furnished with them by this State, for the use of such Territories and States respectively, three copies of the laws of this State that have heretofore been enacted, and also three copies of all laws that shall be hereafter enacted, annually, and request a like interchange from them.

Governour to transmit to the executive of each Territory and State three copies of the laws, and request a like interchange from them.

SEC. 2. *And whereas,* the reverend Jared Sparks, of Boston, desires to procure, for historical purposes, a copy of the laws of Delaware, *be it therefore enacted,* That the Secretary of State be and he is hereby empowered and required to transmit to the said Jared Sparks, of Boston, in the State of Massachusetts, one full copy of all the laws of this State.

Secretary of State to send a copy of the laws to the Rev. Jared Sparks.

PASSED AT DOVER, *February* 8, 1827.

CHAPTER LVII.

AN ACT *concerning insolvent prisoners.*

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That any person who shall be imprisoned in the common gaol of any county of this State, for debt or damages or costs, by virtue of original, execution, or other process or commitment in any civil action, (except

Who may petition to the supreme court or court of common pleas for discharge from prison, under this act.

1 vol. 196, 282. 444, 4 vol. 215. 1 vol. 209, s. 23.

process or commitment of the court of chancery,) and who shall have resided in this State for one year next preceding such imprisonment, may prefer to the supreme court or to the court of common pleas held in the county in which such person shall be imprisoned, a petition stating such imprisonment and the cause thereof, and the insolvency of the petitioner, and setting forth a full and true account of all his or her real and personal estate, debts, credits, rights, money and effects whatsoever, with the sums and dates of all his or her bonds, notes or other securities, and a true list, according to the best of his or her knowledge or belief, of all his or her creditors, with the sums due to them respectively, and offering to assign all his or her property for the benefit of his or her creditors, and praying, upon such assignment, to be discharged from imprisonment: and if the petitioner shall have at any time given, conveyed, assigned, settled, disposed of or delivered any money, stock or property of any kind upon trust, it shall be mentioned in such petition. The court to which such petition shall be preferred, shall have cognizance of the case, and shall appoint a day for hearing the same, and may adjourn the hearing and consideration thereof from time to time; and the court shall award a summons or summonses for summoning the creditors of the petitioner to appear and shew cause, if any they have, why he or she should not be discharged from imprisonment upon assigning his or her property for the benefit of his or her creditors. Such summons may be served by any credible person, who shall prove such service in court, by oath or affirmation, the substance of which shall be entered, and the entry shall be distinctly read to the deponent or affirmant, who shall sign the same; and service of such summons upon the agent or attorney of any creditor not residing in this State, shall be deemed good service thereof in respect to such creditor. And if any creditor having a demand against such petitioner, for any sum not less than fifty dollars, or any number of creditors whose demands together shall amount to that sum, shall allege fraud against such petitioner, and shall file a statement naming the supposed fraudulent transactions, such petitioner shall plead to said statement, and the court shall direct an issue to be made up and tried by a jury, on some day of the same term to which the petition is preferred: but if no creditor or creditors shall file such statement, or having filed one, shall withdraw the same, then the court shall hear the petition and what may be alleged or proved against or for granting the prayer thereof: interrogatories may be proposed to the petitioner touching the causes of his or her insolvency

What shall be stated in the petition.

Day for hearing appointed.

Summons for creditors.

Service of the summons.

Allegation of fraud against petitioner, how tried.

What interrogatories may be

the ownership, disposal or state of any rights, credits, money or property, the time of contracting any debt, and of executing any bond, note, security, deed or instrument, and the consideration thereof, and any other matter which the court shall deem a proper subject for such inquiry; and upon the requirement of any creditor, the petitioner shall fully and directly, upon oath or affirmation, answer such interrogatories, and the answers shall be reduced to writing and the said writing shall be signed by the petitioner. If it shall appear to the court that the petitioner has fraudulently concealed, transferred, disposed of or removed any goods, chattels, rights, credits, money or property, or has been guilty of any deception or fraud in contracting any debt, or has not fully and truly answered the interrogatories proposed, or has been guilty of any covin or fraud by which his or her creditors may be injured, the petitioner shall be remanded and the petition shall be dismissed; and if any creditor shall insist, and the court shall be of opinion, that, according to the circumstances and equity of the case, the petitioner ought to make satisfaction to his creditors by servitude, he shall be remanded unless he shall, in writing under his hand, endorsed on his petition, declare his consent to be adjudged to serve his creditors for such wages as the court shall allow, to satisfy the debts due from him; but this consent shall not be required from any female nor from any white man. And the court, for sufficient cause shewn, may in their discretion order the petitioner to produce any money that may be in his or her possession or power, or any deeds, bonds, notes, books of account or other writings relating to his or her real or personal estate, and remand him or her until such order shall be complied with; and if, upon full hearing, the court shall be of opinion that there is no sufficient cause for remanding the petitioner, they shall administer to him or her an oath or affirmation according to the following form, *which shall be first distinctly read to the petitioner;* (that is to say:)

proposed to petitioner.

Answers of petitioner to be reduced to writing and signed.

Petitioner shall be remanded to prison for fraud, &c.

Consent to be adjudged to serve creditors, when required. 4 vol. 215. 1 vol. 208, 282.

Court may order petitioner to produce money, deeds, bonds, &c.

I ——— ——— do solemnly swear (or affirm) that the account set forth in my petition to be discharged from imprisonment, is a full and true account of all my real and personal estate, legal and equitable, in possession, reversion and remainder, and of every nature and description, including all my debts, credits, rights, money and effects whatsoever; and that I have not at any time given, conveyed, assigned, settled, disposed of or delivered any lands, goods, money, stock, securities or other real or personal estate, so as to expect any benefit or advantage therefrom, or upon any trust otherwise than as

The oath. 1 vol. 198.

CHAPTER LVII. 1827.

mentioned in said petition; that I have not contracted any debt, nor executed any bond or security, nor done any other act or thing to defraud my creditors; and that I have not intentionally or knowingly omitted from the list set forth in my petition, any one of my creditors nor misstated any debt due from me: so help me God, (or so I do solemnly affirm.)

Upon such oath or affirmation being administered, the petitioner shall execute a deed of assignment to trustees or a trustee to be appointed by the court; such deed shall be endorsed upon or annexed to the petition and shall be according to the following form:

The assignment.

I ——— do grant and assign to ——— ——— their heirs and assigns, as joint tenants, upon trust for all my creditors, all my lands, tenements, hereditaments, goods, chattels, rights, credits and real and personal estate of every nature and description, wheresoever situate or being.

Witness my hand and seal, the ——— day of ——— A. D. 18——

Signed, sealed and delivered in open court, before } ——— L. S.

(the deed, if one trustee only be appointed, being adapted to the case by the requisite variation from said form;)

Petitioner when discharged, and when adjudged to serve creditors.

whereupon the court shall order that the petitioner be discharged from his or her imprisonment for debt, damages or costs as aforesaid; but if the petitioner shall, according to the provision herein before in this particular contained, have declared his consent to be adjudged to serve his creditors, the court, before pronouncing the order for his discharge, shall adjudge him to serve his creditors for certain monthly wages, to satisfy the debts due from him to them respectively, or any balance thereof that shall remain unpaid after the proper application of his estate: the court shall determine said wages, and may direct a certain sum thereof to be applied, monthly, for the support of the petitioner's family, which direction shall be observed by the person having the petitioner's services pursuant to the adjudication, and the balance only of the wages shall be applied toward satisfying such debts. The petitioner being so adjudged shall serve his creditors until, by the application of his wages, or such balance thereof, all the debts due from him to them respectively shall be satisfied; except that the whole term of such servitude shall not in any case exceed seven years.

Adjudication to serve creditors.

1 vol. 208, s. 19, 20.

Proceedings in cases of impris-

Any person who shall be imprisoned in the common gaol of any county, for the non-performance of any de-

cree for the payment of money or costs, by virtue of attachment or other process issued out of the court of chancery, and who shall have resided in this State for one year next before such imprisonment, may prefer to the chancellor in the court of chancery held in the county in which such person shall be imprisoned, a petition of the same purport and contents as herein before prescribed for the petition afore mentioned; and thereupon like proceedings shall be had as herein before directed; and the chancellor in the said court of chancery shall in respect to said petition, and over the subject thereof, have the same jurisdiction as herein before granted to the courts aforesaid, and shall exercise the said jurisdiction in the same manner as herein before prescribed for said courts, except as it regards the directing of an issue.

onment by process from chancery.

Every petition, and all proceedings, orders and adjudications under this section, shall be recorded by the clerk, prothonotary or register, in suitable books by them respectively kept for that purpose; and to each book a correct alphabetical index shall be kept.

Record of all proceedings under this section, to be kept.

Sec. 2. *And be it further enacted*, That every deed of assignment, which shall be executed pursuant to this act, shall pass to, and vest in, the trustee or trustees to whom the same shall be executed, all the property and estate of the petitioner at the time of executing the same, real and personal, legal and equitable, and of every nature and description, as well rights, whether real or personal, credits and things in action, as property in possession; and the said trustee or trustees shall take possession of all said property and estate, except the wearing apparel and the necessary bedding of the petitioner and his or her family and the tools or implements of his or her trade or calling, not exceeding in value in the whole fifty dollars; which articles, and the value thereof, shall be ascertained by two substantial and impartial freeholders of the county whereof the petitioner is an inhabitant, to be appointed, and to be sworn or affirmed faithfully and justly to fulfil the duties of said appointment, by the justice of the peace for said county residing nearest to the petitioner's place of abode; and said articles so ascertained shall be retained by the petitioner, exempt from any execution or legal process but distress for rent and execution in a criminal case; and also if the petitioner be a tenant holding any messuage, lands or tenements under rent, his or her goods and chattels being on the said demised premises at the time of executing said deed of assignment, shall be liable for the rent of said premises for the current or the preceding year, (if such rent be not paid;)

Effect of the assignment.

What shall be retained by the petitioner exempt from all legal process, but distress for rent and execution in a criminal case.

1 vol. 198.

One year's rent shall be paid before goods are moved from demised premises.

1 vol. 202.

CHAPTER LVII. 1827.

and the landlord may require that such rent shall be paid before the said goods or chattels are removed from said premises; but rent for one year only shall be so required; and the said trustee or trustees, or the survivers or surviver of them, or the executors or administrators of such trustee or such surviver, shall collect, recover and reduce into possession all the said rights, whether real or personal, credits and things in action of the petitioner, and for that purpose may, in the name of such trustee, trustees, survivers, surviver, executors or administrators, institute and prosecute to judgment and execution any actions, real, personal or mixed, and shall convert into money all the property and estate assigned, and for that purpose shall have full power to sell, dispose of and convey the same, in parcels or otherwise, as may be deemed most expedient. No suit or proceeding of the petitioner in law or equity, shall be abated by such deed of assignment as aforesaid; but such suit or proceeding may be continued and carried on, and execution may be issued on any judgment recovered by the petitioner, in the name of said petitioner, in the same manner and form as if such deed of assignment had not been executed; but such suit, proceeding or execution shall be for the use or benefit of such trustee, trustees, survivers, surviver, executors or administrators. No release, acquittance or receipt, made by such petitioner after executing such deed of assignment, of any debt, demand, right, action, suit or cause of action existing at or before the time of executing said deed shall be of any force or effect whatsoever. Such deed of assignment shall be deemed to be a record of the court in which it shall be executed, and a certified copy thereof shall be competent evidence.

Duties and powers of the trustees.

Copy of the assignment to be evidence.

Creditors must exhibit their claims to the trustees within a year.

SEC. 3. *And be it further enacted*, That the creditors of the petitioner shall respectively exhibit their respective demands against the petitioner to the trustee or trustees, or the survivers or surviver of them, or the executors or administrators of such trustee or surviver, within one year from the day of executing the deed of assignment; and no demand, unless exhibited within that time, shall be allowed or considered. The nett proceeds of the petitioner's estate, (the just expenses of executing the trust, and a reasonable commission to the trustees being first paid or retained,) shall be applied in or toward payment of the demands exhibited as before prescribed. A demand existing at the time of executing said deed, but payable at a future day, (subject to the proper discount, if payable without interest,) shall be admitted and entitled to payment or dividend. Any overplus of the estate

Proceeds of petitioner's estate, how distributed.

after satisfying the demands exhibited, shall be returned to the petitioner or his or her heirs, executors or administrators; but if said nett proceeds shall not be sufficient to satisfy said demands, the same shall be apportioned and distributed to and among the said creditors in proportioned and distributed to and among the said creditors in proportion to the amount of their respective demands. Controversies arising in the course of the execution of the trust, respecting any disputed demands or claims, may be referred, compromised, or settled as may be deemed most expedient. The court, in which any order of discharge as aforesaid may be made, shall have authority to settle the accounts concerning the execution of the trust and to require such accounts to be rendered, and to compel compliance with such requirement by attachment and imprisonment, and such court may, in like manner, compel any trustee or trustees to grant and assign the trust, estate and effects to other trustee or trustees, to be appointed by the court, and to be in every respect as if originally appointed: the said court, in its discretion, may require any trustee or trustees to give bond, with security, to the State, for the faithful execution of the trust, and may vacate the appointment and compel an assignment to other trustees by the trustee or trustees neglecting to give such bond, and also may order an inventory and appraisement of the estate and effects assigned to be made and returned to said court, if this shall in any case be deemed expedient.

Disputed claims how settled.

Court may appoint other trustees, compel security to be given, &c.

SEC. 4. *And be it further enacted*, That any person discharged from imprisonment pursuant to the first section of this act shall not be afterward imprisoned nor arrested for any debt or demand contracted or existing before such discharge, except debts and demands of the United States, and also of persons not appearing or served with summons as hereinafter more fully expressed; but such impisonment and discharge therefrom shall have no further effect; and if any judgment, debt or demand, due or existing before and at the time of such discharge, from or against the person so discharged, shall not be fully satisfied out of the estate and property assigned, because of the insufficiency thereof, every such judgment, debt and demand, or any balance thereof remaining after a proper application of such estate and property, may be collected, recovered and levied of any property and estate which such person, after executing the deed of assignment, may acquire or be entitled to, excepting that herein before exempted from execution, subject only to

One discharged from prison, not to be after imprisoned for a prior demand, except, &c.

But property acquired after the assignment shall be liable for a demand remaining unsatisfied.

the following restriction in case of persons adjudged to serve their creditors.

Adjudication to serve a creditor, when a discharge of the demand.

If a person shall, pursuant to the first section of this act, be adjudged to serve his creditors, his creditors, respectively, by force of such adjudication, shall have all the power of a master or mistress over him to demand and have his services for the satisfaction for their respective debts, or the balance thereof unpaid after the proper application of his estate, but shall have no other remedy or means for the recovery of such debts or such balance thereof, except in the cases following; that is to say: if any person adjudged as aforesaid to serve his creditors, shall obstinately and pertinaciously refuse to render service to any creditor pursuant to the adjudication, or if any creditor shall, within sixty days after the adjudication, and without having had the person adjudged in his or her service, cause his or her refusal of the services of such person to be entered upon the record of the adjudication, in either of said cases, the creditor shall have remedy for his or her debt or demands, in the same manner and as fully as if such person had not been adjudged to serve his creditors; and the clerk or prothonotary or register in whose office the record shall be, upon the application of the creditor, shall enter his or her refusal, which shall be signed by the creditor; and the effect of such entry shall be to vacate all right of such creditor to demand service pursuant to the adjudication.

Priority of creditors entitled to service under an adjudication.

The rights of creditors to the services of a person adjudged as aforesaid shall stand in priority as follows; that it is to say; first, creditors by judgments and by recognizances, and these shall stand in priority according to the dates of the judgments and the recognizances respectively; second, creditors by obligations and notes, and instruments under seal, or only under hand, and these shall stand in priority according to the dates of the instruments; and all other creditors shall stand in priority according to the amount of their respective demands, the larger having preference over the smaller: but a person adjudged shall not controvert the right of any creditor to his immediate service, on the ground of the prior right of any other creditor: and any creditor having had such person in his service for three days without adverse claim, shall continue to hold him until his debt is satisfied, according to the terms of the adjudication, without the let of, and without becoming responsible to, any other creditor.

Liens not to be affected by any

SEC. 5. *And be it further enacted*, That any thing done pursuant to this act shall not impair the lien of any mort-

gage, judgment, recognizance, bond or execution, nor any other lien:

thing done under this act.

Also, that any person who, as surety, joint debtor or otherwise, shall be liable for a debt or demand due from or existing against any person discharged from imprisonment according to this act, shall not by such discharge, nor by an adjudication to serve creditors, be released or exonerated from such liability.

Sureties and joint debtors not to be released by an adjudication, &c. 1 vol. 201.

Sec. 6. *And be it further enacted*, That any person imprisoned in the common gaol of any county for debt or damages, or costs of a civil suit, or non-performance of a decree for the payment of money, by virtue of original, execution, or other process or commitment, may prefer to the supreme court or to the court of common pleas held in the county in which such person shall be imprisoned, or to any judge of either of the said courts in vacation, a petition stating such imprisonment and the cause thereof, and the inability of the petitioner, if detained in prison, to maintain him or herself or his or her family, and praying for relief; and the court to which, or the judge to whom, such petition shall be preferred, shall inquire into the case, and if, upon due inquiry, it shall appear to such court or judge that there is reasonable ground to apprehend that the petitioner or his or her family, in consequence of his or her imprisonment, will be chargeable to the county, the said court or judge shall make an order, that the person or the persons, respectively, at whose suit the petitioner is imprisoned, shall, with sufficient surety enter into recognizance to the State, in the penal sum of two hundred and fifty dollars, with condition, (in substance,) to be void if the recognizors, or either of them, or their or either of their heirs, executors or administrators shall keep the county aforesaid harmless and indemnified of and from all damages and charges in consequence of the imprisonment of the petitioner, either for the maintenance or through the sickness of the petitioner, or his or her family; which order, with the petition, shall be filed in the office of the clerk or prothonotary of the court in which, or by a judge of which, such order shall be made, in the county in which the petitioner is imprisoned: and the said clerk or prothonotary shall have authority to approve the surety and to take the recognisance directed; which recognisance shall be joint and several; and if such order shall not be complied with by the person, or by some one of the persons, if several, upon whom it is made, in ten days after notice thereof to such person or persons, or to the agent or attorney of such person or persons, the said clerk or prothonotary, or his

An insolvent imprisoned on civil process may apply for relief, and unless the creditor enter into recognizance to indemnify the county, shall be discharged, &c. 1 vol. 444. 4 vol. 215.

CHAPTER LVII.
1827.

deputy, shall, in writing under his hand and the seal of office of said clerk or prothonotary, certify the substance of said order, and the failure to comply therewith, to the sheriff or gaoler of the county, and the petitioner shall be thereupon discharged from such imprisonment as aforesaid. If any person or persons at whose suit the petitioner is imprisoned, or his, her or their agent or attorney, shall be present at such inquiry as aforesaid, or at the making of such order as aforesaid, or shall have been served with written notice of such petition, and the time and place appointed for making the inquiry thereupon, the court or judge shall certify the fact upon the order, and every such person shall be deemed to have notice of such order on the day of making the same; with respect to any other of such persons a copy of the order may be served on him, her or them, or his, her or their agent or attorney, personally or by being left at the place of abode of such person, agent or attorney, in presence of some member of the family, if there be one, if not, of some neighbour, by a credible person, who shall prove such service; but if service cannot be done, in the county in which the petitioner is imprisoned, upon any person, because such person cannot be found in such county, and has no place of abode therein, nor any agent or attorney residing there, upon proof of said circumstances, the clerk or prothonotary shall certify in the same manner as if it duly appeared, that such person or persons, upon whom service cannot be done, had received due notice of the said order on the day of making it: proof of the service or of the circumstances aforesaid shall be made before the clerk or prothonotary, or his deputy, each of whom is authorized to administer an oath or affirmation for that purpose: the proof shall be reduced to writing, signed by the deponent or affirmant and filed with the order. If recognisance shall be entered into pursuance to such order as aforesaid, the principal or principals in such recognisance may, at any time, direct an entry to be made upon said recognisance, or the record thereof, that he, she or they are unwilling to continue liable touching any further imprisonment of the person upon whose petition the said order was made; and such entry shall be made by the clerk or prothonotary and signed by the party directing it; and the said clerk or prothonotary shall forthwith certify in manner aforesaid, to the sheriff or jailer of the county, the substance of such order, and of said recognisance, and of said entry; and the petitioner shall be immediately discharged from imprisonment at the suit of the party or parties causing such entry to be made, in the same manner as if the said recognisance had not been

The principal in a recognizance to indemnify the county, may at any time direct an entry to be made of his unwillingness to continue longer liable, and the prisoner shall then be discharged.

entered into; but such entry shall, in no manner, impair the said recognisance; nor shall other effect flow from it than that the petitioner shall not, after making the entry, be detained in prison at the suit of the party causing it to be made. A person discharged from imprisonment pursuant to this section shall not be again arrested upon the same process; but such imprisonment and discharge shall have no other effect; and no judgment, debt, or demand shall be thereby extinguished or invalidated.

Effect of discharge under this section. 4 vol. 216.

SEC. 7. *And be it further enacted*, That the appearance of any person, who shall be discharged from imprisonment according to this act, may be entered in any suit or action from process in which such person shall be so discharged, and such suit or action may be proceeded in on the ground of such appearance.

Appearance for one discharged under this act may be entered in an action against him. 4 vol. 217.

SEC. 8. *And be it further enacted*, That any proceeding or order under this act shall not discharge any person imprisoned by the authority of the United States from such imprisonment, and shall not discharge any person from imprisonment for any other cause than that to which such proceeding or order relates; but such person, notwithstanding such proceeding or order, shall be detained for such other cause, according to the nature and effect thereof: an order of discharge, made upon a petition pursuant to the first section of this act, shall not affect or extend to any person upon or in respect to whom the summons awarded upon such petition shall not have been served, unless such person shall have appeared personally or by attorney on the hearing of such petition: such appearance shall be entered and shall be as effectual as proof of the service of the summons; and the appearance of, or the service of a summons upon or in respect to, one of several partners, joint plaintiffs or joint creditors, so far as shall concern a partnership or joint debt or demand, shall be sufficient.

In what cases a proceeding under this act shall not discharge from imprisonment. 1 vol. 202.

Appearance of, or service of summons on, one of several joint creditors sufficient.

SEC. 9. *And be it further enacted*, That in any action against any person or persons, for any thing done pursuant to this act, this act, with the matter of justification under it, may be given in evidence under the general issue.

This act to be evidence under the general issue in an action against any person for any thing done pursuant to it.

SEC. 10. *And be it further enacted*, That if any person, to whom an oath or affirmation shall be administered according to this act, shall wilfully and falsely swear or affirm in any matter, every such person so offending shall be deemed guilty of wilful and corrupt per-

Any one taking an oath according to this act, and swearing falsely, to be guilty of perjury.

1 vol. 203. jury, and upon conviction thereof shall incur and suffer all the pains, penalties and disability to which a person convicted of wilful and corrupt perjury shall, according to the laws of this State, at the time of committing such offence, be liable, and shall further forfeit all benefit by virtue of this act, and shall not be permitted to plead or insist upon the same or to avail himself thereof for any purpose whatsoever.

Repeal.

SEC. 11. *And be it further enacted*, That the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, nineteenth, twentieth, twenty-first, twenty-second and twenty-third sections of the act 1 vol. 196, entitled "An act for the relief of insolvent debtors within this government," chap. 76. 1 vol., 282, chap. 118. amendment of the said act, and also the act for amending 1 vol. 444, chap. 194. the said first mentioned act, passed June 16, 1769, and the first, second, third, fourth, fifth, sixth, seventh and 4 vol. 215, chap. 65. eighth sections of the act entitled "An act for the better securing personal liberty, and for other purposes," be and the same are hereby repealed; except that so much of the said acts and sections as grants or concerns the power and jurisdiction to adjudge a debtor or prisoner to serve his or her creditors, shall continue unrepealed and in full force with respect to any and every debt contracted before the passing of this act; and except further, that all persons heretofore adjudged to serve creditors according to said acts, or any part of the same, shall stand bound by and subject to such adjudication, in the same manner and as effectually as if this act had not been passed; and that all decrees, orders, transactions and matters made, done or transacted according to said acts or any part thereof, shall not be affected by this repeal, but shall remain valid and have the same force and effect as if this act had not been passed; and that the said acts and sections, now in force, shall continue in force for the punishment of any and every the offences heretofore committed against the said acts and sections, or any one of the same.

Saving.

PASSED AT DOVER, *February* 8, 1827.

CHAPTER LVIII.

CHAPTER LVIII. 1827.

AN ACT *authorizing Mary E. M'Donough, of the State of Maryland, to remove a certain female slave from the State of Delaware into that State.*

PASSED AT DOVER, *February* 8, 1827. } PRIVATE ACT.

CHAPTER LIX.

AN ACT *to authorize the cutting a ditch or drain from Baucumbrig into Murderkill creek.*

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That Cornelius Dewees, Elias Fleming, Curtis B. Beswick, Abraham Gullet, and Caleb Sipple be and they are hereby appointed commissioners to go upon and view the marshes and low-grounds, on a creek or gut called Baucumbrig: and after viewing the same, they, or a majority of them, shall ascertain and determine what owners of said marshes and low-grounds will be benefitted, and shall appraise all the said marshes and low-grounds which, in their opinion, or the opinion of a majority of them, will be benefitted by the said ditch or drain, by fixing the value thereof per acre, according to situation, and upon such principles as will do equal and exact justice to all parties; which said appraisement shall be the rate of assessment for all taxes to be laid under this act; and the said commissioners, or a majority of them, shall estimate the sum of money requisite to cut and make said ditch or drain, and shall apportion, lay and assess the same upon the said value, so fixed, of said marshes and low-grounds, according to a certain rate for every dollar of said value, and so *pro rata,* and shall apportion the same sum of money among the respective owners accordingly.

Commissioners appointed to estimate the sum requisite to cut the ditch, and fix the rate of assessment, &c.

And the said commissioners shall make two certificates, to be signed by them, or a majority of them, describing the ditch or drain as laid out, and containing the names of the owners of the said marshes and low-grounds and quantities thereof held by them respectively, the appraisement or valuation, and the taxes laid. One of the said certificates shall be deposited in the office for recording of deeds in and for Kent county, and shall be there recorded by the recorder of deeds for said county, and a

Two certificates to be made, describing the ditch, and containing names of owners, &c.

One certificate to be recorded, and the other delivered to treasurer.

CHAPTER LIX. 1827.

copy of said record under the hand and seal of office of said recorder, shall be competent evidence; and the other of said certificates shall be delivered to the treasurer for the time being; and the said certificate shall be final and conclusive upon all parties.

Certificate conclusive.

Style of the company.

SEC. 2. *And be it enacted*, That the owners of the aforesaid marshes and low-ground, which, according to the determination of the aforesaid commissioners, or a majority of them, will be benefitted by the said ditch or drain, shall compose a company to be called "the Baucumbrig marsh company," and shall hold a meeting on the first Wednesday in April next, and yearly thereafter, at such place as the managers for the time being, or the survivors of them, or if none, such as the treasurer for the time being, shall appoint, whereof the commissioners shall give ten day's notice of the first meeting, by at least four advertisements, posted in the most public places in Mispillion neck; at which meeting the said owners of the said marshes and low-ground, shall choose, by ballot and majority of votes, two managers and one treasurer, and may do and determine upon all such matters and things as shall be deemed requisite for cutting the said ditch or drain; and that occasional meetings of said owners may be called by the managers and treasurer, for the time being, or a majority of them, at such time as they, or a majority of them, may direct, giving ten days' notice, as is herein before mentioned: and at all meetings, a guardian of a minor-owner shall have a right to vote for his ward. And every manager or treasurer, to be chosen under this act, shall continue in office for one year, or until their successors shall be duly elected and chosen.

Annual meetings.

Election of managers and treasurer.

Occasional meetings.

Guardian to vote for ward.

Managers and treasurer to continue one year.

Powers and duties of managers.

SEC. 3. *And be it enacted*, That the managers aforesaid, and their successors, managers for the time being, shall have full power to enter upon the marshes and low-grounds aforesaid, and, at the common expense of the company, proceed to cut and make the ditch or drain aforesaid, and to cut and open such ditch or ditches as may be found necessary to drain the aforesaid marshes and low-grounds, as they may deem expedient. They shall keep an exact account of receipts and expenditures, and shall lay the same before the company at the annual meeting; and if the money shall be expended and the work still incomplete, it shall be lawful for the managers aforesaid, or their successors, managers for the time being, to lay and assess such sum and sums of money among the owners of the aforesaid marshes and low-grounds as is herein before provided; and the said managers shall make

a list of all assessments and taxes by them from time to time laid, and shall deliver them to the treasurer for the time being, and the same shall be final and conclusive upon all parties.

Powers and duties of the treasurer.

SEC. 4. *And be it enacted*, That the treasurer aforesaid, and every treasurer to be chosen as aforesaid, for the time being, shall have power and authority to demand and receive, levy and make all and every the taxes which shall be laid and assessed pursuant to this act, in the same manner, and by the same means, as are provided for raising county rates and levies. The treasurer or treasurers for the time being, before entering upon the duties enjoined by this act, shall give bond, with surety to be approved by the managers, to and in the name of the company aforesaid, in the penalty of one thousand dollars, upon condition to be void if he shall well and truly account for all monies that may come to his hands as treasurer at every annual meeting of the company, or otherwise, as the company may direct, and shall pay any balance or sum which shall be due from him on such account, to his successors in office, and shall perform all the duties of his office with fidelity. And every treasurer for the time being shall have the same power to collect and levy all taxes, upon a list delivered to a former treasurer, remaining unpaid, which the treasurer to whom the list was originally delivered had.

Treasurer's bond.

Time for paying taxes by whom fixed.

Oath of commissioners and managers.

SEC. 5. *And be it enacted*, That the commissioners or managers laying the taxes, shall appoint the time for the payment thereof; and that every commissioner or manager, before acting under this act shall take an oath or affirmation, before some justice of the peace of Kent county, to perform all the duties required of him by this act with impartiality and fidelity.

Penalty for filling up or obstructing the ditch.

SEC. 6. *And be it enacted*, That if any person shall wilfully fill up or obstruct the aforesaid ditch or drain, when cut and made, every such person shall pay to the company treble damages, to be recovered before any justice of the peace of Kent county, as debts under fifty dollars are recoverable; and if above that sum, in the supreme court or court of common pleas. Suits may be instituted and prosecuted, in the name of the company aforesaid, upon any bond given as aforesaid, or for the recovery of damages as aforesaid.

Waters may be drained

SEC. 7. *And be it enacted*, That the owners and possessors of the aforesaid marshes and low-grounds,

through the grounds of other owners, &c.

shall respectively have right and privilege to discharge the waters from their respective grounds or marshes, through the grounds or marshes of other owners or possessors, in such places and directions and of such width, depth and dimensions, as the managers for the time being shall prescribe: if the cutting of such drains will be advantageous to the marsh or grounds of other owners, such owners shall contribute such proportion of the expense as the managers shall direct: if the cutting of such drains will injure the marsh or grounds of other owners, the managers shall assess the damages, and the cutting shall not be commenced until the damages shall be paid or tendered: any owner shall have privilege to cut any drain or drains, through his own marsh or ground, emptying into the aforesaid ditch or drain, or into the ditch or drains of the company, and keep up and scour the same at their own expense.

Compensation of commissioners, managers & treasurer.

SEC. 8. *And be it enacted*, That every commissioner and manager shall, for each and every day's service under this act, receive,—the former one dollar,—the latter seventy-five cents; and every treasurer shall be allowed a commission of five per centum on all monies by him collected.

PASSED AT DOVER, *February* 8, 1827.

CHAPTER LX.

AN ACT *to authorize Rachel Kierne to remove into this State, from the State of Maryland, a certain negro slave therein mentioned.*

PASSED AT DOVER, *February* 8, 1827. PRIVATE ACT.

CHAPTER LXI.

AN ACT *to authorize Joseph Hossinger, of Newcastle county, to bring a certain slave into this State.*

PASSED AT DOVER, *February* 9, 1827. PRIVATE ACT.

CHAPTER LXII.

AN ACT *to authorize and empower Samuel Pennington, an infant under the age of twenty-one years, to convey to a certain William Bowman and his heirs all his right and interest to and in certain lands therein mentioned.*

PASSED AT DOVER, *February* 9, 1827. } PRIVATE ACT.

CHAPTER LXIII.

AN ACT *for the payment of claims against the State.*

State-treasurer to pay certain claims.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That the State-treasurer be and he is hereby authorised and directed to pay to Caleb H. Sipple, for services to the high court of errors and appeals, nine dollars and eighty-three cents; to H. Niles, for the 27th, 28th and 29th volumes of the Weekly Register, nine dollars and thirty-seven cents; to Samuel M. Harrington, for Geo. W. Metz, for binding laws, eight dollars and twenty-five cents: to Samuel Harker, for public printing, twenty-six dollars and forty cents; to A. and H. Wilson, for public printing, twenty-six dollars and forty cents; to Ezekiel Cowgill, State-treasurer, for travelling expenses and postage, nineteen dollars and sixty-two and a half cents; to H. M. Ridgely, late Secretary of State, for making indexes to laws for the years of 1824, 1825 and 1826, one hundred and twenty dollars; to John Robertson, for five reams marriage, three reams retailers,' one ream tavern, and one ream hawkers' licenses, and one ream of commissions, one hundred and sixty-five dollars; to Spencer Williams, auditor of accounts, for books, postage and expenses, seventeen dollars and twenty-two cents; to Thomas Fisher, sheriff, for attendance on the high court of errors and appeals, thirteen dollars and fifty cents; to Philip Rasin, for attendance on the high court of errors and appeals, nine dollars; to Joseph Parsons, for expenditures during the last war, thirty-four dollars and forty-five cents.

Appropriation for the expen-

SEC. 2. *And be it enacted,* That the State-treasurer be and he is hereby authorized to pay to the Secretary of

ses of the Secretary's office.

State the sum of two hundred and eighty dollars, to be applied by him to the payment of the contingent expenses of his office, an account of which shall be submitted to the General Assembly at the next January session.

PASSED AT DOVER, *February* 9, 1827.

CHAPTER LXIV.

AN ACT *regulating the travelling over the Summit Bridge erected over the Chesapeake and Delaware Canal, on the upper State road, near the Buck Tavern, in Newcastle county, belonging to the Chesapeake and Delaware Canal Company.*

Bridge to be passed on the right hand side in a walk.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That every person passing said bridge, either with stage, wagon, cart, coach, gig, chaise or other carriage of burden or pleasure, and all persons riding, driving or leading horses, mules or cattle of any description, shall pass the same on the right hand side thereof in a walk; and that if any person or persons shall intentionally and willfully offend against this provision, every person, for such offence, shall forfeit and pay a sum not exceeding five dollars, to be recovered before any justice of the peace in and for Newcastle county and applied, one moiety thereof to the person suing, and the other moiety to the poor of Newcastle county, and paid to the treasurer thereof. And it shall be the duty of the said company to put up an index-board, at each end of said bridge, explanatory of the aforesaid provisions; and if any person or persons shall wilfully, or without orders of the said company, pull down, break or destroy, with intent to injure any part or parts of the said bridge, or of any abutment or other property of the said company appurtenant to or erected or made for the use and convenience of the said bridge, or persons employed in conducting the business thereof, or shall wilfully, without the orders and consent of the company, or any person or persons authorized by them, obliterate, deface or destroy the letters, figures or other characters affixed or to be affixed in any place or places, for the information of travellers, or shall wilfully and maliciously obstruct or impede the passage on or over the said bridge, or any part or parts thereof, he, she or they so offending, and each of them, shall forfeit

Penalty.

Index-board.

Penalty for injuring the bridge, &c.

and pay to the said company the sum of thirty dollars, to be sued for and recovered before any justice of the peace, in like manner, and subject to the same rules and regulations, as debts under fifty dollars may be sued for and recovered; and he, she or they so offending may and shall remain liable to actions, at the suit of the said company, for further damages for such torts, if the said sum or sums herein mentioned be not sufficient to repair and satisfy such damages.

Lamps where to be placed, and when lighted, &c.

SEC. 2. *And be it enacted*, That the said company shall, for the safety of travellers, place or cause to be placed, at the expense of said company, four lamps, one at each end of said bridge, and two at equal distances between them; which lamps shall be lighted every evening within one half hour after the setting of the sun, and continue lighted until day-light in the morning of the ensuing day; and the company aforesaid, or their agent, for every night the said lamps shall not be lighted, shall forfeit and pay the sum of ten dollars, to be recovered as debts of the same amount are recoverable by the laws of this State, and applied as other fines and forfeitures under this act are directed to be.

Penalty.

PASSED AT DOVER, *February* 9, 1827.

CHAPTER LXV.

AN ACT *authorizing and requiring the registers of the court of chancery to open and adjourn said court in certain cases.*

Registers of the court of chancery, to open and adjourn the court in certain cases.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That if, at any time appointed by law or by adjournment for holding the court of chancery in either county of this State, the chancellor, on account of sickness or otherwise, shall not attend to hold said court, the register of the said court, in such county, shall have power, and it shall be his duty, to open and adjourn the said court, and he shall open and adjourn the same as the chancellor shall direct, or if the chancellor shall give no di-

CHAPTER LXV. 1827.

rection, then from day to day, for five successive days, and from thence to the term in course, unless the chancellor shall attend.

PASSED AT DOVER, *February* 9, 1827.

CHAPTER LXVI.

AN ACT *for the payment of claims for the tuition of poor children.*

State-treasurer to pay certain claims for tuition of poor children.

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That the trustee of the fund for establishing schools in this State be and he is hereby authorized and required to pay, out of any unappropriated money belonging to that fund in his hands, the following claims for the tuition of poor children, that is to say;—in Newcastle county,—to John M. Clark, seven dollars and seventy-six cents; to Cheney Pyle, nine dollars and eleven cents; to Eliza A. Weaver, for the Female Benevolent Society of Newcastle, eighty dollars; to Maria C. Smith, Free Harmony school of Wilmington, eighty dollars; to William A. Jackson, thirteen dollars and twenty-five cents;—in Kent county,—to George Clemmans, for 1825, six dollars and seventy-five cents, for last year, two dollars and sixty-two cents; to Mary Farson, fifty-nine dollars and four cents; to John Eynon Ward, four dollars and three cents; to John Palmer, twelve dollars and eighteen cents; to Rebecca Comegys, five dollars;—in Sussex county,—to James F. Outten, twenty-five dollars and ninety cents; to Walter Elder, eleven dollars and eighty-eight cents;—in Newcastle county,—to Joseph Rowman, jr. twelve dollars and thirteen cents; to David D. Lowther, five dollars; to Moses Lowther, senr., ten dollars; to John Finnimore, six dollars; to Richard W. Robinson, nine dollars and forty-one and an half cents;—in Kent county,—to Maria M'Natt, forty-three dollars and seventy-five cents; to John O'Harnett, eighteen dollars and seventy-five cents; to Thomas Smith, seven dollars and fifty-four cents; to David M. Smith, nine dollars;—in Sussex county,—to Clifford Shannahan, six dollars and thirty-one cents.

PASSED AT DOVER, *February* 9, 1827.

CHAPTER LXVII.

CHAPTER LXVII.
1827.

A SUPPLEMENT *to an act entitled "An act to enable the owners and possessors of the marsh meadows on the north side of Christiana river, called Middleburgh marsh, to keep the banks, dams and sluices in repair, and to raise a fund to defray the expenses thereof," passed in the year* 1769.

PASSED AT DOVER, *February* 9, 1827. } PRIVATE ACT.

CHAPTER LXVIII.

AN ACT *for the relief of Nathaniel Wolfe.*

PASSED AT DOVER, *February* 9, 1827. } PRIVATE ACT.

CHAPTER LXIX.

AN ACT *to repeal the act therein mentioned.*

SEC. 1. BE IT ENACTED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That the act entitled "A supplement to an act entitled an Act to prevent swine running at large within the villageof Milton, and the bounds therein prescribed, in the county of Sussex," which passed on the fifth of February, 1819, be and the same hereby is repealed, made null and void.

Repeal of the supplement to the act to prevent swine running at large in Milton. vol. 5, chap. 219, p. 392.

PASSED AT DOVER, *February* 9, 1827. }

CHAPTER LXX.
1827.

Resolutions.

CHAPTER LXX.

War agent's compensation.

RESOLVED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That William P. Brobson, agent for adjusting with the war department of the United States the account of that department with this State, relative to arms and military supplies furnished under the authority of an act of Congress for "arming and equipping the whole body of the militia of the United States," and for adjusting and finally settling all claims which this State may have against the United States, for expenses incurred during the late war with Great Britain, be allowed to retain for his services, out of the moneys received by him of the United States, the sum of four hundred dollars, amounting together with the sum of two hundred dollars heretofore advanced to him, to the sum of six hundred dollars, being the sum hereby allowed to him for his said services:

To pay $6.130 to State Treasurer.

And that the said William P. Brobson be authorized and directed to pay the balance of said monies, amounting to six thousand one hundred and thirty dollars, to the State treasurer.

ADOPTED AT DOVER, *January* 12, 1827.

CHAPTER LXXI.

Directors of the Farmers' Bank appointed on the part of the State.

RESOLVED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That the following persons be and they are hereby appointed directors of the Farmers' Bank of the State of Delaware; that is to say: Jacob Boone, junior, Elias Naudain and John Bell, for the principal bank; E. I. Dupont, Josiah F. Clement and Joseph G. Rowland, for the Branch Bank at Wilmington; Samuel Meteer, Levi Boulden and Augustine H. Pennington, for the Branch at Newcastle; and William D. Waples, Jehu Stockley and Stephen M. Harris, for the Branch at Georgetown.

ADOPTED AT DOVER, *January* 31, 1827.

CHAPTER LXXII.

Trustee of the school fund to invest in certain stocks, and report to auditor.

RESOLVED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met*, That the trustee of the fund for establishing schools in this State be authorized and required to vest any unappropriated money belonging to that fund, now in his hands, in loans authorized by the government of the United States, or in stocks of the United States, or stock of the bank of the United States, upon the best terms he can obtain; and that the said trustee, from time to time, hereafter, as often as any money may come into his hands belonging to the said fund, and not otherwise appropriated, shall vest the same in loans authorized by the government of the United States, or in stocks of the United States, or in stock of the bank of the United States; which investments shall, as often as made, be by the said trustee reported to the auditor of accounts, and by the auditor annually submitted to the General Assembly.

Duty of auditor.

ADOPTED AT DOVER, *February* 7, 1827.

CHAPTER LXXIII.

Preamble.

WHEREAS, the "Wilmington Union Colonization Society," professing by its constitution to be "auxilairy to the American colonization society," and that the object to which its views shall be exclusively directed is the colonization, on the coast of Africa, *with their own consent*, of the free people of colour of the United States, has, by memorial addressed to this general assembly, requested the expression of an opinion whether their views deserve the national support, and with the national funds, to such extent as the wisdom of Congress shall deem prudent; and in the said memorial has set forth that the system of colonizing the free people of colour on the coast of Africa, has already been commenced by "the American colonization society," and that experiments have proved the plans adopted to be no longer doubtful, if suitable national encouragement be given:

And whereas, it satisfactorily appears to this legislature, that the memorialists are engaged in endeavouring to execute one of the grandest schemes of philanthropy that can be presented to the American people—that it is

CHAPTER LXXIII. 1827.

no less than the cause of humanity—suffering humanity—the redemption of an ignorant and a much injured race of men from a degradation worse than servitude and chains and placing them in that country, on that luxuriant soil, and in that genial clime, pointed to by the finger of Heaven as their natural inheritance:—

And it further appears, to this legislature, that the object of this society is two-fold; for while it immediately and ostensibly directs its energies to the amelioration of the condition of the free people of colour, it relieves our country from an unprofitable burden—one which, if much longer submitted to, may record upon the pages of our history the dreadful cries of vengeance that, but a few years since, were registered in characters of blood at St. Domingo: therefore—

Resolutions relating to the removal of free negroes and free mulattoes.

BE IT RESOLVED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That it is requisite for our prosperity, and, (what is of more important concern,) essential to our safety, that measures should be taken for the removal, from this country, of the free negroes and free mulattoes.

Resolved, That this general assembly approve the objects of "the American colonization society" and consider that these objects deserve public support, and that they ought to be fostered and encouraged by the national government, and with the national funds.

Resolved, That the senators of this State in Congress, with the representative from this State, be requested to approve and promote, in the councils of the nation, measures for removing from this country to Africa, the free coloured people who may be willing to emigrate.

Resolved, That the speakers of the two houses be requested officially to sign these resolutions, and forward a copy to each of our senators, and a copy to our representative in Congress.

ADOPTED AT DOVER, *February* 8, 1827.

CHAPTER LXXIV.

Secretary to have the 6th

RESOLVED, *by the Senate and House of Representatives of the State of Delaware, in General Assembly met,*

That the printed laws of this State, from the completion of the fifth volume to those passed in 1826, inclusive, shall constitute a sixth volume, and the secretary of this State is hereby authorized and required to have bound, in good and substantial binding, as many copies thereof as are to be found in his office, or can be procured from the offices of the different prothonotaries in the State, and from those belonging to the senate and house of representatives, with a complete index thereto annexed, which the said secretary is hereby authorized and required to make.

Volume of the laws bound, &c.

Index.

Resolved, That when the aforesaid sixth volume shall have been bound, the Secretary of State shall retain in his office ten copies, and deliver to the house of representatives twenty copies, and to the senate ten copies, and the remainder he shall equally divide between the respective counties, placing them in the hands of the different prothonotaries, who are authoized to sell the same at two dollars for each copy, make return thereof, as the law directs.

Distribution of the bound volumes.

5 vol. 373, 437.

ADOPTED AT DOVER, *February* 9, 1827.

CHAPTER LXXV.

RESOLVED *by the House of Representatives, with the concurrence of the Senate*, That Ezekiel Cowgill be and he is hereby appointed State-Treasurer.

E. Cowgill appointed State-Treasurer.

ADOPTED AT DOVER, *February* 9, 1827.

SECRETARY'S OFFICE,

DOVER, 27th April, 1827.

In obedience to the directions of an act of the General Assembly of the State of Delaware, entitled "An act to enjoin certain duties to be performed by the Secretary of State, and for other purposes," I have collated with, and corrected by, the Original Rolls, and caused to be published, this edition of the Laws of the said State, passed during the last Session of the General Assembly, which commenced on Tuesday the second day of January, and closed on Friday the ninth day of February, in the year of our Lord one thousand eight hundred and twenty-seven.

JOHN M. CLAYTON,
Secretary of the State of Delaware.

LAWS

OF THE

STATE OF DELAWARE.

CHAPTER LXXVI.

CHAPTER LXXVI. 1829.

AN ACT *authorising Manlove Jester of Newcastle county in the State of Delaware, to bring into this State from the State of Maryland a certain negro girl named Mary.*

PASSED AT DOVER, *January* 12, 1829. } PRIVATE ACT.

CHAPTER LXXVII.

AN ACT *for the partition of a certain real estate therein mentioned.*

PASSED AT DOVER, *January* 12, 1829. } PRIVATE ACT.

CHAPTER LXXVIII.

AN ACT *to appropriate the money in the treasury of this State.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the money now in the treasury of this State, shall be applied in the following manner, that is to say; so much thereof as may be necessary shall be applied to the payment of

Appropriation for paying the salaries of certain officers—

CHAPTER LXXVIII. 1829.

the salaries due and to become due to the governor, chancellor, judges of the supreme court and court of common pleas, attorney-general, secretary of state and auditor of accounts, up to the first Tuesday of January eighteen hundred and thirty; and so much thereof as may be necessary shall be applied to the payment of the daily allowance to the members of the General Assembly, their clerks and other expenses, and for printing the laws, and the votes and proceedings of the two branches thereof; and the residue thereof to the payment of any sums of money due to the citizens of this State, for which provision shall be made by law.

General Assembly, &c. Printing laws and journals. Claims of citizens.

PASSED AT DOVER, *January* 9, 1829.

CHAPTER LXXIX.

AN ACT *to enable Benjamin Watson to bring into this State certain negro slaves, and to hold them as such.*

PASSED AT DOVER, *January* 13, 1829.

PRIVATE ACT.

CHAPTER LXXX.

3 vol. 216.

A SUPPLEMENT *to an act entitled An act to incorporate the Reliance Fire Company of the Borough of Wilmington.*

Limitation of members extended—

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That so much of the first section of the act to which this is a supplement as limits the number of members to *sixty* be and the same is hereby repealed.

SECTION 2. *And be it further enacted,* That

said corporation shall not admit and have at any one time more than one hundred persons as members thereof.

to one hundred.

PASSED AT DOVER, *January* 14, 1829.

CHAPTER LXXXI.

AN ACT *to divorce Mary R. Marshall and Oliver E. Marshall from the bonds of matrimony.*

PASSED AT DOVER, *January* 14, 1829. PRIVATE ACT.

CHAPTER LXXXII.

AN ACT *to enable Stephens W. Wolford to bring into this State certain negro slaves and to hold them as such.*

PASSED AT DOVER, *January* 14, 1829. PRIVATE ACT.

CHAPTER LXXXIII.

AN ACT *to authorise Robert Armstrong to remove from this State to the State of Maryland certain negroes therein named and hold them as slaves.*

PASSED AT DOVER, *January* 15, 1829. PRIVATE ACT.

CHAPTER LXXXIV.

CHAPTER LXXXIV.

1829. AN ACT *authorizing Joseph Dutton of Sussex county in the State of Delaware to bring into this State from the State of Maryland a certain negro woman named Rachel, and her son named Daniel.*

PASSED AT DOVER, *January* 14, 1829. } PRIVATE ACT.

CHAPTER LXXXV.

AN ACT *authorising Ayres Stockly of Kent county of the town of Smyrna and State of Delaware, to bring into this State from the State of Virginia two certain negro boys, slaves.*

PASSED AT DOVER, *January* 16, 1829. } PRIVATE ACT.

CHAPTER LXXXVI.

2 vol. 1054. AN ACT *concerning the barring of estates tail and other interests.*

Estates tail—barred by deed; SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That a person having a legal or equitable estate or right in fee tail, in possession, remainder or reversion, in any lands, tenements or hereditaments shall have power to alien the said lands tenements or hereditaments in fee simple, or for other less estate, by deed, in the same manner and as effectually as if such estate or right were in fee simple; and furthermore, that the deed of alienation in fee simple of any person, of any lands, tenements or hereditaments shall have the

as effectually as by fine or

same effect and operation for barring all estates tail and other interests in the said lands, tenements and hereditaments as such persons being a party cognizor to a fine in due manner levied, or a party vouchee to a common recovery with a double voucher in due manner suffered of the said lands, tenements and hereditaments. But no deed shall avail within either of these provisions unless it shall be duly acknowledged or proved and recorded according to law, nor unless it be a valid and lawful deed sufficient to pass the premises therein, if the maker thereof were seized of said premises in fee simple.

common recovery.

Proviso.

SECTION 2. *And be it further enacted,* That the "act for docking estates tail" be and the same is hereby repealed; except so far as shall concern any deeds, matters or acts which have been made, transacted or done before the passing of this act.

Repeal of ch. ii. c. 2 vol 1054.

PASSED AT DOVER, *January* 19, 1829.

CHAPTER LXXXVII.

AN ACT *amending the act providing for the recovery of small debts.*

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the "act providing for the recovery of small debts" be amended in the fourth section by substituting in the clause "or on any *other* day, on which there shall be a constable in attendance before the justice" the word *subsequent* for the word "other," and in the sixth section by inserting after the words "wherein the sum demanded"—the words *by the plaintiff* or *insisted upon by the defendant,* and also by inserting after the words "unless the sum demanded"—the words *or insisted upon,* and in the ninth section by inserting after the word "witnesses,"—the words *unless the defendant shall have brought forward and insisted upon a de-*

6 vol 433.

6 vol. 436.

6 vol. 439.

6 vol. 441.

6 vol. 442. *mand exceeding that sum*, and in the eleventh section by inserting after the words "for a sum less than five dollars" the words *and thirty-three cents*, and in the twenty-fourth section by inserting after the word 6 vol. 454. "party," where it first occurs, the word *appealing*, 455. and by expunging from said section the words "and upon every case of appeal costs shall be awarded" and all the subsequent words to the end of said section and inserting instead thereof the following—*The party for whom judgment shall be given upon the appeal, shall, as a part of said judgment recover his costs, as well those before the justice as those upon the appeal: Except, that if a party appealing on the special ground of his demand or a part thereof being disallowed or defalked, shall not establish a demand exceeding what was allowed to him before the justice by at least the smallest sum, for the disallowance or defalcation whereof he had the right of appeal, he shall not recover his costs on the appeal, and he shall pay to the appellate his costs on the appeal; but if he shall establish a demand exceeding what was allowed to him before the justice by such smallest sum, then the appellate (altho' there may be still a sum due to him) shall recover no costs on the appeal;* and in the fourteenth 6 vol. 446. section, by substituting in the phrase "in the foregoing clause" the word *form* for the word "clause"

The act amended hereby shall be published as amended in future editions of the laws.

The sections aforementioned shall be read and construed according to the amendments of the same respectively hereinbefore prescribed; and in any edition of the laws of this State hereafter to be published, the act aforesaid shall be printed as amended by this act.

PASSED AT DOVER, }
January 19, 1829. }

CHAPTER LXXXVIII.

CHAPTER LXXXVIII. 1829.

AN ACT *to repeal an act therein mentioned.*

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the "act for preventing and punishing the counterfeiting of the common seal, bank bills and bank notes of the President Directors and Company of the Bank of North America, and for other purposes therein mentioned" be and hereby is repealed; and that the said act shall not have effect or operation by means of any act adopting the same, but so much of every act as adopts the same, is hereby repealed.

Ch xcvi—b, 2 vol. 773.

Sec. 19—4 vol. 102. Sec 2. 4 vol. 524. Sec. 15, 4 vol. 533. Sec. 8. 4 vol. 530.

PASSED AT DOVER, *January* 19, 1829.

CHAPTER LXXXIX.

AN ACT *concerning strays.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That any person taking up a stray shall immediately send notice thereof to the owner, if known, or if the owner be not known, shall within five days set up in four or more of the most public places within six miles from the place of taking up said stray, advertisements under his hand describing the stray by its colour and apparent age and size, and natural and artificial marks, and mentioning the time and place of taking up the same and the place where the same is. If the owner, or his agent shall not appear and shew his right in thirty days after giving such notice or setting up such advertisements, the person having possession of the stray shall make a statement under his hand contai-

Duty of person taking up a stray.

Duty of justice of the peace.

ning the same as the advertisements, and shall file the same with the justice of the peace for the county residing nearest to the place of the taking up, who shall appoint two judicious freeholders to be appraisers of such stray, and administer to them an oath or affirmation to appraise the same faithfully and impartially, and they shall certify to him their appraisement under their hands. The justice shall endorse upon the statement the appointment of the appraisers and that they were sworn or affirmed, which shall be a sufficient record thereof; and the justice within five days after the appraisement shall cause advertisements under his hand, containing the substance of said statement, to be set up at the court house door of the county and in five or more other of the most public and suitable places of the county, and when the appraised value exceeds fifteen dollars, shall procure such advertisements to be inserted for three weeks, successively, in one or more of the newspapers printed in this State; the expenses shall be paid by the person having possession of the stray.

Owner appearing—

If the owner, or his agent, shall within one year after appraisement appear and shew his right, he shall have the stray upon paying all proper charges, and in case the stray were taken trespassing, the damages of such trespass; such charges and damages may be assessed, if the owner or agent and person having possession of the stray, cannot agree, by the justice with whom the statement is filed, or before the filing of the statement, by the justice of the peace for the county residing nearest to the place of taking up; but if the sum claimed exceed six dollars, the justice, upon the application of either party, shall appoint three judicious and impartial freeholders to assess such charges or damages, and administer to them an oath or affirmation to determine the matter in controversy faithfully and impartially according to the best of their skill and judgment, and they or two of them agreeing shall certify their award under their hands which shall be conclusive.

Who shall assess damages, &c.

No owner appearing—duty of Justice—

If no owner or agent appear and shew right as aforesaid within one year from the date of the ap-

praisement, the justice with whom the statement is filed shall have power to make an order for the sale of the stray, and it shall be sold by a constable for the county by public vendue at some town or village, and the constable shall give the same notice of said sale as is required to be given of the sale of goods on execution, the justice making the order shall assess the charges and also the damages, if any, and the same shall be paid out of the price, and the balance thereof shall be paid to the county treasurer for the use of the county.

Duty of constable.

If a justice of the peace with whom a statement is filed, or any proceeding had under this act, shall die, resign, remove or cease to be in office, any further proceeding that may be requisite may be had before the justice with whom the records of such former justice shall be deposited or the justice residing nearest to the place of the taking up.

If justice die, &c. before whom proceedings shall be had.

Any person having the possession of a stray, if the same be a beast of burden, may moderately use the same. The stray, if faithfully taken care of, shall be at the risk of the owner.

Stray beasts of burden may be used.

A beast not twelve months old, unless following its dam, being a stray, shall not be deemed a stray.

2 vol. 842.

SEC. 2 *And be it further enacted,* That the fees under this act shall be—

Fees—

Of the justice—

For filing statement and advertising	0 50
For order of sale - - -	12½

of justice—

Of the constable selling—

For advertising - - -	33
Commissions on sale, on a dollar -	02

of constable—

Of the freeholders—each - - 25

of freeholders.

SEC. 3. *And be it further enacted,* That the act for the appointment of rangers and regulation of strays, shall be and hereby is repealed from and after the first day of June next, except so far as shall concern matters arising before that day, and this act shall go into operation on that day.

Repeal of—ch 130. b. 2 vol 841.

PASSED AT DOVER, *January* 20, 1829.

CHAPTER XC.
1829.

CHAAPTER XC.

AN ACT *to amend the act concerning apprentices and servants.*

Be it enacted by the Senate and House of Representatives of the State of Delaware ia General Assembly met, That the paragraph beginning with the words "and in the case" and ending with the words "decimal fractions" of the fourth section of the "act concerning apprentices and servants" be and hereby is repealed.

Repeal of—part of sec 4. ch. 41. 7 vol. 99.

PASSED AT DOVER, *January* 22, 1829.

CHAPTER XCI.

AN ACT *to divorce Happy Maria Millen and James Blake from the bonds of matrimony.*

PASSED AT DOVER, *January* 23, 1829.

PRIVATE ACT.

CHAPTER XCII.

AN ACT *concerning fines and forfeitures.*

Fines not otherwise appropriated shall belong to the State. Sec. 5. 2 vol. 605

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That all fines and forfeitures not otherwise appropriated by law, do and shall belong to the State; and every officer who shall collect or become chargeable with any such fine or forfeiture shall pay the same to the State-treasurer: and if any sheriff, constable or other officer who shall collect or become chargeable with any such fine or forfeiture shall not pay over the same in ninety days

Sec. 2. 2 vol. 1126 Duty of collecting officers.

after receiving or becoming chargeable with it, he shall pay, besides the sum of the said fine or forfeiture, the rate of twenty per centum per annum thereupon from the time of so receiving or becoming chargeable with the same; which rate shall accrue to the State and shall be charged in any account of the fine or forfeiture, and assessed in any suit for the recovery thereof. It shall be the duty of the clerk of the peace immediately after every term of the court of general quarter sessions of the peace and gaol delivery in his county to transmit to the State-treasurer an abstract of all such fines and forfeitures imposed by said court at said term; and if he fail to perform this duty, he shall, upon conviction, pay to the State a fine not exceeding one hundred dollars.

Penalty for neglect. Sec. 1. 5 vol. 120.

Duty of the clerk of the peace.—

Penalty for neglect.

Action may be brought in the name of the State against any officer for money received by or legally chargeable to him for fines, forfeitures or fees appertaining either to the funds of the State or to the fund for establishing schools in this State.

Action may be brought in the name of the State. 4 vol. 595.

SEC. 2. *And be it further enacted*, That the "act for ascertaining the salaries and allowances to the officers and persons therein mentioned employed in the government of this State and providing a fund for the payment thereof"—and the second section of the "act to regulate and appropriate certain finances of this State," and the "act declaring the manner of instituting suits for recovering sums therein mentioned" and the first section of the "act to secure the punctual payment of public monies and for other purposes" be and are hereby repealed: except so far as shall concern any money heretofore received by any officer, for fines or forfeitures or fees.

Repeal of—ch. 6. b. 2 vol. 604.

Sec. 2. ch. 28. c.—2 vol 1126. Ch. 223—4 vol. 595.

Sec 1. ch. 70. 5 vol 120.

PASSED AT DOVER, *January* 23, 1829.

CHAPTER LXXXIV.
1829.

CHAPTER XCIII.

AN ACT *declaring certain acts obsolete.*

Declaring obsolete.
Ch 2 a 1. vol. 51.
ch. 5. a. 1 vol 52.
ch 174 b 2 vol. 921.
ch. 12 a. 1 vol 55.
ch. 14. a. 1 vol. 57.
ch 122. a. 1 vol. 299.
ch. 231. a. 1 vol. 587.
ch 54. b. 2 vol. 690.
ch 49. 3 vol. 123.

SECTION 1. *Be it declared and enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the "act against buying land of the natives,"—and the "act for naturalization"—and the supplementary act to the said act and the "act about seven years possession,"—and the "act for regulating weights and measures," and the "act for making and establishing a new great seal for the use of this government,"—and the "supplementary act to the act entitled an act for the more effectual ascertaining and fixing the limits of the several counties within this government and for remedying some inconveniencies that may arise by the late establishment of the boundaries and divisional lines between the same and Maryland," and the act for the amendment of the said supplementary act,—and the "act to establish and regulate a public ferry over Christiana creek at the village of Newport in Newcastle county" are obsolete.

Also—
ch. 128. a. 1 vol. 319
ch. 162. a. 1 vol. 352.
ch. 174. a. 1 vol. 385.
ch. 178. a. 1 vol. 396.

Also that the "act for the new appointment of trustees for the several general loan officers within this government,"—and the "act for reprinting, exchanging and re-emitting twenty thousand pounds of the bills of credit of this government, to be let out on loan; and for striking the further sum of seven thousand pounds in such bills, and giving the same to his majesty's use and for providing a fund for sinking the same,"—and the "act to authorize and empower Benjamin Chew and William Plumstead, esquires, of the city of Philadelphia, to draw for the sum of three thousand and seventy-five pounds, nine shillings and eleven pence sterling, now in the hands of the agent of this government residing in London, and to direct the appropriation of said money"—and the "act to authorize and empower Benjamin Chew, esquire, of the city of Philadelphia, and in case of his death William Plumstead, esquire, of the city of Philadelphia, to draw for the sum of

three thousand seven hundred and forty-five pounds seventeen shillings and ten pence sterling now in the hands of the agent of this government residing in London, and to direct the appropriation of said money,"—and the "act for the new appointment of trustees for the several general loan offices within this government," passed June 16, 1769; and the "act for the new appointment of a trustee of the general loan office in Sussex county,"—and the "act for emitting the sum of thirty thousand pounds in bills of credit on loan, and providing a fund for the payment of public debts,"—and the "act for printing and emitting fifteen thousand pounds in bills of credit of this State to be let out on loan; and for striking the further sum of ten thousand pounds in such bills for the use of this State and for providing a fund for sinking the same,"—and the "act for raising one hundred and twenty thousand dollars in the Delaware State for the service of the year one thousand seven hundred and seventy eight, by a general tax,"—and the "act for raising one hundred and ninety eight thousand dollars in the Delaware State for the service of the year one thousand seven hundred and seventy-nine by a general tax"—and the "act for the recovery of public monies from the late trustees of the loan office in Sussex county and others therein named,"—and the "act for raising an additional sum of four hundred and ninety-five thousand dollars in the Delaware State for the service of the year one thousand seven hundred and seventy-nine by a general tax,"—and the "act for the appointment of trustees of the general loan officers in the respective counties of this State"—and the "act for raising one million three hundred and sixty thousand dollars in the Delaware State between the first day of February and the first day of October in the year one thousand seven hundred and eighty and for other purposes therein mentioned,"—and the "act for furnishing supplies within this State for the army of the United States for the ensuing campaign,"—and the "act for procuring an immediate supply of provisions within this State for the army of the United States of America, and for other purposes there-

ch. 191. a. 1 vol. 437.

ch. 219. a. 1 vol. 506.

ch. 230, a. 1 vol. 571.

ch. 8. b. 2 vol. 608.

ch. 22. b. 2 vol. 627.

ch. 38 b. 2 vol. 647.

ch. 41. b. 2 vol. 656.

ch. 46. b. 2 vol. 670.

ch. 51. b. 2 vol. 679.

ch. 53. b. 2 vol. 682.

ch. 56. b. 2 vol. 692.

ch. 61. b. 2 vol. 704.

ch. 63. b. 2 vol. 709. in mentioned,"—and the "act for furnishing the continental treasury with one hundred and thirty-two thousand eight hundred dollars by loan on the ch. 67. b. 2 vol. 715. credit of the State,"—and the "act for payment and discharge of divers receipts, notes, or certificates in the hands of the inhabitants of this State issued by Francis Wade, esquire, deputy quarter master general within this State for the continental army and his agents or assistants, for forage and other articles furnished by them to the said department ch. 68. b. 2 vol. 718. for the public service," and the "act to suspend for a limited time the operation of the several acts of Assembly of this State for making the bills of credit of the United States and of this State a legal tender in payment of debts, equal to gold and silver,"— ch. 71. b. 2 vol. 719. and the "act for calling out of circulation and cancelling the quota of this State, according to the present apportionment, of all the bills of credit emitted by Congress, and for emitting and funding new bills according to the resolutions of Congress of the eighteenth day of March last, and for other purposes," ch. 77. b. 2 vol. 748. and the supplementary act to the said act, passed ch. 85. b. 2 vol. 763. June 18, 1781; and the additional supplementary act to the said act, passed November 13, 1781;— ch. 75. b. 2 vol. 741. and the "act for raising seven thousand, eight hundred and seventy-five pounds, in specie, for the service of the year one thousand seven hundred and eighty-one by a general tax,"—and the "act for ch. 74. b. 2 vol. 739. stating the accounts of the several loan offices and of commissioners into whose hands any public monies have come by virtue of laws passed under the former government, and for repealing part of an act for the appointment of trustees of the general loan offices in the respective counties of this State,"—and the "act for raising twenty-three thousand, six hundred ch. 83. b. 2 vol. 751. and twenty-five pounds in specie for the service of the year one thousand seven hundred and eighty-two, and the "act for ascertaining the depreciation of the pay accounts of divers persons in the several departments of the army, who are credited to this State as part of the quota of the land forces thereof and for other purposes;" and the supplement to the ch. 103. b. 2 vol. 784. said act passed June 21, 1783; and the "act for the

discharging of the half pay to the widows or children of the officers of the Delaware Regiment who have died or may die in the service of the continent;"—and the "act for the levying and collecting divers sums of money remaining due for taxes in continental bills of credit herein mentioned, and for other purposes;"—and the "act for raising twenty-two thousand five hundred pounds for the service of the year one thousand seven hundred and eighty three;" and the "act for raising twenty three thousand, six hundred and twenty-five pounds for the service of the year one thousand seven hundred and eighty-four,"—and the "act for calling in and destroying such of the bills of credit emitted by virtue of any law of this State, passed under the present or former government thereof, as are now outstanding and for other purposes therein mentioned,"—and the supplementary act to the said act, passed June 24, 1786; and the further supplement to said act, passed June 8, 1787; and another supplement to said act, passed February 3, 1789; and a further supplement to said act, passed June 27, 1790; and an additional supplement to said act, passed January 29, 1791; and the "act for raising ten thousand five hundred pounds for the service of the year one thousand seven hundred and eighty-five;"—and the "act for raising twenty-three thousand six hundred and twenty-five pounds for the service of the year one thousand seven hundred and eighty-six,"—and the "act for raising ten thousand five hundred pounds for the service of the year one thousand seven hundred and eighty-seven;"—and the "act to alter and supply certain parts of said act, &c." passed November 10, 1787;—and the supplement to the last mentioned act, passed February 2, 1788;—and the "act for raising twelve thousand six hundred pounds for the service of the year one thousand seven hundred and eighty-nine, in addition to the arrearages due on former taxes,"—and the "act for raising five thousand two hundred and fifty pounds for the service of the year one thousand seven hundred and ninety,"—and the "act to establish a fund

ch. 95. b. 2 vol. 771.
ch. 97. b. 2 vol. 774.
ch. 99. b. 2 vol. 776.
ch. 107. b. 2 vol. 787.
ch. 113. b. 2 vol 801.
ch. 141 b. 2 vol. 867.
ch. 161 b 2 vol 906
ch. 192. b. 2 v. 937.
ch 202, b. 2 v. 960.
ch 229, b. 2 v. 1016
ch 124. b. 2 v. 823.
ch. 138, b. 2 v. 852.
ch. 156, b. 2 v. 895.
ch. 165, b. 2 v. 909.
ch. 170, b. 2 v. 918
ch. 198, b. 2 v. 945.
ch. 213, b. 2 v. 977.

ch. 59, c. 2 v. 1183. for the support of government," and the "act making provision for the support of government for the year one thousand seven hundred and ninety-five, and for other purposes,"—and the "act making provision for the support of government for the year of our Lord one thousand seven hundred and ninety-six;"—and the "act making provision for the support of government for the year of our Lord one thousand seven hundred and ninety-seven," are obsolete.

ch. 77, c. 2 v 1204.

ch. 106, c. 2 v. 1299.

ch 128. c. 2 v. 1343.

Ch 57, b 2 vol. 701 SEC. 2. *And be it further declared and enacted,* That the "act for conferring certain privileges and immunities on the subjects of his most Christian Majesty the King of France within this State, has ceased to be in force in consequence of the provision contained in the third section thereof.

PASSED AT DOVER, *January* 19, 1829.

CHAPTER XCIV.

AN ACT *to repeal certain acts.*

Repeal of— ch. 25, a. 1 vol. 80. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the "act obliging all non-residenters within this government to give security to the prothonotaries of these counties before any writ can issue from the said offices for the payment of costs;" —and the third, fourth and fifth sections of the "act for the better confirmation of the owners of lands, and inhabitants of this government in their just rights and possessions;"—and the last clause, beginning with the words "to be recovered" of the "act to oblige witnesses being legally summoned to give evidence,"—and the "act against speaking in derogation of courts,"—and the second section of the "act about defalcation,"—and the "act providing for the security and defence of the town of Lewes, in the county of Sussex within this government,"—

§3, 4 5 of ch. 28, a. 1 vol 86.

part of— ch 38, a. 1 v. 99

ch. 52, a. 1 v. 120

§2 ch. 64, a. 1 v 162.

ch 68, a. 1 v. 175.

and the "act about departers out of this government"—and the "act to prevent the unseasonable killing of deer within this government;"—and the "act to encourage the killing of wolves within this government,"—and the "act for establishing a market in the town of Dover in the county of Kent, and in the town of Lewis in the county of Sussex within this government,"—and the "act for the amendment of said act;"—and the "act for establishing a market in the town of Newark and for regulating the same,"—the twelfth section of said act excepted; and the second section of the "act for the easing scrupulous consciences, in the mode of taking an oath,"—and the supplement to the act entitled "an act for regulating and establishing fees,"—and the "act for the better ordering, assessing, levying and collecting of taxes, and making provision for the support of government for the year of our Lord one thousand seven hundred and ninety-eight," be and hereby are repealed.

ch. 72, a. 1 v. 187. ch 74, a. 1 v. 191. ch 101, a. 1 v. 256. ch 99, a. 1 v. 249. ch 124, a. 1 v. 303 ch. 213, a. 1 v. 518, except §12. §2 of ch. 224, a. 1 vol. 543. ch. 89, b 2 v. 769. ch 10, 3 v. 26.

Also that the "act to limit the continuance of actions in the respective courts of common pleas in this government,"—and the fourth section of the "act to revive the proceedings of the commissioners of the land office in Kent county and for other purposes," —and the tenth section of the "act for the better regulation of the supreme court within this government,"—and the "act requiring foreigners to give security in suits prosecuted by them in certain cases and for other purposes" be and the same are hereby repealed;

Ch. 130, a. 1 vol. 314. §4, ch. 132, c. 2 vol. 1351. §10, ch 167, a. 1 vol. 379 ch. 37, 3 vol. 79.

Also that the "act to prevent abuses committed by destroying timber and other trees within this government" be and hereby is repealed.

Ch. 85, a. 1 vol. 226.

Also that the "act for supplying the loss of records in particular cases" be and hereby is repealed.

Ch. 33, 3 vol, 72.

And that the last clause beginning with the words "and the commissioners" of the eight section of the additional supplement to the act entitled "an act for the valuation of real and personal property within this State" be and hereby is repealed;

Clause of ch. 125, c. 2 vol. 1330.

CHAPTER XCIV. 1829.

And the joint resolution of the Senate and House of Representatives respecting the laying out of the money appertaining to the fund for establishing schools in this State, adopted at Dover, February 13, 1816, be rescinded.

PASSED AT DOVER, *January* 19, 1829.

CHAPTER XCV.

AN ACT *concerning costs in civil suits.*

3 Blac. Com. 399, 400. costs—upon discontinuance. non-pros. nolle prosequi, retraxit or non-suit, &c. by whom recovered.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That in a court of law whether of original jurisdiction or of error, upon a discontinuance, non-pros, nolle prosequi, retraxit or non-suit, there shall be judgment for costs for the defendant; and generally a party, for whom final judgment is given in any civil action, or on a writ of error upon a judgment in such action shall recover against the adverse party costs of suit to be awarded by the court: and concerning costs upon rules or interlocutory matters such order shall be made in each case, as shall be deemed just. If final judgment be given for the defendant in a civil suit, which is in the name of the State for the use of any person or corporation, judgment for costs shall be given against the said person or corporation.

costs on rules, &c.

upon suit in the name of the State—

costs in equity:

A court of equity, the registers court, the orphans court and the supreme court exercising appellate jurisdiction from the two last mentioned courts, shall make such order concerning costs in every case as shall be agreeable to equity.

Costs before a Judge, &c. out of court. 7 vol. 105, §14 9 vol. 474—6.

In a case before a judge or the chancellor, out of court, there may be allowed for the service of process, or the attendance of witnesses, a reasonable fee, not exceeding what is allowable for like service or attendance, according to the "act providing for the recovery of small debts," and the judge or chancel-

lor may make order for the payment, as he shall consider just, and enforce obedience by attachment.

But this act shall not contravene the thirty-seventh section of the "act providing for the recovery of small debts," nor entitle a party to costs in any case in which it is provided by act of the General Assembly that he shall not have costs.

Proviso. §37, ch. 263, 5 vol. 467.

SECTION 2. *And be it further enacted*, That the clause in these words—"The foregoing provisions shall extend to any execution issued by a justice or justices of the peace" of the first section of the "act for regulating fees" be and hereby is repealed; and the said last mentioned act shall also be amended in said first section by inserting the word *or* between the words "due by will" and the words "upon executors."

Repeal of part of §1, ch. 347, 6 vol. 656.

amendment of, §1, ch. 347, 6 vol. 652.

PASSED AT DOVER, *January* 19, 1829.

CHAPTER XCVI.

AN ACT *concerning the administering of certain oaths and affirmations.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That the persons appointed or authorized by any decree, order, rule or commission made in, or issued out of the high court of errors and appeals, the court of chancery, the supreme court, the court of common pleas, the court of general quarter sessions of the peace and gaol delivery, or the orphans court, to perform any duty, or for any purpose, shall severally have authority to administer to each other and to any surveyor or person by them employed, and to any witness produced before them, any oath or affirmation required or proper to be taken in the case.

5 vol. 238.

Persons appointed by the courts to perform any duty, may swear each other—

and also the surveyor, and witnesses—

surveyor may swear chain carriers.

Every surveyor shall have authority to administer the proper oath or affirmation to chain carriers acting under him.

Form of oath shall accompany the rule, &c.

The form of the oath or affirmation required to be taken by persons appointed or authorized as aforesaid, with directions for administering the same shall accompany every commission, rule or order issued out of any court as aforesaid.

Chancellor, &c. may administer oaths.

The chancellor, each of the judges, every justice of the peace and every notary public in this State, shall have authority in every case, in which an oath or affirmation is necessary or proper, to administer such oath or affirmation.

Repeal of ch 141—5 vol. 238.

SECTION 2. *And be it further enacted,* That the "act for the administration of certain oaths and affirmations" be and hereby is repealed.

PASSED AT DOVER, *January* 20, 1829.

CHAPTER XCVII.

AN ACT *to authorize John B. Scotten to bring into this State from the State of Maryland, a certain negro girl, slave.*

PASSED AT DOVER, *January* 22, 1829.

PRIVATE ACT.

CHAPTER XCVIII.

AN ACT *appointing the places of holding the courts.*

High court of Errors and appeals shall be held at Dover.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the high court of errors and appeals shall be held at Dover, in Kent county. The court of chancery, the orphans court, the supreme court, the courts of oyer and terminer

Other courts at

and general gaol delivery, the court of common pleas and the court of general quarter sessions of the peace and gaol delivery shall be held in Newcastle county, at Newcastle; in Kent county, at Dover; and in Sussex county, at Georgetown. But if at any term or on any occasion for holding either of the aforesaid courts, persons cannot attend at the place hereby appointed for that purpose, without peril on account of malignant sickness prevailing there, or other cause, the chancellor, in respect to the court of chancery and orphans court, the judges of the supreme court, or any two of them, in respect to the said court and court of oyer and terminer and general gaol delivery, the judges of the court of common pleas, or any two of them, in respect to the said court and the court of general quarter sessions of the peace and gaol delivery, and the chancellor and judges, or any four of them, in respect to the high court of errors and appeals, shall have power to appoint a different place, in the same county, of holding such court for such term or occasion, and to make all rules and orders requisite for holding such court at the place so appointed for such term or occasion, and for the return of process and the continuance of proceedings.

Newcastle—in Newcastle county; Dover, in Kent; Georgetown, in Sussex.

5 vol. 14 17.

In case of malignant sickness—who may remove the courts

SEC. 2. *And be it further enacted*, That in case of invasion of this State by a foreign enemy or imminent danger thereof, the chancellor and judges residing in a county, or any two of them, shall have power to direct the removal of the records and papers belonging to the public offices in such county, to a place of safety, and from place to place as may be deemed expedient. The records and papers so removed shall be returned to the proper office as soon as the safety thereof will admit. The officer, the records and papers of whose office shall be so removed, may do the business of his office at the place to which the same shall be removed.

5 vol. 15, §2.

In case of invasion or danger thereof, who may remove the public records and papers.

When they shall be returned.

SEC. 3. *And be it further enacted*, That the "act for aiding the discontinuance of process in the supreme court," &c. passed February 22, 1777; and the supplement to the "act for removing the seat of justice from Lewes to a more central part of

Repeal of—ch. 5, b. 2 vol. 602.

ch. 237, b. 2 v. 1022.

Sussex county and for other purposes,"—and the "act to provide for temporarily holding the courts at other places than is now established by law and for the security of the public papers" be and the same are hereby repealed;—and that the words "four times in every year" and the clause beginning with the words "viz. at Newcastle" and ending with the words "said months" of the first section of the "act for the establishing courts of law and equity within this government," and the clause beginning with the words "and shall be holden" and ending with the words "said months" of the fifteenth section of said act; and the clauses beginning with the words "four times" and ending with the words "every county" of the twenty-first section of said act; and the clause beginning with the words "that is to say" and ending with the words "next day following" be and hereby are repealed; and in any subsequent edition of the laws of this State shall be expunged;—and also that the last clause beginning with the words "and that all process" of the fourth section; and the fifth and seventh sections of the "act for removing the seat of justice from Lewes to a more central part of Sussex county and for other purposes" be repealed.

ch 5, 3 v. 14. —of parts of— ch. 54, a 1 vol. 121.

1 vol. 128.

1 vol. 130.

ch 167, a. 1 v. 375.

ch. 222, b. 2 v. 1004, 5.

PASSED AT DOVER, *January* 23, 1829.

CHAPTER XCIX.

AN ACT *for the establishment of free schools.*

Levy-court to divide the county into school districts.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That it shall be the duty of the levy court and court of appeal in each county to cause their county to be divided into convenient school-districts. In making this division it shall be a general regulation, to form each district so that the most remote parts shall be two miles, or about

rule of division.

that distance, from the centre, but this form and extent may be varied from, to bound a district by clearly defined lines or to accommodate other districts; and a district comprehending a town, or part of a town, may be of such dimensions as shall be deemed just, having respect to the population.

Levy-court shall appoint five commissioners to divide the county.

To effect this division the said court in each county shall, at their meeting in March next, appoint five commissioners, and they or a majority of them acting together shall divide the county as aforesaid. If a vacancy happen in the place of a commissioner, any Judge of the Supreme Court, or Court of Common Pleas, of the proper county, shall fill it upon application of the remaining commissioner or commissioners. And each and every of the commissioners appointed as aforesaid, shall be sworn or affirmed, to perform his duty with fidelity; which oath or affirmation may be administered by any Judge or Justice of the Peace of their respective counties.

Vacancies how filled.

Commissioners to be sworn &c.

Their duties.

The commissioners in each county at the time of dividing the county into districts, shall ascertain the number of schools in operation, the number of scholars taught therein and the several sums paid to the teachers, and shall form an estimate of the number of children in each district, between the ages of five years and twenty-one years, and shall make return thereof with their doings under this act to the clerk of the peace of their county, who shall also make return thereof to the Trustee of the school fund to be by him laid before the General Assembly in January next.

Clerk of the peace—Trustee of the school fund.

Board of commissioners to meet on the first Monday of August next.

The commissioners in each county shall meet at the Court house of their county on the first Monday of August next, before which time they must complete the duty assigned them. They shall form a board; they may adjourn from day to day; a majority shall be a quorum, but a less number may adjourn. This board shall have authority to review the proceedings of the commissioners, to supply any deficiency, and to alter or form the bounds of any district. The said board shall cause a return to be drawn, describing all the districts and mentioning a

Its powers—and duties.

convenient place in each for the meeting of the school-voters; and the said return shall be signed by the commissioners, or a majority of them, and delivered to the clerk of the peace for their county; and he shall cause to be posted in one of the most public and suitable places in each district, an extract, certified under his hand, from said return, of the description of said district.

Clerk of the peace to publish a description of the districts.

The court aforesaid in each county shall meet at the court house of their county on the last Monday of August next, and shall examine the return aforesaid, and shall hear any objections that may be made; and the said court, two thirds of the members present concurring, may make any corrections or alterations of the said return which they shall consider proper for the more convenient and just division of the county into school districts. They may supply any deficiency by proper insertions, which shall be deemed a correction of the return. The school districts as the same shall stand upon the said return as corrected or altered by the said court shall be permanent. The said court shall give to each district a designation by number and shall appoint a place in each for the meeting of the school-voters; which number shall be inserted in the return immediately preceding the description of the district to which it belongs, and the place of meeting shall also be inserted in the return immediately following said description, and shall be connected with the description by such words as to be intelligible, which insertions shall be deemed corrections by the said court. The said court shall cause a fair transcript to be made of said return as corrected and altered, and said transcript shall be examined in the presence of said court, and attested by the clerk of the peace under his hand and seal of office. The said clerk shall enter the said transcript at large, upon the minutes of the said court; the entry shall be deemed a record, and an office copy shall be evidence. He shall cause a copy of said transcript to be inserted in each of the newspapers printed in this state for two weeks in succession; the first insertion to be within ten days after the attestation of the tran-

Levy court shall meet on the last Monday of August next—

May correct returns of commissioners—

and number the districts, &c.

Clerk of the peace shall record a transcript of the return—

and publish the same—

script. He shall also certify under his hand and seal of office to the "trustee of the fund for establishing schools in the State of Delaware" the number of school districts, and the part of the county in which each number is situated, and it shall be the duty of the said trustee to lay a copy of the returns of the several clerks of the peace in this state, before the General Assembly at their session in January next.

And make return to the trustee of the school fund—

Who shall lay a copy before the General Assembly.

The court aforesaid in each county, two thirds of all the members concurring, may, upon application, make from time to time alterations of school-districts, when such alterations shall appear expedient; due regard being had to the conveniencies and inconveniencies to result therefrom. But notice of the intended application to said court, and of the time and place of making it, and of the alterations desired, shall be given by advertisements posted in four or more of the most public places in each district that will be affected by the alterations twenty days before the application is made, or the court shall not receive it.

Levy-court may from time to time alter school districts.

The proceedings of the said court touching any of the premises shall not be drawn in question elsewhere.

SECTION 2. *And be it further enacted*, That the school voters in each school-district shall hold a stated meeting every year on the second Monday of October, at one of the clock in the afternoon (the first meeting to be on the second Monday of October next at said hour) at the place appointed by the court aforesaid, for such meeting, until there shall be a school house built or procured for the district, and then at such school house. Every person residing within a district, and having right to vote for representatives in the General Assembly, shall be a school-voter of said district. Any number of school-voters assembled at a stated meeting may proceed with business, and their proceedings shall have the same force as if all the school-voters of the district were present. At every stated meeting the school-voters present shall appoint

School-voters—annual meeting of—

Place of meeting.

Qualifications of—

Any number of voters may proceed to business—

and appoint a

chairman and secretary—and elect, by ballot, a clerk and two commissioners of the district—and resolve what sum shall be raised by subscription.

a chairman and secretary of the meeting, and shall thereupon elect, by ballot, by a majority of votes from the school-voters of the district, a clerk and two commissioners of the district, and shall resolve, by a majority of votes, what sum shall be raised by subscription or by voluntary contribution, in the said district for building, procuring or maintaining a school house, or for the support of a free school in the said district. A stated meeting after appointing a chairman and secretary, may adjourn, and the proceedings at the adjourned meeting, shall be of the same nature and force, as if had at the original meeting.

The meeting may adjourn.

Clerk of the peace, to give notice of the meeting in October next.

Notice of the stated meeting in October next shall be given by advertisements, signed by the clerk of the peace, posted in five or more of the most public and suitable places in each district, mentioning the day, hour and place of meeting in such district, at least five days before the day of meeting. It shall be the duty of the clerk of the peace for each county to prepare advertisements and cause the same to be posted accordingly. It shall be the duty of the clerk of the district for the time being to give notice of any subsequent stated meeting by advertisements under his hand, of the day, hour and place thereof, posted in five or more of the most public and suitable places of the district at least five days before the day of meeting. If there be no clerk of the district, the commissioners of the district or one of them shall perform the same service. The proceedings of a stated meeting shall not be void or irregular, altho' no notice of such meeting be given; but if any clerk of the peace, or any clerk or commissioner of a district shall fail to perform truly and faithfully the duty herein enjoined upon him, he shall forfeit and pay to the school-district wherein such failure happens the sum of ten dollars.

Clerk of the district—his duty.

To be performed by the commissioners—when—

Penalty for neglect.

Mode of calling occasional meetings.

Occasional meetings of the school-voters of a district may be called by the clerk and commissioners or any two of them by advertisements of the business, and of the day, hour and place of the meeting, posted in five or more of the most public places of

the district, at least five days before the day of meeting. No occasional meeting shall be held except at the school-house, or if there be none, at the place appointed as herein-before provided for the meeting of the school voters. Any number of the school-voters met pursuant to such call, may appoint a chairman and secretary, and transact any business mentioned in the advertisements; except, that a resolution to raise money in the district shall not be passed at any occasional meeting unless a majority of the school-voters of the district be present; and if such resolution be proposed at an occasional meeting the chairman and secretary shall ascertain the number of school-voters present, and a note of said number shall be made among the minutes of the proceedings and shall be conclusive unless it can be proved fraudulent. No business not mentioned in the advertisements calling an occasional meeting shall be transacted at such meeting; and at every occasional meeting the chairman and secretary shall enquire respecting the advertisements thereof, and a note shall be made among the minutes of the proceedings, of the places in which, and of the time when advertisements of the meeting were posted and of the business mentioned in the advertisements; and such note shall be conclusive, unless it can be proved fraudulent.

What may be done thereat.

Two certificates of the proceedings of every meeting of school-voters shall be made and signed by the chairman and secretary: one shall be delivered to the clerk of the district, the other to the clerk of the peace of the county to be preserved among the papers of the court aforesaid. If a chairman or secretary of an occasional meeting of school-voters shall wilfully make or certify a false note of the number of school-voters present at such meeting, or respecting the advertisements of such meeting; he shall be deemed guilty of a misdemeanor and on conviction shall forfeit and pay to the State a fine not less than twenty nor exceeding one hundred dollars.

Proceedings of the meetings shall be certified— to the clerk of the district— and the clerk of the peace.

Certifying falsely to be a misdemeanor:

Forfeiture therefor.

If any person not being a school-voter of a district, shall vote at a stated, or occasional meeting

Penalty for illegal voting at

a meeting of school-voters.

of the school-voters of such district he shall be deemed guilty of a misdemeanor, and on conviction shall pay to the State a fine of fifteen dollars.

Provision in case of the failure of school voters in any district to meet on the day herein appointed.

If in any district on the second Monday of October next, or in any subsequent year, there shall not be a meeting of the school-voters, or the officers mentioned herein shall not be elected, or a resolution to raise money in such district shall not be passed, the said district shall not thereby lose the power to proceed under this act; but meetings adjourned, occasional or stated, may be held in said district according to this act; and if there be no clerk or commissioner of a district to give notice of a stated meeting in any year, such notice shall be given by the clerk of the peace for the county, upon application of five or more of the school-voters of such district; and the said clerk is required, upon such application, to give notice of the stated meeting in the same manner as herein-before prescribed with respect to the stated meeting in October next, and he shall incur the like penalty for failure.

Notice of meeting shall be given by the clerk of the peace in certain cases.

School committee.

SECTION 3 *And be it further enacted*, That the clerk and commissioners of each district elected as aforesaid, shall be the school-committee of the district, and shall continue in office until the next stated meeting after their election and until successors to them are duly elected. Each member of the school-committee shall be sworn or affirmed to perform his duty with fidelity, which oath or affirmation each member may administer to the other. Their powers and duties shall be:

To be sworn.

Their powers and duties.

1. To provide school-house, &c.

1. To determine the site, lease or purchase the necessary ground and build or procure a suitable school-house for the district. The school-house shall be as near the centre of the district as circumstances shall admit. When a school-house is built or procured for a district, this power shall not extend to the removal of it or the building or procuring another while it remains. But the school-voters of any district, may at any stated meeting of the said district, authorize the clerk and commissioners thereof to remove the school-house, and if necessity require to build or procure another.

2. To maintain the school-house when built or procured and see that it is kept in good repair and uninjured, and to cause action to be brought for any injury if expedient; to provide proper furniture for the school-house; and supply necessary fuel. 2 To maintain school-house.

3. To provide a school for the district for such periods as the funds in their power will enable them, and employ teachers and make all necessary arrangements. They shall employ as a teacher no person whom they shall not have just grounds to believe to be of good moral character and well qualified to teach reading, writing, arithmetic and english grammar, and such other branches of knowledge as the committee may deemed necessary to be taught in their district. They may employ a female teacher, (in respect to whom the qualification of reading and writing may be sufficient) in the summer months or other parts of the year, when small children can attend school, and others are engaged in the common occupations of the country. They may dismiss a teacher. 3. To employ teachers. Qualifications of teachers. Female teachers.

4. To receive and collect all money appropriated for the district or to be raised in it according to the resolution of a meeting of the school-voters and to apply the same justly. 4. To receive and apply monies.

5. To appoint a collector of the district and take from him security for the faithful performance of his duties; they shall have power to fill a vacancy in said office. It shall be the duty of the collector to collect and receive the money so as aforesaid resolved to be raised in the district and shall on or before the first Monday of January in each and every year pay to the school-committee the amount of money which may have come into his hands, for the use of said district, deducting five per centum on the sum collected. 5. To appoint a collector and take bond from him.

6. To do all acts requisite for effecting the premises. 6. To do all other necessary acts.

The bond of the collector may be according to this form. Collectors' bond.

Know all men by these presents, That we ——— ——— are firmly bound, jointly and severally, to school district No. ——— in ——— county, in the Form.

sum of ——— to be paid to the said school-district. Sealed with our seals. Dated the ——— day of——— 18 ——

Condition.

The condition of the above written obligation is such, That if the said ——— ——— who is collector of the school-district aforesaid, shall well and faithfully execute said office and perform all his duties as such collector, then the said obligation shall be void.

The acts of a majority of the school-committee shall be as effectual as if done by them all.

Clerk of the district, his duty.

The clerk of the district shall keep a record book of the district, in which he shall enter the bounds and description of the district to be taken from the transcript in the court aforesaid, a copy of the certificate of the proceedings of every meeting of the school-voters of a district: and the proceedings of the school-committee, and the names of the scholars attending the school, a list of whom shall be furnished by the teachers. The said book shall be evidence. He shall keep all the papers belonging to the district or to the school-committee.

Income of the school fund apportioned and appropriated.

SECTION 4. *And be it further enacted*, That the clear income of "the fund for establishing schools in the State of Delaware" hereafter to accrue, shall be and the same hereby is apportioned and appropriated among the school districts in the several counties as follows; that is to say; all the dividends or profits that shall hereafter be declared or accrue upon stock in the Farmers' Bank of the State of Delaware; upon stock in the Bank of Delaware; upon stock in the Bank of the United States, or upon any other stock, property or securities, belonging to said fund (commissions and necessary expenses being deducted) together with the clear sum arising from fees for marriage and tavern licenses received in the several counties, shall be divided into three equal parts, and one of the said parts shall be divided among the school districts in such county, to each an equal share. The trustee of the said fund as the said clear income shall accrue, shall apportion it among the school districts; keeping an account with each and entering its portion to its credit: such

Mode of distribution.

Trustee of the school fund, his duty—

accounts with the school-district in each county, to be opened as soon as the clerk of the peace certifies the districts to the trustee; the clear sum arising from fees for marriage and tavern licenses is considered in this direction as part of said clear income. When the school voters of a district have in regular meeting resolved that a sum shall be raised in said district for building, procuring or maintaining a school-house, or for the support of a free school; and the school-committee of the district have received an equal sum for the benefit of the district, the said committee or a majority of them may draw an order on the trustee of the fund aforesaid for a sum equal to the sum so resolved to be raised. There shall accompany this order as vouchers, a copy verified under the hand and seal of the clerk of the peace of the certificate in his office of the proceedings of said meeting, and also a certificate under the hands of the said committee or a majority of them, that they have received for the benefit of the district a sum equal to that resolved to be raised as aforesaid. Such order accompanied by such vouchers shall be accepted and paid by the said trustee, if a sufficient sum stand to the credit of the district; if a sufficient sum do not stand to the credit of the district, when the order is presented, the sum in hand shall be paid, and any money that shall be placed to the credit of the district during the year of the account shall be applicable to the balance. A greater sum than that which the school voters have resolved shall be raised in the district, shall not be paid on such order. The year of the accounts with the school districts shall commence on the fourth day of July; and at the end of every year so commencing, the accounts of all the districts shall be closed; an order shall not be drawn or presented in a subsequent year on the ground of a sum standing to the credit of a school-district or raised in such district the preceeding year; but any sum or balance remaining to the credit of a school district in either county at the end of the year shall be carried to the portion of the income of the aforesaid fund divisible among the school districts in the same county the next year, and shall

To open an account with each district.

Orders to be drawn on him by school-committee.

Necessary vouchers.

To be paid, when—

How much—

Mode of keeping the accounts—

increase the amount to be divided among said districts. A school district can be entitled to no more than what shall be placed to its credit in the account duly kept as aforesaid. The said trustee shall certify the substance of each order and the sum paid thereon to the auditor.

Orders and payments to be certified to the auditor.

Auditor shall settle the accounts of the school-committees — They shall appear before him when—

Notice thereof to be given They may be compelled by attachment.

The auditor shall settle the accounts of the school-committees, who have drawn money as aforesaid. For this purpose every such school-committee shall appear, with their accounts and vouchers before him, when he shall attend in their county to settle the account of the county-treasurer and others, whereof he shall give like notice as is required in respect to others. He may compel them by attachment to appear and exhibit their accounts and vouchers. In the settlement it shall be shewn how long a school was kept in the district and the number of scholars and this shall be stated with an abstract of every such account, in the auditors report to the General Assembly. If upon settlement it shall appear that in any district there has not been received or raised and appropriated in good faith beside the sum drawn by the school-committee of the said district from the trustee of the fund aforesaid a sum equal thereto for the purpose of building, procuring or maintaining a school-house, or procuring ground therefor, or of supporting a free-school in said district, or if the school-committee of any district fail to appear before the auditor and exhibit their accounts and vouchers for settlement, the auditor shall immediately certify the fact to the trustee of the fund aforesaid, and such district shall forfeit its right to any portion of the fund aforesaid for the ensuing year, and the division of said income for said ensuing year shall be in the same manner as if said district did not exist. If such forfeiture shall occur through the default of the school-committee, the said committee shall pay to the district a sum equal to that lost by the forfeiture. If it appear on settlement that the school-committee have misapplied, or that they do not account for, the money received by them, the auditor shall make known the fact by letter addressed to the chairman and secretary of the last stated meeting, or if they

A district may forfeit its portion in certain cases.

School-committee shall pay a sum equal to this forfeiture, when caused by their neglect

Auditor shall notify the districts of the neglect, &c. of the commitee

do not continue in the district, or be of the committee, to two other inhabitants of the district

The school-committee shall, at the next stated meeting after their election, lay before the meeting a just account of their receipts and expenditures and a report of all their proceedings. The meeting may appoint persons to settle said account. The said committee shall pay to their successors in office all money due from them; and if they neglect to do so for ten days they shall forfeit and pay the rate of twenty-five per cent on the sum due, to be recovered with the said sum as damages for the detention thereof.

School-committee shall lay their account before the school voters—and pay over any sum due—penalty for neglect.

If any person shall make a fraudulent certificate for the purpose of drawing money from the trustee of the fund aforesaid, such person shall be deemed guilty of a misdemeanor, and on conviction, pay to the State double the sum drawn or attempted to be drawn by means of said certificate.

Penalty for making fraudulent certificate to draw money from the school fund.

SECTION 5. *And be it further enacted,* That a school supported in a district pursuant to this act shall commence on the first Monday of November next, and on the first Monday of November in each and every year thereafter, and shall be continued for such a period as the funds of the district will allow, and during the continuance of the said school it shall be free to all the white children of said district, but the school committee may make regulations for the government of the school and by these may provide for the expulsion of a scholar for obstinate misbehaviour.

Schools shall open on the first Monday in November of each year.

Shall be *free.*

SECTION 6. *And be it further enacted,* that the school-committee shall receive no emolument unless the same be voted at the end of their year in the stated meeting of the school-voters, except for attendance before the auditor. The allowance to each shall be for attendance before the auditor, one dollar a day and mileage at the rate of three cents a mile going and returning, to be allowed in their account.

Pay of school-committee.

SECTION 7. *And be it further enacted,* That each school-district shall be a corporation by the name of "School-district No. —— in —— county"

School districts incorporated.

the number of the district and name of the county being inserted in the blanks respectively. Said corporation by said name may take and hold ground for a school-house; a school-house and the appurtenances and furniture, and may take and hold by devise, bequest or donations, real and personal estate not exceeding in clear annual income one thousand dollars, for the use of the free school in said district; and may alien the same; may take bond from the collector and his sureties, may prosecute any action for an injury done to the ground, school-house, appurtenances or furniture and in such action shall recover double damages and costs, and also any action upon the bond aforesaid and action for the aforesaid penalty of ten dollars, or for a cause of action against the school-committee. A school-district shall not possess any other corporate power or franchise. The said corporation may bring any of the actions aforesaid before a justice of the peace, if the sum demanded for debt or for damages do not exceed fifty dollars; and he shall proceed thereupon according to the "act providing for the recovery of small debts," and there shall be an appeal according to said act.

Corporate powers.

Ch. 263. 6 vol. 433.

452.

Governor to appoint a *superintendant of free schools*, in each county

His duties.

SECTION 8. *And be it further enacted*, That the Governor in the present year and yearly hereafter before the first Monday of March, shall appoint a superintendant of free schools in each county. It shall be the duty of the superintendant to correspond with all persons concerned in executing this act, and to aid in all matters connected with its execution; to supply school-districts with proper forms and advise with them in respect to their proceedings; to see that notice of the division into districts is given; to collect information, and to report to the General Assembly the state of the districts and such matters as he shall deem proper to be communicated for their consideration. He shall receive no emolument, but postage and travelling charges and the expenses incurred in procuring and distributing proper forms to the school-districts as aforesaid shall be allowed and paid to him out of the income of the fund aforesaid, by the trustee.

To receive no compensation.

SECTION 9. *And be it further enacted,* That the commissioners appointed by the court aforesaid, shall each be allowed for every day's service one dollar to be paid by the county. And the clerk of the peace shall receive a reasonable compensation for his services to be allowed by the levy court of his county.

Pay of commissioners.

Pay of clerk of the peace.

SECTION 10. *And be it further enacted,* That this act and any matter of justification under it may be given in evidence under the general issue.

This act may be given in evidence under the general issue.

SECTION 11. *And be it further enacted,* That the act entitled "An act appropriating part of the school fund for education of poor children" passed at Dover, Feb. 6, 1817, and the act entitled "An act appropriating part of the school fund for the education of poor children" passed at Dover, Feb. 3d, 1818, and the third and fourth sections of the act entitled "An act for the encouragement and support of schools in this state" passed at Dover Feb. 3d 1821, and the second section of the act entitled "An act for the payment of claims for the tuition of poor children" passed February 2d 1824, and "An act for the payment of claims for the tuition of poor children" passed at Dover 8th Feb. 1822, be and the same are hereby repealed.

Repeal of—

Ch. 146. 5 vol. 251.

ch. 183. 5 vol. 340.

§3, 4, of ch. 65. 6 vol. 86. 7.

§2. of ch. 242, 6 vol. 377.

ch. 143. 6 vol. 240.

PASSED AT DOVER, *February* 12, 1829.

CHAPTER C.

AN ACT *concerning constables.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That there shall be constables for the several counties of this state, respectively residing in the different hundreds.

Constables to reside in the different hundreds.

1 vol. 476. 2 v. 934. 3 v. 222. 4 v. 472.

Every such constable shall hold his office for the term of one year from the date of his appointment; except, that if the office of constable become va-

Term of office one year—

cant before the regular expiration of the term thereof, the vacancy shall be filled by an appointment to continue for the residue of the said term.

or the residue of a term.

Qualifications of constable. 2 vol 935. §7. 6 vol: 266, §4.

No person shall be a constable in a hundred unless he reside therein, and shall have resided therein at least six calendar months next before the commencement of his office, nor unless he be a freeholder in the county wherein such hundred is. If a person, being a constable in a hundred, shall remove his residence from such hundred, or if a person, being a constable required by law to reside in a town, shall remove his residence from such town; in either case, the office of such constable shall, upon such removal, become vacant.

No person to hold the office more than three years in six, unless, &c. 7 vol. 134 6 vol. 559 4 vol. 472. 6 vol. 266. §4.

No person shall hold the office of constable more than three years, in any period of six years; except, that the holding of the said office for the residue of a term, by virtue of an appointment to fill a vacancy, unless such vacancy were occasioned by the failure of the person appointed to the entire term of the office to give security, shall not be a disqualification to hold said office for three full years after the expiration of said residue of said term.

Constable to give bond—and surety. 5 vol. 264. §2.

SECTION 2. *And be it further enacted,* That no person shall enter upon the execution of the office of constable, until he shall have, with two or more sufficient sureties being freeholders of the county for which he shall be appointed constable, in the court of general quarter sessions of the peace and gaol delivery within said county, if in term time, or before a judge of the court of common pleas, if in vacation, become bound to the State of Delaware in a joint and several obligation to be, together with the sureties therein, approved by the said court or judge, in the penalty of two thousand dollars, with condition according to the following form—"The condition of the above obligation is such, That if the above named being a constable for county, shall and do well and diligently execute all process which shall duly come to his hands as such constable, and shall punctually apply and pay over, according to law, all monies, which he shall receive pursuant to any legal process, and

To be approved by the court or judge.

Condition.

shall and do, faithfully in all things fulfil and perform all the duties of his said office of constable, then the said obligation shall be void." Upon said obligation being acknowledged and approved, a certificate thereof shall be thereon endorsed, if in term time under the hands of the judges present, if in vacation under the hand of the judge; said certificate may be according to the following form—

Certificate of acknowledgment to be endorsed.

" county, ss. On the day of 18 this obligation was acknowledged by therein named to be their act and deed respectively and the same with the sureties therein approved in the court of general quarter sessions of the peace and gaol delivery within said county.—Witness the hands of the judges present." Or if the obligation be taken by a judge in vacation, the said form may be varied from by substituting after the word "approved" these words, *before the subscriber one of the judges of the court of common pleas. Witness the hand of the said judge.* The said court or judge shall cause said obligation with said certificate endorsed thereon, to be immediately delivered to the recorder of deeds for the county for which such constable is appointed, and the said recorder shall record the same and carefully preserve the original in his office—the obligations for each year in a separate bundle with a label of the year. If any person who shall be appointed constable, shall not, within five days next ensuing the day of his appointment, become bound with sureties in an obligation acknowledged, and with the sureties therein approved as before prescribed, the appointment shall become absolutely void, and the office shall be vacant.

Form of certificate.

Bond to be delivered to the recorder of deeds—and recorded—and filed.

Failure to give bond in five days—vacates the office.

SECTION 3. *And be it further enacted,* That the power of every constable for a county shall extend throughout his county; and it shall be his duty to execute all lawful orders, warrants and other process directed to such constable by any court or judge of this state, or by any justice or justices of the peace for said county; to take care that the peace of the state be duly kept according to his power; to arrest all persons who shall in his presence commit any riot,

Powers and duties of a constable. 6 vol. 266.

CHAPTER C.

1829.

affray or other breach of the peace, or who shall be riotously assembled, and carry them before a justice of the peace for the county to be dealt with according to law; to use his best endeavours to cause all murderers, thieves and other felons to be apprehended; and in case of resistance to his lawful authority or other case of necessity, to call to his assistance any of the people of this state; to present truly all bloodsheds, affrays and other offences committed in his county, against the laws of the state; and to execute all other duties that have been or shall be enjoined upon him by any act of the General Assembly.

Constable shall pay to the clerk 5 dollars.

Clerk to pay over to the secretary of State in sixty days.

SECTION 4. *And be it further enacted*, That every person appointed a constable, whether to the entire term or to fill a vacancy, shall pay to the clerk of the peace for his county, for the use of the state, within five days after the day of such appointment, a fee of five dollars, which fee the said clerk shall pay over to the secretary of state within sixty days from the receipt thereof. If any constable or clerk shall fail to pay as required by this section, he shall upon such failure forfeit his office, which may be immediately filled by another appointment.

Constable or clerk neglecting shall forfeit their office.

Number and residence of constables.

2 v. 934. 6 v. 263, 338, 559.

SECTION 5. *And be it further enacted*, That the number and residence of the constables for the several counties of this state shall be as follows, that is to say;

Newcastle county.

For Newcastle county there shall be two constables in Christiana hundred; two constables in Newcastle hundred, one of whom shall reside in the town of Newcastle; two constables in Appoquinimink hundred; two constables Redlion hundred, one of whom shall reside in Delaware City; and one constable in each of the other hundreds in said county.

Kent county.

For Kent county there shall be two constables in Duck-creek hundred; one constable in Little-creek hundred; three constables in Dover hundred, one of whom shall reside in the town of Dover; four constables in Murderkill hundred; and three constables in Mispillion hundred.

7 v. 59, §2.

Sussex county.

For Sussex county, there shall be three constables in North-West-Fork hundred, one of whom shall

reside in the village of Seaford; two constables in Broadkiln hundred, one of whom shall reside in the village of Milton; there shall be two constables in Lewes and Rehoboth hundred, one of whom shall reside in Lewestown, and two constables in each of the other hundreds of said county.

Additional constables for a limited time.

SECTION 6. *And be it further enacted,* That besides the constables provided for Newcastle county by the preceding section, there shall be for four years following the tenth day of May in the year of our Lord one thousand eight hundred and twenty-eight, two other constables for the said county, to wit: one constable in St. George's hundred, who shall reside in the village of Port Penn; and one constable in Pencader hundred who shall reside near the line of the canal and within two miles of the Buck tavern.

2 v. 934. §2.

6 v. 336. §3.

Court of Quarter sessions to appoint constables—at the first term in every year—

SECTION 7. *And be it further enacted,* That the court of general quarter sessions of the peace and gaol delivery, within each county, shall have power to appoint the constables for such county, and shall every year, at the first term of said court in each county, appoint said constables: such appointments may be made at any time during said term without regard to the day on which the terms of office of the constable for the preceding year will expire;

May fill vacancy at any term.

and the said court may at any term in a county fill any vacancy in the office of constable for said county; but if the office of constable for any county shall become vacant during the vacation of said court in said county, the governor shall have power to fill said vacancy, provided he make the appointment to fill the same at least ten days before the first day of the term of said court in said county next after the happening of said vacancy.

6 vol. 338, §5.

Governor to fill vacancies—when—

Repeal of—

SECTION 8. *And be it further enacted,* That the "act obliging persons returned and appointed for constables to serve accordingly, and for ascertaining their fees" except the ninth section thereof;—and the "act for altering the manner of levying executions to be issued by justices of the peace in certain cases; and for lessening the number of constables;"—

ch. 205. a 1 v. 476 except §9,

ch 190, b, 2 v. 934.

ch. 219, b. 2 v. 999. and the "act to authorize the court of quarter sessions to appoint constables of each hundred;"—and ch. 166, 4 v. 472 the supplement to the said act,—and the "act for appointing an additional number of constables in the ch 100, 3 v 222. county of Newcastle;"—and the "act for appointing ch 117, 3 v. 252. an additional number of constables in the county of ch. 165, 6 v. 263. Kent;"—and the "act providing for the election of constables and concerning elections of inspectors and ch. 219, 6 v. 336. assessors;"—and the supplement to the said act, passed at Dover January 19, 1824;—and the additional ch 303, 6 v. 559. supplement to the said supplement, passed February 10, 1825;—and the additional supplement to ch. 55, 7 v. 134. said act passed February 8, 1827;—and the second §2. ch. 3, 7 v 59. section of the "act allowing for a limited time an additional justice of the peace and constable to the county of Sussex," shall be and hereby are repealed from and after the tenth day of April next:—

Proviso. Provided that this repeal shall not defeat, impair or effect the tenure of office or the authority of any constable then in office; but all the constables then in office in the several counties of this State shall continue in office, and have all the powers and emoluments of office, until the regular expiration of their terms of office respectively, according to the law as in force before the passing of this act, in the same manner and as fully as if this act had not been passed; nor shall this repeal in any manner impair or affect any bond or obligation given by any constable with surety or sureties, with condition touching the execution or performance of the duties of his office, or otherwise, pursuant to either of the acts aforesaid or any section thereof, but every such bond or obligation shall remain and be in force as fully and effectually as if this act had not been passed; and further this repeal shall not revive any act, or part of an act, repealed by either of the aforesaid acts; but any act or section repealed by either of the said acts in this section mentioned shall, notwithstanding this section, continue repealed.

PASSED AT DOVER, }
January 24, 1829. }

CHAPTER CI.

CHAPTER CI.
1829.

AN ACT *to authorize William Duhamel to bring into this State from the State of Maryland, a certain negro boy slave.*

PASSED AT DOVER, *January* 24, 1829. } PRIVATE ACT.

CHAPTER CII.

A SUPPLEMENTARY ACT *to the act entitled "a supplement to an act entitled an act to incorporate the Bank of Wilmington and Brandywine in the Borough of Wilmington."* 6 v 320. 4 v. 528.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That from and after the passing of this act the capital stock of the said Bank of Wilmington and Brandywine actually paid in shall be deemed and taken to be the sum of twenty-eight thousand one hundred and ninety-four dollars, and no more.

Capital stock paid in, deemed to be $28,194.

SECTION 2. *And be it further enacted,* That new certificates of stock, signed by the president and countersigned by the cashier, and sealed with the common seal of the said corporation, shall be issued and delivered to each stockholder, acknowledging the payment of seven dollars on each share held by him, her or them, subject however to the payment of the remaining four instalments, one of eight dollars, and three of five dollars each, when called for: so that the original capital stock consisting of four thousand shares of thirty dollars each be made whole. And the stockholders shall, on receiving new certificates of stock as aforesaid, return their old certificates to the proper officers of said Bank, who shall cause the same to be cancelled.

New certificates of stock to issue—

To make up the original capital.

Old certificates to be returned and cancelled.

Deficiency to be supplied by subscriptions.

SECTION 3. *And be it further enacted,* That if any of the stockholders in said Bank, shall neglect or refuse to pay the instalments that shall be called for, the president and directors shall have the power to supply any deficiency that shall occur by such neglect and refusal, by opening a subscription for such deficiency of stock so refused or neglected to be subscribed for.

PASSED AT DOVER, *January* 26, 1829.

CHAPTER CIII.

AN ACT *declaring the effect of certain expressions in acts of Assembly.*

Construction of certain terms.

Be it declared and enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That in construing acts of the General Assembly an expression in the singular number and masculine gender shall be extended to a plural and feminine meaning, so as to comprehend several persons, and also females within parity of reason; and every provision relative to a male or to a person in the singular number, shall be extended to several persons and to females under the same circumstances within the same reason: unless such construction would be inconsistent with other expressions or provisions of the act.

PASSED AT DOVER, *January* 27, 1829.

CHAPTER CIV.

CHAPTER CIV.
1829.

AN ACT *to incorporate the Delaware Coal Company.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That a company shall be established for the purpose of securing to the manufacturers, mechanics and people generally of this State, a cheap and ready supply of mineral coal, the capital stock whereof shall not exceed four hundred thousand dollars, divided into eight thousand shares, each of fifty dollars.

Company established.

Capital stock.

SECTION 2. *And be it enacted,* That Edward Tatnall, Joseph C. Gilpen, William Seal, Benjamin Coombe and William Warner be and they are hereby appointed commissioners, and they or any three of them are authorized to receive subscriptions to the said capital stock, and for that purpose to open books at such time and place, in the Borough of Wilmington, as the said commissioners or any three of them may appoint; at least ten days notice of the time and place of opening such books shall be given by advertisements in two or more of the newspapers published in this State, and such books shall continue open at least two days and afterwards until the said commissioners or a majority of them shall deem it proper to close the same, or until the number of shares subscribed shall amount to two thousand.

Commissioners appointed.

Books to be opened—

Notice, &c.

SECTION 3. *And be it further enacted,* That the subscribers to the capital stock aforesaid, their successors and assigns shall, and hereby are ordained, constituted and declared to be, until the first day of June which will be in the year of our Lord one thousand eight hundred and fifty, a body politic and corporate in fact and in name, by the name of The Delaware Coal Company and by that name shall have continual succession, and be persons capable of suing and being sued, pleading and being impleaded in all manner of actions, suits, complaints, matters and causes whatsoever, either in law or equity, and

Company incorporated—

Name.

CHAPTER CIV.

1829.

may have a common seal, and make, change and alter the same at their pleasure—ordain by-laws for their own government, not repugnant to the laws or constitution of this State or of the United States; but it shall not be lawful for the said company and they shall not have power to discount notes or bills or to loan money on interest, or to exercise any banking powers whatever: and the said company shall have power to purchase hold and convey any real or personal estate and to do all acts necessary and proper to effect and accomplish the declared objects of this act; Provided that the real estate so to be holden, shall be only such as is necessary and proper to effect such objects or such as shall have been bona fide, mortgaged or conveyed to the company by way of security or satisfaction of debts, previously contracted in the course of their dealings, or purchased at sales upon judgments or decrees which shall have been rendered in their favour for such debts, or sales made by virtue of any mortgages given to said company.

Not to have any banking powers.

May hold land.

Proviso.

SECTION 4. *And be it further enacted,* That the stock, property, affairs and concerns of the said company shall be managed and conducted by seven directors (of whom one shall be president) to be elected by the stockholders; that the first election for said directors shall be held by the commissioners before named, or any three of them, on the first Monday of April next, of which and all subsequent election there shall be given at least ten days notice in two or more of the newspapers printed in this State; that the directors so elected shall hold their offices until the second Tuesday in January one thousand eight hundred and thirty, and in all subsequent elections the directors shall hold their offices for the term of one year, and the elections shall be held on the second Tuesday in January in each and every year thereafter; that all elections under this act and all meetings of the stockholders and directors shall be held in the said Borough of Wilmington; and the said elections shall be made by such of the stockholders as shall attend for that purpose in their proper persons or by proxy, and all

Board of directors—

Number—

to be elected—

when—

where—

by whom.

elections shall be by ballot, each share of the stock having one vote, and the persons who shall have the greatest number of votes at any election shall be the directors; and if it shall happen at any election that two or more persons have an equal number of votes, so that no choice shall have been made as to such person, then the said stockholders herein before authorized to vote at such elections shall proceed to ballot a second time and by plurality of votes determine which of the persons so having an equal number of votes shall be the director or directors so as to complete the whole number of seven; and the said directors as soon as may be after their election shall proceed in like manner to elect by ballot one of their number to be their president; and if any vacancy shall be occasioned in the said direction by death, resignation or otherwise, the same shall be filled for the remainder of the term in which it may happen, by such person or persons as the remainder of the directors, for the time being, or the major part of them, shall appoint.

Majority of directors to form a board.

SECTION 5. *And be it further enacted,* That a majority of the directors for the time being shall form a board or quorum for transacting all the business of the said company; and that a failure to elect directors on the day that, pursuant to this act, it ought to be done, shall not be deemed to operate a dissolution of the said corporation, but it shall and may be lawful to hold such election on such other day, in the manner aforesaid, as shall be prescribed by the by-laws and ordinances of the said corporation.

President and directors may call in subscriptions.

SECTION 6. *And be it further enacted,* that it shall be lawful for the president and directors of said corporation to call and demand of the stockholders, respectively, all such sums of money as are by them subscribed, at such times and in such manner and proportions as they shall deem fit, under pain of forfeiture of their shares and all previous payments thereon to the said corporation: always however giving at least thirty days previous notice of such call and demand in two or more of the public newspapers of this State.

Notice thereof.

Transfers of stock—when valid.

SECTION 7. *And be it further enacted,* That no transfer of stock shall be valid or effectual until such transfer shall be entered or registered in the book or books to be kept by the president and directors for that purpose.

Dividends, to be semi-annual.

SECTION 8. *And be it further enacted,* That the dividends to be made upon the profits of the corporation, if any, shall be semi-annual, and shall be paid equally to all the stockholders thereof in proportion to their respective interests therein.

Construction of this act.

SECTION 9. *And be it further enacted,* That the provisions of this act shall not be deemed or taken to grant any exclusive right to supply coal as herein before mentioned, but that the General Assembly of this State may from time to time pass any other act or acts of incorporation for the like purpose.

PASSED AT DOVER, *January* 28, 1829.

CHAPTER CV.

AN ACT *to incorporate the trustees of the Pratts Branch school in Murderkill hundred.*

Trustees incorporated.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That George T. Fisher, William Roe, William Saterfield, John Bailey and Joshua M'Gonigall shall be and they are hereby constituted a body politic and corporate, by the name and style of the trustees of the Pratts Branch school, and by that name shall have perpetual succession and may sue and be sued, plead and be impleaded in any court of law or equity.

Their powers. May hold lands.

SECTION 2. *And be it enacted by the authority aforesaid,* That the said trustees and their successors, by the name aforesaid, shall be capable in law to purchase, receive and hold any lands, tenements, rents, goods or chattels, money or effects which

shall be given, conveyed and devised to them, for the use of the said school; and to sell, rent or dispose of the same, in such manner as to them shall seem most beneficial to the said school; and may have and use a common seal with the power of altering or changing the same as may be thought proper.

Common seal.

SECTION 3. *And be it enacted*, That the said trustees, or a majority of them, shall have power, from time to time, to make and establish such by-laws, rules and ordinances, not contrary to the laws and constitution of this state, as they shall judge necessary and proper for the good government of said school; and to appoint a president, secretary, tutor or tutors and treasurer; the last of whom shall receive all monies accruing to the said school, and property delivered to his care, and pay or deliver the same to the order of the said trustees, or a majority of them. The said treasurer before he enters upon the duties of his office, shall give bond and security in such sum as the said trustees shall direct, payable to them or their successors, conditioned for the faithful discharge of the trust reposed in him, and that he will when required by said trustees, render a true and just account of all monies and goods and chattels received by him on account of, and for the use of the said school; which treasurer shall receive such salary as the said trustees shall allow.

Make by-laws.

Appoint officers.

Treasurer to give bond.

Condition thereof.

SECTION 4. *And be it enacted*, That the said trustees shall have power to take and receive subscriptions for the use and benefit of the said school; and in case any person shall fail to comply with his or her subscription, to enforce payment thereof; and in case of the death, resignation or other legal disability of any of the said trustees herein named, the vacancy thereby occasioned shall be supplied by an election to be held by the contributors to said school: Provided, that no person shall be appointed a trustee who is not a contributor to said school.

Trustees may receive subscriptions—

and sue for the same.

Vacancies—how filled.

PASSED AT DOVER, *January* 29, 1829.

CHAPTER CVI.
1829.

CHAPTER CVI.

AN ACT *to dissolve the bonds of matrimony between Frances L. Cochran and her husband Joseph W. Cochran.*

PASSED AT DOVER, *January* 29, 1829. } PRIVATE ACT.

CHAPTER CVII.

AN ACT *for the relief of Elisha D. Collins of the county of Sussex.*

PASSED AT DOVER, *January* 22, 1829. } PRIVATE ACT.

CHAPTER CVIII.

4 vol. 462.

AN ACT *of limitation of appeals in causes in equity.*

Appeals from interlocutory decrees, within what time to be taken.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That no appeal from an interlocutory decree or order of the chancellor shall be received in the high court of errors and appeals, unless the petition, or assignment of causes of appeal, with a certified copy of the record and papers of the case, be filed in the said court or in the office of the clerk thereof, on or before the first day of the term of said court next after the entering of the said decree or order; but the said court shall have power to extend said time to a further day, if this limitation shall not, in any case, allow sufficient time for copying the record and papers; and an omission or failure to claim or prosecute an appeal from an interlocutory decree or order, shall not debar a par-

ty from making any objection to such decree or order, upon an appeal from the final decree.

No appeal from a final decree of the chancellor, shall be received in the high court of errors and appeals, unless the petition, or assignment of causes of appeal, with a certified copy of the record and papers of the case, shall be filed in the said court or in the office of the clerk thereof, within two years after the signing of said decree; provided that this limitation with respect to any person under disability of infancy, coverture or incompetency of mind, at the time of signing a final decree, shall begin to run from the ceasing of such disability, and not from the time of signing said decree.

Appeals from final decrees—within what time to be taken.

Proviso.

It shall be the duty of the clerk of the high court of errors and appeals, upon a petition, or assignment of causes of appeal, with a copy of the record and papers in a case of appeal from the court of chancery, being delivered to him, to file the same forthwith, endorsing thereon the date of said filing, and to enter the appeal with said date on the docket of said court.

Clerk shall note the time of filing causes of appeal, &c.

No omission or mistake of the register of the court of chancery, in making a copy of the record and papers of a case, shall affect an appellant; but it shall be sufficient to file within the time limited a copy certified under the hand and seal of office of of the register; and any defect may be corrected according to the course or order of the high court of errors and appeals.

Mistake of clerk in making copy, not to prejudice appellant—

but may be amended.

For saving costs, the chancellor shall have power to direct the original depositions and exhibits in a case, or any part thereof, instead of copies, to be sent upon appeal, into the high court of errors and appeals, under such regulations as he may prescribe, and the same shall be instead of copies within the foregoing provisions.

Chancellor may order originals to be sent up on appeal.

SECTION 2. *And be it further enacted*, That the provisions of the preceding section shall be extended to appeals from the court of common pleas in cases of equity jurisdiction; the entering of a final decree in said court being substituted for the signing of such decree.

§1 extended to the Court of Com. Pleas in equity cases.

Repeal of—
§24. ch. 54, a. 1 vol. 131.

SECTION 3. *And be it further enacted*, That the twenty-fourth section of the "Act for establishing courts of law and equity within this government;" and the twenty-seventh and twenty-eighth sections of the "Act concerning awards; to regulate the summoning and returning juries and for lessening the expense thereof; to repeal the savings in certain acts of limitation; to confirm the title of lands of the husband conveyed by husband and wife and to direct the examination of such wives; to authorize the court of chancery to order lands to be sold; to fix the limitation for appeals from decrees in equity" shall be and hereby are repealed from and after the first day of September next, except so far as shall concern any appeal or matter, which now is, or on or before the first day of July next, shall be, barred according to the form and effect of said sections or either of them.

§27, 28, ch. 158, 4 v. 462.

This act to go into operation on the first of June.

SECTION 4. *And be it further enacted*, That this act shall commence and be in operation from and after the first day of July next.

PASSED AT DOVER, *January* 23, 1829.

CHAPTER CIX.

6 vol. 587.

A SUPPLEMENT *to the act entitled "An act to incorporate the Delaware Fire Insurance Company."*

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the thirteenth section of the act to which this is a supplement, be and the same is hereby repealed, made null and void; and that the said company shall have perpetual succession as a body politic and corporate, in the manner set forth in the first section of the said act.

Repeal of—
§13. ch. 321, 6 v. 593.

PASSED AT DOVER, *January* 23, 1829.

CHAPTER CX.

CHAPTER CX.
1829.

AN ACT *to enable George M. Wootten to remove from the state of Maryland into the state of Delaware, certain negroes therein mentioned.*

PASSED AT DOVER, *January* 23, 1829. } PRIVATE ACT.

CHAPTER CXI.

AN ACT *rendering Assessors and Collectors incapable of certain other offices.*

Assessors and collectors not to hold certain offices until, &c.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That no assessor, during the time for which he is elected, or appointed; and no collector of a county, road, poor, or state tax, during the time for which he is appointed, nor until he shall have rendered a full account of the taxes committed to him for collection and discharged himself thereof according to law; shall be elected or appointed commissioner of the levy-court and court of appeal, county treasurer, trustee of the poor, inspector of a hundred, senator or representative in the general assembly, coroner or sheriff.

Repeal of—ch. 59, 3 v. 151.

SECTION 2. *And be it further enacted,* That the "Act to render assessors and collectors ineligible to the offices of commissioner of the Levy-court and court of appeal, county treasurer, treasurer of the poor, inspector, coroner and sheriff," be and hereby is repealed.

PASSED AT DOVER, *January* 23, 1829. }

CHAPTER CXII.
1829.

CHAPTER CXII.

AN ACT *to authorize Jeremiah Morris, of Sussex county, to bring into this State from the State of Maryland, a certain negro man named Isaac.*

PASSED AT DOVER, *January* 23, 1829. } PRIVATE ACT.

CHAPTER CXIII.

AN ACT *to restrain persons from suffering swine to go at large within certain limits.*

Swine running at large within certain limits, may be impounded.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That no swine shall be suffered to go at large within any limits, to which this act shall be extended; and any swine found going at large within any such limits, may be taken and impounded in any place within said limits, respectively, by any free white person of the age of twenty-one years or upwards, residing within said limits,

Duty of person impounding—

who shall within twenty-four hours after such impounding, give notice thereof, by a written notice delivered to the owner, or left at his usual place of abode, or if the owner be unknown, or have no known place of abode, within three miles of the place of taking, by advertisements posted in three or more of the most public places within said limits:

Duty of constable on selling such swine.

and any constable for the county, upon the application of the person impounding, shall sell the swine so impounded, at public vendue, at any time after the expiration of five days after the day of impounding, giving notice of such sale, by advertisements posted in five or more of the most public and suitable places in said limits, and the neighbourhood thereof, at least three days before the day of sale: and the constable,

His fees—

deducting from the amount of the sale forty cents, and

also the rate of three cents on each dollar, shall pay the balance, one half to the person impounding, and the other half to the treasurer of the trustees of the poor of his county. But if the owner of the swine shall, before the sale, pay to the person impounding, fifty cents for each swine weighing not more than forty pounds, and one dollar and fifty cents for each swine exceeding that weight (live weight) and the rate of five cents for each swine for every days impounding, and to the constable if sale has been advertised, twenty cents, the swine shall thereupon be restored to him: or if the owner reside not within the limits wherein the swine are taken, the same, if they have not been fed within said limits with his permission, or been at large there to his knowledge, previously to the occasion of the impounding, shall be restored to him on paying to the person impounding, the rate of five cents for each swine for every days impounding, and to the constable, if a sale have been advertised, twenty cents. The person impounding shall provide for the swine, while in pound, necessary food and water.

Swine to be restored to the owner—when.

Owner residing out of the limits—when the swine shall be restored to him.

SECTION 2. *And be it further enacted*, That if any swine be found trespassing on enclosed ground, within any limits to which this act shall be extended, the occupier of said enclosed ground or any person by his direction may shoot, or in any manner kill such swine; and the person killing shall without delay cause notice thereof, to be given to the owner of the swine, that he may take the same. For ground to be enclosed within the meaning of this section, it is not necessary for the fence to be a lawful fence. But swine escaping from the enclosed ground of their owner, into the enclosed ground of another person, through defect of fences, which the last mentioned person, or any one under whom he holds, was bound to repair, shall not be liable to be shot or killed under this section.

Swine trespassing on enclosed ground within the limits may be killed.

Person killing shall give notice to the owner.

Swine escaping through defect of fences.

SECTION 3. *And be it further enacted*, That this act shall extend to, and be in force in the following limits, in Newcastle county, that is to say;

Limits to which this act shall extend.

In Newcastle county.

First, beginning at the Bridge over the southerly prong of Appoquinimink creek on the road from

Part of Appoquinimink hundred 3 vol. 283.

Middletown to Blackbird, and running from thence along said prong to the wolf swamp, thence to Dutchmans pond and the State line, thence up said line to the line of Appoquinimink hundred, and with said line to the road aforesaid, and down said road to the beginning:—Second, the bounds of the town of St. George's, and—Third, beginning at the junction of Drawyers and Appoquinimink creeks, and running down the latter to the mouth of Hangman's creek, thence up said creek to the road from Cantwell's Bridge to Taylor's Bridge, thence up said road to the State road from Cantwell's Bridge to Smyrna, and crossing said road on the line between lands heretofore of Thomas M'Kean, and lands heretofore of Richard C. Dale to the head of a cripple and marsh, thence down said cripple and marsh with the water courses to Appoquinimink creek aforesaid, thence up said creek to the line of lands of Robert Cochran and of lands formerly of Ezekiel Hunn, thence with said line and continuing the same course, crossing the road from Cantwell's Bridge to Middletown, to the head of Samuel Thomas' mill pond on Drawyers creek, and down said pond and creek to the beginning.

St. George's. 7 vol. 40

Cantwell's Bridge, &c. 7 vol. 48.

Also this act shall extend to, and be in force within the following limits, in Kent county, that is to say;—First, beginning at the main branch of Duck-creek, where the State road running from the line dividing Newcastle county from Kent, through Smyrna, &c. crosses the same, and running up said creek on the several courses, one and one half mile, thence in a direction paralell with said road to Gravelly run, then down Gravelly run to Duck-creek aforesaid, and up said creek to the beginning:—Second, beginning at the mill dam, late of Israel Peterson, on the State road from Smyrna to Dover, and running thence with said road to the road leading into Duck-creek neck; thence with said last mentioned road, through lands late of William Denny, Edward Joy and James Raymond, to a corner of lands late of James Raymond and Edward Carney, and through the lands late of Edward Shane and others, continuing ten rods below the house and lot

In Kent county:—

Old Duck-creek. 2 vol. 965.

Part of Duck-creek hundred 5 vol. 128.

on the west side of said road, lately sold by Robert Thompson to Timothy Cummins, thence from said road to a corner of lands late of James Morris, and land of Abraham Allee, and from thence with the line of land late of said Morris, which adjoins the said Abraham Allee, the heirs of John Allee and Edward Joy, to a road leading from Severan's meeting house to Long point; thence with said road by the gate late of Thomas Hawkins, senior, to the line of land late of Mordecai Morris, on said road, thence leaving said road and running with the line of land late of said Mordecai Morris, adjoining lands of John Norton's heirs, until it intersects the line between Jacob Stout and land late of said Mordecai Morris, thence with the lines of said Jacob Stout's land to Duck Creek, thence up said creek to Pairman's Branch, on which the mill, late of Israel Peterson, is situate, and up said branch to the place of beginning; and extending in Kent county from every part of the said lines, outwardly, the distance of one mile, so as to comprehend all that is within said limits, and also every place in Kent county, situate within one mile of any part of said limits:—Third, the distance of one half mile in every direction from the intersection of the roads, crossing each other in the village of Kenton:—Fourth, beginning at St. Jones' creek, where the state road from Dover to Smyrna crosses the same, and running thence down said creek to the line dividing between a lot of James Kerbin and a lot late of Elizabeth Nixon, thence with the line of the said lot late of Elizabeth Nixon, and crossing the state road, and thence with the line dividing between lands late of William Killen, and lots late of Elizabeth Nixon and Jacob Furbee, and lots of Nicholas Ridgely and Henry M. Ridgely, to the south east corner of the last mentioned lot, and thence with the dividing line between said lot and land of Nicholas Ridgely, to west street of the town of Dover, and thence with said street, and the same course continued until a line due east will strike the place of beginning, and thence due east to the place of beginning:—

Kenton. 5 vol. 139.

Dover. 1 vol. 508. 4 vol. 336.

Frederica, &c. 6 vol. 301.

Fifth, beginning at the fork of Murderkill and Spring creeks, and running up Spring creek to the division line between the heirs of Matthew and Thomas Lowber, thence with said division line to a corner stone of lands formerly of Daniel Leach and Peter Lowber; thence with the division line between lands late of said Leach now of Vincent Moore and lands of the heirs of Thomas Lowber to the line of Joseph G. Rowland, and with said line and continuing the same course to Murderkill creek and down the same to the beginning;—Sixth, beginning at Howell's mill branch where the Dover road crosses, and running thence down said branch to the line between Thomas H. Howell's land and land formerly of Edward Rogers, thence with said line until it intersects the line of land of Daniel Mifflin's heirs, thence with said line south-westerly to the mill road, thence with said road to the state road from Camden to Canterbury; thence crossing said road and with the line of a lot purchased by Philip Hardcastle from George Temple to the road from Camden to Willow-grove, thence with said road to land late of Doctor James Fisher, and with the said land to the head of Jarrel town branch and down said branch to the head of Howell's mill pond, and down said pond and the branch first mentioned to the beginning:—Seventh, the distance of three quarters of a mile in every direction, in Kent county from the drawbridge over Mispillion Creek at Milford:—

Camden, &c. 6 v. 87.

Milford, 4 v. 314.

Also this act shall extend to and be in force within the following limits in Sussex county, that is to say; First, the distance of one half mile in every direction in said county from the drawbridge over Mispillion creek at Milford:—Second, beginning at the mouth of the round pole branch, and running thence up said branch and the southmost fork thereof, until it crosses the road from Clowe's to Cool-Spring, thence up said road to John Conwell's mill, thence down the mill stream to the fork of Broadkill creek, thence up the north-west fork thereof to Lavinia's bridge, thence a north-west course to the line between James Ponder and William Perry, thence with said line to the neck road: and with said road

In Sussex county.—South Milford. 4 v. 314

Milton, &c. 4 v. 477.

to the north-east corner of the cleared lands late of Thomas Fisher, and down his fence to Broadkill creek:—Third, beginning at the mouth of Pagan or Canary creek, thence up the same to the public road, thence by a right line to the head of Pot-hook creek, thence down the same to the mouth thereof, and thence down Lewes creek to the mouth of Pagan or Canary creek aforesaid:—Fourth, beginning at the ship-yard, late of Barclay Townsend, formerly Thomas Baldwin's, and running thence a straight line to a mill heretofore called said Towsend's little mill, thence with the run of said mill branch until it intersects the waters of Broad creek, thence down said creek to the place of beginning:—Fifth, the bounds of Georgetown:—Sixth, the village of Bridgeville and the distance of three-eights of a mile in every direction from the principal bridge in that village:—Seventh, beginning at the mouth of Herring creek and running up said creek to the line of the heirs of William Hazzard, and with said line to the county road, and with said road to the north-east corner of land formerly of Barnard M'Gee, and with said line to Nanticoke river, and with the same to the place of beginning: Provided, that nothing in this act shall be construed to extend to the swine of any person or persons residing without the bounds last described; also without the bounds secondly described in Sussex county, and seventhly described in Kent county, unless such swine shall be fed or kept by some person or persons within such bounds.

Lewestown. 1 v. 324. 3 v. 211.

Laurel. 3 v. 62. 5 v. 38.

Georgetown. 6 v. 38.

Bridgeville. 6 v. 157.

Seaford. 6 v. 583.

Proviso respecting Seaford, Milton & Milford.

SECTION 4. *And be it further enacted*, That the "act to prevent swine running at large without rings or yokes in certain parts of Newcastle county within this government," passed October 31, 1746, shall be extended to, and in force in Pencader hundred; and also all that part of St. George's hundred, lying westward of the upper road, leading through Newcastle county, from Mount Pleasant to Middletown; and also all that part of Appoquinimink hundred, lying easterly of said upper road, from Church Branch at the head of Appoquinimink creek to Duck-creek.

Ch. 113, a 1 v. 275, extended to Pencader, part of St. George's and Appoquinimink hundreds. 1 v 561. 2 v. 1203. 1 v. 441.

This act evidence on the general issue.

SECTION 5. *And be it further enacted,* That this act, and the act hereby extended, with the special matter of justification, under the same, shall be received in evidence on the general issue.

Repeal of—
ch 132, a. 1 v. 324.
ch. 75, 3 v. 211.
ch. 210. a. 1 v. 508.
ch. 123, 4 v. 336
ch. 130, 3 v. 283.
ch. 23, 7 v. 40.
ch. 27, 7 v. 48.
ch. 203, b. 2 v. 965.
ch. 75, 5 v. 128.
ch. 77, 5 v. 139.
ch. 184, 6 v. 301.
ch. 66, 6 v. 87.
ch. 114, 4 v. 314.
ch. 170, 4 v. 477.
ch. 23, 3 v. 62.
ch. 22, 5 v 38.
ch. 39, 6 v. 38
ch. 107, 6 v. 157.
ch. 319, 6 v. 583.
ch. 192, a. 1 v. 441.

SECTION 6. *And be it further enacted,* That the "act to prevent swine running at large, within the bounds of Lewestown, in Sussex county;" and the supplement to said act; and the "act to prevent swine running at large in the town of Dover;" and the supplement to said act; and the "act to restrain swine from running at large within the limits therein described;" and the "act to prevent swine running at large in the town of St. George's;" and the "act to prevent swine from running at large within the village of Cantwell's Bridge and certain limits therein mentioned;" and the "act to prevent swine running at large within Duck-creek town, the village commonly called Duck-creek-cross-roads and parts adjacent;" and the "Act to prevent hogs or swine running at large within the limits therein mentioned in Duck-creek hundred, in Kent county;"—and the "Act to prevent swine from running at large within the village of Kenton and limits therein described;" and the "Act to prevent swine from running at large in certain limits therein mentioned,"—and the "Act to prevent swine running at large in the village of Camden and certain bounds and limits therein prescribed;" and the "Act to prevent swine running at large within the village of Milford and the bounds therein prescribed;" and the "Act to prevent swine running at large within the village of Milton and the bounds therein prescribed, in the county of Sussex;" and the "Act to prevent swine running at large in the village of Laurel, in the county of Sussex," and the supplement to the said act; and the "Act to prevent swine running at large within the bounds of Georgetown, in Sussex county;" and the "Act to prevent swine from running at large in the village of Bridgeville, in the county of Sussex;" and the "Act to prevent swine from running at large in the town of Seaford and certain limits therein mentioned;" and the three acts passed, the first, June 16, 1769; the second, March 29, 1775; and the third,

January 31, 1795, extending the "Act to prevent swine running at large without rings and yokes in certain parts of Newcastle county within this government," shall be and the same hereby are repealed from and after the first day of June next, excepting so far as shall concern any offence against either of the said acts, or any matter done or happening under or against the same, or either of them: And provided that no act repealed by either of the aforesaid acts shall be revived by this repeal.

ch. 226, 1 v. 561.
ch. 76, c. 2 v. 1203.

Proviso.

SECTION 7. *And be it further enacted,* That this act shall commence in operation on the first day of June next.

This act to go in operation on the first of June.

PASSED AT DOVER, *January* 22, 1829.

CHAPTER CXIV.

AN ACT *concerning Wills.*

SECTION 1. *Be it declared and enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That lands, tenements and hereditaments are devisable by last will and testament.

Lands, &c. are devisable.
2 Blac com. 375.

Every person of the age of twenty-one years or upwards, of sound and disposing mind and memory, married women excepted, has power to make a will and testament, as well of real, as of personal, estate.

Who may make a will.

SECTION 2. *And be it further enacted,* That no person under the age of twenty-one years shall be capable of making a will or testament of either personal or real estate.

Disability.

SECTION 3. *And be it further enacted,* That every will and testament, whether of personal or real estate, must be in writing, and signed by the testator, or by some person subscribing the testator's name in his presence, and by his express direction, and attested, and subscribed, in his presence, by two or more credible witnesses, or it shall be void.

Requisites of a valid will.
1 v. 242.
4 v. 270.

A creditor, &c. may be a witness to a will. 3 Blac. com. 377.

A creditor of a testator may be a witness to his will and testament, altho' it contain a provision for the payment of his debts. Also a person may be a witness to a will and testament containing a devise or bequest to the trustees of the poor of either county, or to any person or institution for a public purpose, altho' he is taxable for the support of the poor of said county, or for such purpose, and the taxes to which he is liable, will by means of such devise or bequest be diminished.

Will—how revoked. 1 v. 342. 4 v. 270.

A will and testament, or any clause thereof, shall not be altered or revoked, except by cancelling by the testator, or in his presence and by his express direction, or by a valid last will and testament; or by a writing signed by the testator, or by some person subscribing the testator's name in his presence and by his express direction, and attested and subscribed in his presence by two or more credible witnesses; but this clause shall not preclude nor extend to an implied revocation.

2 Woodeson lec. 370. 1 P. Wms 304, n.

Nuncupative wills—when valid 1 v. 344, 5, §4, 5, 6, 4 v. 270, 1, §12.

Must be reduced to writing,

Provided, that a nuncupative will of personal estate, not exceeding in the whole amount bequeathed, two hundred dollars, pronounced by the testator in his last illness, before two or more credible witnesses, expressly requested by him to take notice thereof, and within three days afterward, reduced to writing and attested by the signatures of said witnesses, shall, if the testator die before the expiration of said three days, or if he be not at the expiration of said period or afterward, capable of making a will, be valid. Such nuncupative will must be

and proved.

produced in the register's office, for probate, within thirty days after the testator's death, or it shall not be received; and notice of the time of proving it must be given as the register may deem reasonable: if the parties interested do not reside in the county, notice by advertisements posted or published according to the register's direction, shall be sufficient.

Will made out of this State—how verified 1 v. 448, 450.

SECTION 4. *And be it further enacted*, That when a last will and testament in writing, of a person not residing in this State at the time of his death, signed by the testator or by some person sub-

scribing the testator's name in his presence, and by his direction, and attested and subscribed in his presence by two or more credible witnesses, is proved in another state, territory or country before competent authority, a copy, duly verified, of such will and testament, and the proof thereof, or of the record of such will and testament and proof, shall be sufficient evidence: such copy, to be duly verified, must be certified by the proper officer, under his hand and seal of office, if there be a seal of office; and there must also be a certificate, either under the great seal of such state, territory or country, or under the hand of the chancellor, or the presiding judge of a court of record of the said state, territory or country, that such copy is certified in due form and by the proper officer; and in case of a certificate, under the hand of a chancellor, or presiding judge there must be an attestation of the officer keeping the seal of his court, under the hand of said officer, and the said seal, that the said certificate is under the hand of the said chancellor or presiding judge, and is entitled to full faith and credit.

Acts of congress of March 27, 1804. 3 v. 621.

Such copy, so verified, may be recorded in the office of the register of the county, wherein are any lands, tenements or hereditaments of the testator, and in that case, it shall be retained in the said office, and the said record, or an office copy thereof, shall be sufficient evidence. Also when a copy, so verified is given in evidence, the court, on the application of the adverse party, may order it to be deposited and retained in the office of the register of the county; and in that case, an office copy thereof, shall be sufficient evidence.

A copy so verified may be recorded and shall be evidence. 1 v. 450, §3.

In every case, the copy of a last will and testament of a person not residing in this state, at the time of his death, proved in another state, territory or country, being recorded according to law for the time being, in the office of the register of either county in this State, the record, or an office copy thereof, shall continue to be evidence in the same manner as if this act had not been passed.

Copy of a will recorded according to law shall be evidence.

SECTION 5. *And be it further enacted,* That the last will and testament of a person not residing in

Will proved tho' not accor-

ding to this act, not hereby invalidated as to personal property. 1 Bin. Rep. 844, 5.

this State, at the time of his death, proved in another state, territory or country, altho' it be not made according to this act, shall not, so far as it shall concern personal property of the testator being in this State, be invalidated by this act; but the register of either county in this State, shall not admit to probate as a last will and testament, any instrument not made according to this act.

Register not to admit probate of will not made according to this act.

Repeal of—ch. 145, a 1. v. 342. ch. 93, 4 v. 270. ch. 196, a. 1 v. 448.

SECTION 6. *And be it further enacted,* That the "act concerning written and nuncupative wills;" and the supplement thereto; and the "Act concerning wills made by persons residing out of this government" shall be, and hereby are repealed, from and after the first day of September next: Provided that no act or section repealed, by either of the said acts, shall by this repeal be revived.

PASSED AT DOVER, *January* 23, 1829.

CHAPTER CXV.

AN ADDITIONAL SUPPLEMENT *to the act regulating the General Election.*

6 v. 392.

Election in Christiana hundred to be opened between 8 & 9, A. M.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That from and after the passing of this act, the inspector of Christiana hundred in Newcastle county, shall open the general election between the hours of eight and nine o'clock in the forenoon, and continue the same open until six o'clock in the afternoon. And that so much of the fourth section of the act, to which this is an additional supplement, as relates to the opening and closing of the election in Christiana hundred, be and the same is hereby repealed.

and kept open until 6 P. M.

PASSED AT DOVER, *January* 23, 1829.

CHAPTER CXVI.

CHAPTER CXVI.
1829.

AN ACT *concerning the perpetuating of evidence respecting the bounds of lands.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That any person interested in any lands, being desirous to perpetuate testimony respecting any of the bounds thereof, or any bounds, upon which the location thereof depends, may file in the court of chancery, in the county wherein such lands lie, a petition to the chancellor, representing the case, and naming the tenants and also the owners of the adjoining lands, and praying for an order for taking depositions to perpetuate the testimony respecting such bounds. Subpœna shall be issued for summoning the said tenants and owners to appear and shew if they have any objection to the granting of this petition. Written notice of the filing of the petition, may be served upon any owner residing without the State, and the service duly proved shall be equivalent to the service of process. When process is issued twenty days before its return, if any owner cannot be found, the chancellor may make a rule upon him to appear on some particular day, and direct such service or publication of the rule as he shall consider proper, and compliance with this direction shall be equivalent to service of process. If no sufficient objection be shewn, the chancellor shall make an order, that commission or commissions issue to some suitable person or persons to take the depositions of witnesses of all parties interested, upon interrogatories filed, after such written notice of the filing of the interrogatories, not less than ten days, as the chancellor deems proper to direct; notice shall be given to an attorney or solicitor on record, and such notice shall be sufficient in respect to the party for whom he appears; it shall not be necessary to give notice to any person not residing in the county, wherein the lands lie.

Testimony respecting bounds—how perpetuated 1 v. 339.

Petition to chancellor.

Subpœna to persons interested.

Commission to take depositions.

On interrogatories.

And notice.

Notice to solicitor.

Each party may produce witnesses.

Each party shall be at liberty to produce witnesses to be examined upon the interrogatories filed on the part of either party. The chancellor may for sufficient cause, order depositions to be suppressed, either before or after publication, and he may thereupon make a new order. If there be no cause for suppressing the depositions, the chancellor shall order them to be recorded, and they shall be evidence against the parties to the petition, and their privies, in any suit or controversy, in which the bounds which they concern shall come in question, in case of the death of the witnesses, or inability to procure their attendance.

Depositions may be suppressed,

Or recorded,

When evidence.

When any person is not summoned upon the subpœna, upon application of the petitioner, the order may be made without any notice to, or rule upon such person; but in such case it shall be directed that such person shall not be deemed a party to the proceeding, and shall not be affected thereby.

Costs.

Each party shall bear the expenses of the witnesses produced on his behalf, and of their examination; all the other costs shall be paid by the petitioner.

Commissioner may have authority to appoint a clerk 2 v. 1211, §3

They shall both be sworn, &c.

In any commission, authority may be given to the commissioner or commissioners, to appoint a clerk or clerks. A commission directed to several commissioners may be joint and several. Every commissioner, and every clerk, before acting, shall take an oath or affirmation to perform his duty faithfully and impartially, according to the best of his skill and judgment. This oath or affirmation may be administered by any judge or justice of the peace; if there be several commissioners in a commission, each may administer it to another; and a commissioner may administer it to a clerk.

By whom.

Repeal of—ch. 144, a 1 v. 339

§3 of ch. 79, c 2 v. 1211.

SECTION 2 *And be it further enacted*, That the "act prescribing an easy and summary method to perpetuate the testimony of witnesses, relating to the bounds of lands within this government; and the third section of the "act to alter the time of holding the courts of chancery in this State, as at present by law directed, and for other purposes therein mentioned," shall be and hereby are repealed, from and

after the first day of June next, except so far as shall concern any matter or transaction that has taken place, or been transacted, under said acts or either of them.

PASSED AT DOVER, *January* 24, 1829.

CHAPTER CXVII.

A SUPPLEMENT *to an act entitled "an act to enable the owners and possessors, of the marsh, meadows, on the north side of Christiana River, called Brandywine Marsh, and of a tract of meadow, marsh and cripple, on the south side of said river, called Holland's Creek Marsh, and also of a tract of marsh meadow, near Newport, called Conrad's Cripple, to keep the banks, dams and sluices in repair, and raise a fund to defray the expenses thereof.*

PASSED AT DOVER, *January* 24, 1829.

PRIVATE ACT.

CHAPTER CXVIII.

AN ACT *concerning the maintenance of bastard children.*

Justices of the peace to have jurisdiction of bastardy. 1 v. 105. 2 v, 1304 3 v 61.

They shall order the father to give bond and surety.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the justices of the peace of this State, severally, shall have jurisdiction of cases of bastardy. In such case, when it is determined that a person is the father of a bastard child, the justice shall order, that the said person, with sufficient surety or sureties, become bound to the State of Delaware, by a joint and several obligation, in the penal sum of one hundred and sixty dol-

Condition.

lars, with condition to be void, if the said person, or his executors or administrators, shall indemnify the trustees of the poor of each county in the State aforesaid, from all costs and expenses, for the maintenance or otherwise on occasion of the said child, while under the age of seven years; and the said justice shall further order that the said person pay for the lying in expenses, to the mother or other person who incurred the same, a sum not less than four, nor more than six dollars, and for the maintenance of the child, to the mother or other person keeping it, a monthly sum, not less than one dollar nor more than two dollars, every calendar month from the birth, until the child shall attain to the age of seven years, if so long chargeable: this last mentioned order shall be of the same nature and effect as a judgment before a justice, and execution may be issued for any sum in arrear, by the justice making the order or another justice with whom the docket or a transcript may be lodged; and the order may be revived against executors or administrators in like manner as a judgment; in case of refusal or neglect to comply with the first mentioned order, the justice shall commit the person refusing or neglecting, to the gaol of the county to remain in custody until he shall comply with said order; or until he shall thence be delivered by the court of general quarter sessions of the peace and gaol delivery. The commitment may be according to the following form:

And to pay the lying-in expenses.

And a monthly allowance.

Force of this order.

The father neglecting to give bond, shall be committed.

Form of commitment.

State of Delaware, —— county, ss. —— —— is committed to the gaol of said county, to remain in custody until he give security in form prescribed by law to indemnify the trustees of the poor of the several counties of this state from all costs and expenses for the maintenance or otherwise on occasion of a [*male or female*] bastard child, born of —— —— on or about the —— day of ——, 18—; of which child it has been duly determined the said —— —— is the father; and he has neglected (or refused) to become bound with surety or sureties according to the order thereupon made by me, one of the justices of the peace for the county aforesaid.

(SEAL.) Given under my hand and seal the ——
day of —— 18—. —— ——.

In case of commitment, any justice of the peace for the county may take and approve the requisite obligation and surety and discharge the party; whether such commitment be by a justice, or by the court as herein-after prescribed.

Any justice may tske the bond and discharge the party.

The justice taking any such obligation as aforesaid shall make and sign an entry thereon of this effect,—*approved by me:* and he shall transmit the same to the trustees of the poor of his county, within sixty days, upon pain of forfeiting to the state in case of failure, a fine not exceeding fifty dollars, to be recovered by indictment. The trustees of the poor shall preserve every such obligation.

Bond to be *approved.*

And sent to the trustees of the poor.

Penalty for neglect.

Any person, against whom an order shall be made as aforesaid, may appeal to the court of general quarter sessions of the peace and gaol delivery within the same county, provided he, within fifteen days after the day of making such order, procure sufficient surety or sureties to enter before the justice into recognizance to the state, in the penal sum of two hundred dollars, with condition to be void, if the appellant shall appear in the said court and prosecute said appeal with effect and not depart the said court without leave. An appeal shall be a supersedeas from the time of surety entered and not before.

Appeal from an order of the justice.

Security on the appeal.

Appeal stays proceedings.

In case of appeal, the justice shall require the mother and other witnesses for the state, respectively, to appear before him and enter into recognizance to the state in like sum, with condition to be void, if they respectively shall appear in said court to give evidence on said appeal, and not depart said court without leave, and he may in his discretion require the mother, or any other witness, to find surety in such recognizance. Upon such appeal, the justice shall immediately transmit a certified copy of the orders and of the appeal to the clerk of the peace for his county, who shall enter the appeal, and the appellant shall without delay file causes of appeal. The attorney general shall answer to the appeal and conduct the case on the part of the state. The court may affirm or reverse the orders complained of, or either of them, or direct any amendment thereof or make other order as justice may re-

On appeal; recognisance to be taken for the appearance of the witnesses.

Justice to certify a copy of his orders.

Clerk of the peace, to enter the appeal.

Attorney general to answer the appeal,

Proceedings when appellant denies that he is the father.

quire. If the appellant in the causes of appeal deny that he is father of the child, the court shall without further pleading, order this matter to be tried by a jury at the bar of the court. The court shall take and approve the obligation and surety required accordingly to any order so affirmed or amended, and in case of refusal or neglect of the appellant to comply with such order, shall commit him till compliance; every obligation so taken the clerk of the peace shall transmit without delay to the trustees of the poor. An amended order shall be of the same nature and effect as an original order. Provided however, that in all cases coming before the said court under this act, the said court shall have power to make such order as to justice shall appertain, and to release the party charged upon his or her own recognizance.

Court may take the obligation.

Clerk to send it to the trustees of the poor.

The mother a competent witness.
1 v 106, §3.

SECTION 2. *And be it further enacted,* That in cases of bastardy, the mother shall be a competent witness, unless legally incompetent to be a witness in any case; and if she be dead at the time of trial, her declaration made in the time of travail and persevered in as her dying declaration, shall be evidence.

Her dying declarations, evidence.

Form of proceeding in bastardy.

SECTION 3. *And be it further enacted,* That the proceeding in every case of bastardy, shall be in the name of the state, and process shall be issued upon information given on oath or affirmation by the mother, before or after delivery. If when the process is returned, the child is not born, the justice shall require the person charged as the father to enter into recognizance with sufficient surety or sureties to the state, in the sum of two hundred dollars, with condition to be void if the said person shall appear before the said justice at the expiration of one month from the birth of said child, and on every subsequent day, to which the said justice shall adjourn the said case; and the justice shall commit him to the gaol of the county on failure to give such security.

Proceedings against the mother.

Any justice of the peace, upon his own knowledge, or upon information, that a woman has been delivered of a bastard child, shall cause her to be

brought before him and require her to discover on oath or affirmation the father of said child or to give security in like manner and sum as hereinbefore required in case of the father to indemnify the trustees of the poor of the several counties in this state from all costs and expenses for the maintenance or otherwise on occasion of said child while under the age of seven years; and if she will not discover the father of said child, or give such security, the said justice shall commit her to the gaol of the county until she so discover the said father or give such security.

She may be committed—when.

The commitment may be according to the following form:

Form of commitment.

State of Delaware; —— county, ss. —— —— the mother of a *(male* or *female)* bastard child, born on or about the —— day of ——, 18—, having been required by me, one of the justices of the peace for said county, to discover on oath or affirmation the father of the said child, or to give security to indemnify the trustees of the poor of the several counties of this state from all costs and expenses for the maintenance or otherwise on occasion of said child while under the age of seven years; and having refused (or neglected) to do either, is committed to the gaol of said county, to remain in custody till she so discover said father or give such security.

(SEAL.) Given under my hand and seal, the —— day of —— 18—

—— ——.

Any justice of the peace for the county may take the discovery or accept the security and discharge the party.

Process against the father.

Upon discovery of the father, process shall be issued against him without delay.

The form of the process against the father, or the mother, may be as follows:

Form.

—— County, ss. The state of Delaware, (SEAL.) To any constable for —— county, Greeting. We command you that you bring before —— ——, one of the justices of the peace for —— county, at ——, forthwith ——, charged with being the father of a bastard child,

CHAPTER CXVIII. 1829.

whereof —— —— has been delivered (or is pregnant) to do and receive what shall be determined in that behalf. Witness the hand and seal of said justice, the —— day of ——, 18—.

——— ———.

Against the mother.

Varying in process against the mother from the above form, by substituting for the word "father" the word "mother" and omitting the clause beginning with the word "whereof," and ending with the word "pregnant."

May be directed to any constable of either county.

For the apprehension of a person charged as the father of a bastard child, a justice of the peace shall have authority to direct process to any constable for either county of this state, and the constable serving such process shall have authority to convey the person charged to the justice, who issued the process, without respect to the limits of his bailiwick.

And served in either county.

Trial—where had.

Cases of bastardy may be proceeded in and tried in either county of the state, wherein the mother, or father resides; or where the father can be taken.

Liability of father to the trustees of the poor. 2 v. 1306, §4.

SECTION 4. *And be it further enacted,* That the father of a bastard child shall be liable to pay to the trustees of the poor of either county of this state, any costs and expenses which they shall incur for the maintenance or otherwise on occasion of said child while under the age of seven years; and they may sustain an action for the recovery thereof, if not exceeding fifty dollars, before a justice of the peace, proceeding according to the "Act providing for the recovery of small debts," with right of appeal according to said act, and if exceeding that sum, in the supreme court or in the court of common pleas, if an obligation of indemnity have not been given according to either of the provisions herein-before contained; and if in a proceeding before a justice, against a person charged as the father of a bastard child, in a case of bastardy, he cannot be found, and this appear by the constable's return, the justice may take the deposition of the mother in the absence of such person, and in every action as aforesaid against said person, this deposition, if the attendance of the mother cannot be procured, shall be received in evidence.

6 v. 433.

Deposition of the mother, when to be taken.

SECTION 5. *And be it further enacted*, That if a female bound as an apprentice or servant, shall bear a bastard child within the time of her apprenticeship on servitude, she shall serve one year after the expiration of the original term of her said apprenticeship or servitude, and shall forfeit her freedom dues.

Female apprentice bearing a bastard child shall serve on year longer; 1 v. 106 §5. And forfeit freedom dues.

SECTION 6. *And be it further enacted*, That the "Act against adultery and fornication" and the supplement to said act, passed February 9, 1796; and the additional supplement to said act, passed in 1799;—shall be, and the same hereby are repealed, from and after the first day of June next.

Repeal of—ch 44, a 1 v. 105 ch. 108, c 2 v. 1304. ch. 22, 3 v. 61.

SECTION 7. *And be it further enacted*, That the costs of proceedings under this act shall be paid by the person charged as the father, if the charge be established, otherwise by the county, and shall be as follows—

Costs—by whom paid—

To the Justice, Of justice—

For issuing process - - - -	0 25
For do. subpœna - - - - -	0 10
For entering orders for indemnity and maintenance—for both	25
For drawing and taking obligation of indemnity - - -	50
For recognizance, including all the cognizors - - - - -	20
For order of commitment and copy thereof	25
For deposition of the mother, in case of no further proceeding - -	25
For execution, and for entering return, same as of other executions.	

To the Constable— Of constable—

For service of process, or commitment	50
In case of service in conveying the person before justice in another county, mileage at the rate of two cents a mile, going and returning, reckoning from place of arrest.	
For summoning witnesses, and service of execution, same as for like service in proceedings before justices for debts.	

Of witness— *To Witness*—

For each days attendance - - 20

On appeal. Upon appeal—There shall be the same fees as are allowed by the act providing for the recovery of small debts, in case of appeal, for like services.

PASSED AT DOVER, *January* 24, 1829.

CHAPTER CXIX.

AN ACT *concerning Wood-corders.*

Wood corders, by whom appointed: 1 v. 247. 2 v. 1307. 3 v. 287. 2 v. 274. 5 v. 70.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That whenever there is occasion for a wood-corder in any town or village, the court of general quarter sessions of the peace and gaol delivery within the county, upon this being shewn to them, shall appoint some suitable person residing in such town or village, to be wood-corder for the same for one year, and until a successor be duly appointed and qualified, subject to be removed by the said court: and if a wood-corder in any town or village shall die, remove, resign or refuse to serve in vacation of such court, the justice of the peace in said town or village, (whose commission is prior in date, if there be two) or if there be none, the justice of the peace for the same county residing nearest to said town or village, shall have power to appoint a wood-corder for the same, to continue to the term of the court next after said appointment.

For what time.

Vacancies—how filled. 4 v. 275.

Wood corder may appoint deputies. 1 v. 248

A wood-corder may appoint deputies. Every wood-corder, and every deputy wood-corder, before acting, shall, before a justice of the peace for the same county, take an oath or affirmation to measure all the fire-wood which he shall be required to measure honestly and truly according to the best of his skill and judgment.

To be sworn.

Fees— 2 v, 1307.

There shall be allowed to the wood-corder or deputy wood-corder for putting up and measuring fire-

wood the rate of ten cents a cord to be paid by the buyer and seller in equal parts.

Forfeiture for buying or selling unmeasured wood.

SECTION 2. *And be it further enacted,* That if any person shall, in a town or village in which there is a wood-corder or deputy wood-corder, duly appointed and qualified, buy or sell any fire-wood without measurement, by the wood-corder or deputy wood-corder, such person shall for every parcel of fire-wood so bought or sold by him or her, forfeit and pay to such wood-corder the sum of one dollar and fifty cents, to be recovered with costs, before any justice of the peace, proceeding according to the "Act providing for the recovery of small debts."

Penalty on wood corder for not measuring.

If any wood-corder or deputy wood corder in any town or village shall not, upon application to him, attend and measure any fire-wood sold or on sale in said town or village, without delay, he shall, unless he have sufficient excuse, forfeit and pay to the person making the application, one dollar and fifty cents, to be recovered with costs before a justice of the peace as aforesaid.

Length of wood. 1 v. 247.

SECTION 3. *And be it further enacted,* That all fire-wood sold in any town or village in this state, shall be of the length of eight or four feet, measuring from the extremity at one end to the beginning of the carf at the other end.

Limitation of extent of this act.

SECTION 4. *And be it further enacted,* that this act shall not extend to any incorporated town having regulations by its charter, by-laws or ordinances for the measurement of fire-wood and the appointment of a wood corder.

Repeal of—
ch. 98, a, 1 v. 247.
ch 119, c. 2 v. 1307.
ch. 131, 3 v. 287.
ch. 96, 4 v. 274.
ch. 44, 5 v. 70.

SECTION 5. *And be it further enacted,* That the "Act for appointing a corder or measurer of fire-wood in each of the towns and villages within this government;"—and the supplement to said act passed February 9, 1796; and the additional supplement to the said act passed at Dover, January 25 1803; and the additional supplement to said act passed at Dover, January 31, 1809; and the additional supplement to the said act passed at Dover, 30 Jan.

CHAPTER CXIX. 1829.

1815, shall be and hereby are repealed from and after the first day of July next.

PASSED AT DOVER, *January* 26, 1829.

CHAPTER CXX.

AN ACT *concerning Aliens.*

Alien having made declaration, may take and hold lands, &c. 4 v. 483. 5 v. 119.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That an alien residing in this state, and having made a declaration, according to law of his or her intention to become a citizen of the United States, shall be capable of taking, by deed or will, lands, tenements and hereditaments, in fee simple or for other estate, and of holding and of aliening the same; and upon the decease of an alien having title or right by purchase or descent according to this act to any lands, tenements or hereditaments in fee simple, intestate as to such lands, tenements or hereditaments, the same shall descend and pass in the same manner, as if said alien were a citizen of the United States: and it shall be no objection to the kindred, husband or widow of such alien or of any citizen deceased taking lands, tenements or hereditaments by virtue of the intestate law of this state, that they are aliens, if they at the time of the death of the intestate reside within the limits of the United States; and any such kindred being aliens and not residing within the limits of the United States at the time of the intestate's death shall be passed by, and the effect shall be the same as if they were dead.

And alien—

And transmit the same.

§I, to have a retrospective operation. 4 v. 483. To relate to 22 Jan. 1811.

SECTION 2. *And be it further enacted,* That the preceding section shall have a retrospective operation and shall relate to the twenty-second day of January, in the year of our Lord one thousand eight hundred and eleven, and shall have the same effect as if enacted on that day.

All purchases, conveyances and devises heretofore made to, or by an alien residing at the time in this State, of lands, tenements or hereditaments, shall be as valid, and the property shall pass and be held as if such alien had been a citizen.

Purchases by a resident alien heretofore made—to be valid.

But no right, vested in any person shall be divested or prejudiced by this section.

This section not to divest any right.

SECTION 3. *And be it further enacted,* That when a title to real estate is claimed by descent, by a person capable at the time of the descent of inheriting, it shall be no bar nor interruption of such descent, that the father, mother or other ancestor through whom the descent is derived, was an alien.

Alien ancestor no bar to a descent to a person capable of inheriting. 3 Blac. com. 251.

SECTION 4. *And be it further enacted,* That the personal estate of an alien deceased, intestate, residing in this State at the time of his or her death, shall be distributed in the same manner as if he or she were a citizen; and it shall be no objection to the husband, widow or kindred of an alien or other intestate, taking distributive shares of the deceased's personal estate, that they are aliens.

Personal estate of resident alien deceased, to go as from a citizen. 1 Johns. ch. Rep. 206—219.

SECTION 5. *And be it further enacted,* That the "act to enable aliens in certain cases to purchase and hold lands, or other real estate within this State;" and the supplement thereto, be and hereby are repealed, saving all rights vested under the same.

Repeal of—ch. 172, 4 v. 483. ch. 69, 5 v. 119.

PASSED AT DOVER, *January* 26, 1829.

CHAPTER CXXI.

AN ACT *concerning bail.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That when a person arrested by virtue of original or mesne process in a civil action, offers sufficient bail, the same shall be taken, and the said person thereupon discharged.

Bail in civil suits—shall be taken. 1 Sellon's Pr. 138, 184. 1 Tidd's Pr. ch 10—12. 3 Blac. Com. 290.

One or more substantial inhabitants of the county wherein the arrest is made, of ability to answer the sum in which bail is required, shall be sufficient bail.

How taken. 1 Sellon's Pr. 137.

But shall be taken by a joint and several bond executed by the defendant and his bail, to the sheriff or officer to whom the process is directed, in the sum thereon set down for bail, payable to said sheriff or officer, or his assigns, with condition that if the defendant shall appear before the court mentioned in the process at the place and time of the return thereof, to answer as expressed therein, the said bond shall be void.

Amount of bail how determined on complaint. 4 v. 218, §9.

Upon complaint of the defendant in such process, any judge of the supreme court or court of common pleas, shall determine the sum in which he shall give bail, or may discharge him on common bail: the plaintiff or his attorney, or agent, if residing in the county, shall have notice of the time and place of hearing such complaint: the affidavit of the plaintiff shall be received to shew cause of bail. When a defendant is discharged on common bail, his appearance shall be entered on the return of the process. When a bail bond is given, the defendant cannot appear without giving special bail to the action, except by the order of the court, or consent of the plaintiff.

Appearance.

Special bail.

3 Blac. Com 291

Assignment of bail bond.

The sheriff or officer to whom a bail bond is given, or his executors or administrators shall, upon request, assign it to the plaintiff or his executors or administrators, by indorsement, under hand and seal, attested by one or more witnesses. By special order of the court, the assignment may be made to the person for whose use the action was brought, or his executors or administrators.

Bail on attachment of contempt shall be taken.

A person arrested by virtue of an attachment, for contempt issued out of a court of law or equity, (except attachments for non-performance of decrees, or the non-payment of money, or returnable forthwith) shall be admitted to give bail in like manner; and the bail-bond shall be in like manner assignable to the person, for whose benefit the attachment was issued, his executors or administrators: the court awarding the attachment, or any judge thereof, may

Amount of bail —how fixed.

determine the sum, in which bail shall be taken, which shall be set down on the writ: and if no sum be so determined, the officer issuing the writ may set down a sum for bail, which he deems reasonable, and which may be altered by a judge of either court on complaint of the defendant.

Action on bail bond—when brought—and how—1 Sellon's Pr. 188 1 Saund. by Wms. 61. a. b.

Action upon a bail-bond must be brought in the same court as the original action; and when the bond is duly assigned, the action shall be in the name of the assignee, his executors or administrators. The said court shall have power to grant to the bail, and to the parties, respectively, in the original action, such relief, upon such terms and in such manner as shall be just and equitable. Proceeding against bail upon a bail-bond taken upon an attachment issued out of the court of chancery, shall be by petition to the said court, which shall decree thereon, according to equity. Insufficient bail shall be regarded as no bail. A sheriff or officer taking insufficient bail, shall be deemed to have voluntarily permitted the defendant to escape, and shall be liable accordingly.

Liability of sheriff for taking insufficient bail.

Rule on sheriff to produce the body. 1 Sellon's Pr. 146.

Altho' bail be taken, the court shall, upon application, grant a rule upon the sheriff or officer, to bring the body of the defendant into court, in the same manner as if no bail were taken, but if the bail be sufficient and the said sheriff or officer be willing to assign the bail bond, no further proceeding shall be had against him, if he cannot find the defendant so as to comply with said rule.

Bail shall be taken in criminal cases not capital.

SECTION 2. *And be it further enacted*, That when a person arrested by virtue of process issued upon an indictment or presentment, except for a capital crime, and except process returnable forthwith, offers sufficient bail, the same shall be taken and said person discharged. The court awarding such process, or any judge thereof, or the attorney general may determine the sum in which bail shall be taken, and it shall be set down on the process; or if no sum be so determined for bail, the officer issuing the process shall set down for bail thereon the sum he deems reasonable. Bail shall be taken by the sheriff or officer to whom the process is directed

Amount how fixed.

How taken.

CHAPTER CXVIII. 1829.

by a joint and several bond executed by the accused, and his bail to the state, in the sum set down for bail upon the process, with condition, that if the accused shall appear in the court mentioned in the process, at the place and time of the return thereof, to answer as expressed therein, and shall not depart the court without leave, the said bond shall be void. Bond so taken shall be returned with the process, and if default be made, it shall be recorded thereon in the same manner as in the case of a recognizance.

How returned.

Justice of the peace to issue process for the arrest of persons accused—when—4 Blac Com. 288, 290. To whom.

SECTION 3. *And be it further enacted*, That a justice of the peace, on probable cause, supported by oath or affirmation, to believe, that a person has committed a crime or misdemeanor, shall issue a warrant, under his hand and seal, directed to any constable of his county—(or in case of emergency, to the sheriff, coroner or any person, whom the justice may see fit to name) for the apprehension of the person accused.

Extent of such writ. 6 v. 741. §13.

Such warrant, if the offence be felony, may be executed in either county of the state, by the officer or person to whom it is directed, or by the sheriff, or any constable of the county, where the accused may be found; and it shall be the duty of each of said officers, and of the citizens in each county, to aid in executing the same. The accused, when apprehended in another county than that in which the warrant was issued, shall, if ready and willing to give bail, and the offence be bailable, be carried before one of the nearest justices of the peace for that purpose; otherwise he shall be carried before the justice who issued the warrant, or in case of his absence or inability, some other justice of the peace for the same county.

Accused to be admitted to bail in bailable offences. Bail, how taken.

Justice of the peace shall take the voluntary declarations of the accused. 4 Blac. Com. 296. McNally Ev 38 ch 6. rule 1. Ib 41. 2. rule 8. and may commit him or require bail.

A justice of the peace, before whom a person accused of a crime or misdemeanor is brought, shall examine the said person, taking his voluntary declarations, without threats or promises, and shall also examine the witnesses, and if he considers that there is probable ground for the accusation, he shall, in case of a capital crime, commit the accused for trial, and in any other case, require the accused to give sufficient bail for his appearance before the next court

of general quarter sessions of the peace and gaol delivery for the county, wherein the offence is alledged to have been committed, and if he do not give such bail, commit him for trial. But when the accused is carried before a justice of the peace in another county than that wherein the warrant was issued, according to the preceding provision, he shall be required to give bail of course. When the offence is felony, the justice shall reduce the examination of the accused to writing and read it to him and offer it for his signature, that he may, if willing, sign it; the justice shall sign it. The justice shall also reduce to writing the testimony, if material, of each witness examined, in the presence of the accused, and read the same in the presence of the accused, to the witness, who shall sign it; it shall be signed by the justice also, and, in case of the death of the witness, shall be evideuce on the trial of the accused.

In felony—Justice to reduce the examination to writing, &c.

And the testimony.

When the accused is committed or bound for his appearance, the justice shall require each witness whose testimony he deems material, to enter into recognizance to the state, in an adequate penalty, for his appearance before the proper court at the proper place and time, to give evidence touching the accusation. Such recognizance shall be taken without surety, unless the justice believes that the witness will not appear according to his recognizance, and that the loss of his testimony ought not to be hazzarded: in which case, the justice may require the witness to give security for his appearance and upon his default may commit him. A witness so committed shall, for the time he is detained be allowed the same fees as for attendance in court, unless the court shall for sufficient cause refuse the allowance.

Witnesses to enter into recognizance—when.

Without surety, unless, &c.

Witness may be committed for want of surety.

In criminal cases, bail for the appearance of the accused, except when taken by the sheriff or officer, to whom process is directed and security for the appearance of a witness shall be given by recognizance. Every judge of the supreme cour and of the court of common pleas and justice of the peace shall

In criminal cases—bail, how taken.

CHAPTER CXXI. 1829.

have authority to take such recognizance, and such recognizance, when entered into before a judge out of court or a justice of the peace shall be signed by the recognizors. When a person is committed for want of bail or security, the sum in which bail or security was required shall be set down on the commitment.

Person committed for want of bail—how discharged.

A person committed for want of bail or security shall be discharged upon giving sufficient bail or security; and any judge or justice of the peace may require such person to be brought before him for that purpose.

Capital offences—not bailable 4 Blac. com 249

But in certain cases.

A capital offence shall not be bailable; but the supreme court or the court of general quarter sessions of the peace and goal delivery, or when neither of said courts is sitting in a county, any judge of the supreme court may admit to bail a person accused of such offence, before indictment found, if upon full inquiry it appears that there is good ground to doubt the truth of the accusation. In every case of such inquiry the justice or officer who committed the accused shall be summoned, and care shall be taken to hear the proper witnesses.

Insufficiency of commitment, not of itself a ground to discharge the accused.

A person accused of an offence and committed for trial, shall not be discharged on the ground of the insufficiency of the commitment merely; but the chancellor, judge or court to whom the accused complains, shall, when the commitment appears to be defective, and proceedings is thereupon directed, order the justice or officer who made the commitment to be summoned; and the chancellor, judge or court before whom the accused is brought, if the commitment be adjudged insufficient, shall examine the circumstances of the accusation, taking proper measures for that purpose; and if there be probable ground for the accusation, shall admit the accused to bail or commit him for trial, as shall be agreeable to law: if a habeas corpus have issued in such case, the hearing may be adjourned for the purpose of such examination from time to time not exceeding fourteen days from the return of the writ.

But court or judge may hear the case, and commit or hold to bail.

2 v. 1058.

Costs of such proceeding—how paid.

Any costs arising in such case may be ordered to be paid by the county or otherwise; but if the com-

mitment be insufficient, the justice or officer who made it, shall have no compensation for attendance.

SECTION 4. *And be it further enacted,* That every judge and justice of the peace and other officer, shall deliver or safely transmit every recognizance, examination and deposition by him taken touching any offence, to the court, having jurisdiction to inquire of the truth of such offence, first held after taking the same, on the first day of said court, immediately after the opening of the court. And to each court of general quarter sessions of the peace and goal delivery in each county, on the first day, the sheriff of such county shall deliver a list of all prisoners in the public goal in said county, with the cause of each commitment; and to each court of oyer and terminer and general goal delivery in each county, the sheriff of said county shall, on the first day thereof, deliver a list of all prisoners in his custody committed for capital offences.

Recognizances, &c.—where returned. 6 v. 745, §19.

Sheriff shall deliver a list of prisoners.

SECTION 5. *And be it further enacted,* That the ninth section of the "act for the better securing personal liberty and for other purposes," and the thirteenth and nineteenth sections of the "act providing for the punishment of certain crimes and misdemeanors," shall be and the same hereby are repealed, from and after the first day of June next, and that this act shall commence and be in operation on and after the first day of June next.

Repeal of— §9 ch. 65, 4 v. 218.

§13, 19. ch. 362, v. 741, 5.

PASSED AT DOVER, *January* 26, 1829.

CHAPTER CXXI.

AN ACT *to prohibit and restrain the digging of earth, sand or gravel, on certain lands of the heirs of Doctor Richard C. Dale, deceased, for the purpose of repairing the causeway over Appoquinimink creek, in Newcastle county.*

PASSED AT DOVER, *January* 27, 1829.

PRIVATE ACT.

CHAPTER CXXIII.

CHAPTER CXXIII.

1829.

2 v. 1064.

AN ACT *concerning the keeping of the papers, belonging to the Executive department, and the acts of the General Assembly, and the printing and disposal of the laws and journals.*

Secretary of State to keep the books, &c. of the Executive department—

And the acts of Assembly.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the Secretary of State, shall have the keeping of all records and public papers belonging to the Executive department, and all acts and public resolutions of the General Assembly, and he shall carefully preserve the same.

Laws to be delivered to him; 2 v. 1064.

5 v. 373.

Whenever an act or public resolution of the General Assembly, is duly enrolled and signed, it shall be immediately delivered by the speaker of the House in which it originated, to the Secretary of State, who shall cause to be accurately printed, he collating the proof sheets with the original rolls, eight hundred copies of all the acts and resolutions, of a public nature, passed at a session of the General Assembly, with succinct marginal notes to the several sections, and with his certificate subjoined of the accuracy of the edition and his collating the same, and with an index, as soon after the end of the session, as it can with diligence be effected.

And he shall print the same; Number of copies;

With notes, certificate,

and index.

Printing—how done—

Contracts therefor—how made; 3 v. 229.

And certified;

And paid.

Such copies after the revised edition is printed, shall correspond in form, size and type, as nearly as may be, with said edition. The Secretary of State shall contract for the printing; and the same being done to his acceptance, he shall certify the sum due therefor, according to contract, stating the pages, the price and all items of charge. The governor shall have power to draw an order upon the State-treasurer for the amount.

Laws—how distributed. 5 v 373, §3,

2 v. 1064.

5 v. 238.

The Secretary of State shall dispose of said copies as follows; He shall deliver one to the Governor, nine to the Senate and twenty-one to the House of Representatives. He shall transmit one hundred and sixty to the prothonotary for each county, one to the President of the United States, one to the

head of each department of the General Government, two to the Library of Congress, and three to the Executive of each State and each territory of the United States, one shall be for the use of the Secretary's office, and the residue shall be retained in said office. Each edition of copies shall be paged in succession until a volume be completed. When the pages exceed six hundred, the Secretary of State shall cause the copies retained as aforesaid, to be bound in volumes with an index to each volume. The volume shall be disposed of as the General Assembly shall direct.

4 v. 521.
7 v. 135.

The governor shall attend to the interchange of the laws between this State and the several States and Territories of the United States, and shall correspond with the Executive of any State or Territory, as may be expedient, and take all proper measures to effect this interchange. He shall have authority to transmit copies of all the laws of this State to any State or Territory, which has not received the same, and copies are made subject to his order for that purpose.

Governor to attend to the distribution.
4 v. 521.
6 v. 238.
7 v. 135.

Of the copies transmitted to the prothonotary for each county, each of the public officers of this State, residing in said county, including the grand jurors attending the court of general quarter sessions of the peace and gaol delivery, shall be entitled to receive one; the copy so received by the clerk, prothonotary or register of a court, shall belong to his court and be safely kept by him and delivered to his successor in office, for the use of said court; the copies received by the register, recorder and sheriff, shall belong to their respective offices, and shall be delivered to their successors in office; one copy shall be delivered to the clerk of the district court of the United States in this district, for the use of said court; the residue of said copies shall be sold for twenty-five cents each, by the prothonotary, who shall in December render to the Secretary of State, an account of the sales, and pay to him the money received.

Prothonotaries, how they shall dispose of the laws sent to them.
2 v. 1064.
5 v. 374.

SECTION 2. *And be it further enacted,* That the journal of the Senate and the journal of the

Journals—to be printed—
5 v. 79.

in what form.

House of Representatives, with the report of the finances, and an index to each journal, shall be printed in octavo, with long primer type, so as to contain at least forty-five lines on a page with the yeas and nays in line in compact form. Three hundred copies of each shall be printed. The clerk of each House immediately after each session shall advertise during three weeks, in two newspapers published in this State, for proposals for printing his journal, and he shall accept the lowest and most advantageous proposals. When the printing is completed, if approved, the clerk shall certify the sum due according to contract, stating the pages, price and all the items of charge. The Governor shall have power to draw an order on the State Treasurer for the amount, provided such order shall not exceed, for the Journal of the Senate, one hundred and fifty dollars, and for the Journal of the House of Representatives, with the report of the finances, two hundred and fifty dollars. If the certificate exceed the order, it may be laid before the General Assembly for allowance of the excess.

Clerks shall advertise for proposals.

And contract for printing—3 v 229

And certify the same—

How paid, 6 v. 80.

Journals—how distributed.

Each clerk shall thus distribute the copies of his journal, to wit:—three copies to the Secretary of State, to belong to his office; nine copies to the Senate; twenty-one copies to the House of Representatives, and eighty-nine copies to the Prothonotary for each county, who shall deliver one to each member of the General Assembly for his county, one to each of the Judges residing in his county, and the residue to such citizens as shall apply for the same, each receiving one.

Those in the office of the Secretary of State—to be bound—when.

The copies of the journals in the office of the Secretary of State shall be bound in volumes whenever he shall consider they will make volumes of suitable size.

Repeal of—

§1, 2, 3 & 4 of ch. 5. c. 2 v. 1064, 5.

ch. 103, 3 v. 329.

SECTION 3. *And be it further enacted,* That the first, second, third and fourth sections of the "act to enjoin certain duties to be performed by the Secretary of State and for other purposes," and the "act making provision for the payment of the printing the laws and journals of the Senate and of the House of Representatives;" and the "act for the

interchange of the laws;" and the supplement to said act; and the further supplement to said act; and the "act for the more speedy publication of the laws;" and the supplement to the act making provision for the payment of the printing the laws and journals of the Senate and of the House of Representatives, be and hereby are repealed; and joint resolutions of the Senate and House of Representatives, adopted at Dover, 6 February 1818, and contained in the 213 and 214 chapters 5 vol. Del. Laws, pages 366, 367, 368 are hereby rescinded.

ch. 193, 4 v. 521. ch. 141. 6 v. 238. ch. 56, 7 v. 135. ch. 205, 5 v. 373 ch. 58, 6 v. 79. ch. 203, 5 v. 366, 7.

PASSED AT DOVER, *January* 27, 1829.

CHAPTER CXXIV.

AN ADDITIONAL SUPPLEMENT *to an act entitled "an act to enable the persons therein named to raise by lottery the sum of three thousand dollars for discharging the incumbrances against St. Peter's Church, in the Borough of Wilmington, and for finishing the said church.*

5 v. 159, 3[illegible], 520.

Preamble.

Whereas it hath been represented in the petition of the Trustees of St. Peter's Church in the Borough of Wilmington that they have experienced great inconvenience and are in danger of losing the benefits which were intended to be secured to the said church by that act, in consequence of the refusal of some of the persons therein appointed, to act as managers of the lottery therein mentioned, therefore—

Repeal of—

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the second section of the said act, appointing certain persons therein mentioned managers of said lottery, passed at Dover, February 2, 1822, be and the same is hereby repealed made null and void: provided that this repeal

§2. ch. 119, 5 v. 159.

Proviso.

CHAPTER CXXIV. 1829.

shall not effect any suit, action or cause of action or claim now depending or existing or which shall hereafter be depending or shall accrue to the managers hereafter appointed or to the Trustees of said church or any person or corporation against said previous managers or any of them or against the trustees of the said church.

Other managers appointed.

SECTION 2. *And be it enacted,* That Peter Pierce, Bernard M'Guigin, Michael Kinny, Henry Grimes, Bernard M'Cann and Patrick Higgins, or a majority of them, shall be and they are hereby appointed managers of said lottery, who shall, previous to their entering upon the discharge of the duties of managers as aforesaid, with two or more sufficient sureties enter into a bond to be approved by the Governor of this State, in the name of the State of Delaware, agreeably to the provisions of the third section of the said original act; and shall in all things conform themselves to that act; and shall in said bond be bound in the condition, to save harmless and indemnify the managers appointed by the original act, as to all losses sustained by them in drawing any class or classes of said lottery.

To give bond.

Condition.

PASSED AT DOVER, *January* 28, 1829.

CHAPTER CXXV.

AN ACT *to enable William Cooch to bring into this State a certain negro boy therein named.*

PASSED AT DOVER, *January* 28, 1829.

PRIVATE ACT.

CHAPTER CXXVI.

CHAPTER CXXVI. 1829.

AN ACT *concerning the lien of judgments and executions.*

SECTION 1. *Be it declared and enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That a judgment does not bind lands, tenements or hereditaments, from the first day of the term, in or of which it is entered by relation thereto, but only from the time of actually entering or signing it.

Judgment only binds from the date of entry.

SECTION 2. *Provided, and be it enacted,* That a judgment upon a verdict, if entered before the end of the term next after that in which the verdict is given, shall be deemed to be entered at the same time as the verdict, and shall bind accordingly; and that a judgment *given, amount to be ascertained by clerk or other person,* shall bind from the time of entering it, if the amount be ascertained and entered upon the docket before the first day of the term next after that in which the judgment is given, but otherwise only from the time of entering upon the docket, the ascertained amount.

Judgment upon a *verdict;* from what time it binds.

Judgment—*amount to be ascertained.*

If several judgments be entered against the same person on the same day, the first entered shall have priority; but if it does not appear by the entries in case of several judgments against the same person, which were first entered, they shall, when given in suits previously commenced, have priority according to the priority of the dates of the suits, in which they are respectfully given. A judgment entered during a term, if the day of entering it does not appear by the docket, shall be postponed to a judgment entered during the period of the same term, the day of entering which does appear by the docket; but these regulations shall not contravene the preceding provision respecting a judgment on a verdict.

Judgments entered *on the same day;* which shall have priority.

SECTION 3. *And be it further enacted,* That a final judgment of the high court of errors and ap-

Judgment of the high court

of errors and appeals: Cons. art. VII. §2. 1 v XLIV from what time it binds.

peals, given upon the reversal of a judgment of the supreme court or of the court of common pleas, shall bind lands, tenements and hereditaments in the county, wherein were the proceedings in the court below, from the date of entering it in the high court of errors and appeals; provided that, the record being remanded, the said judgment be entered upon the docket of the court below, within twenty days after said date, but otherwise only from the time of entering it upon the docket of the court below; and the clerk or prothonotary of the court below, to whom a record remanded with a duly certified copy of the proceedings, and judgment of the high court of errors and appeals, is delivered, shall without delay file it, and enter upon the docket of the court below, in connexion with the entries of the proceedings in the cause in the said court, the said proceedings and judgment of the high court of errors and appeals, with the date of making such entry; and the said entry shall be a record, and the said judgment so entered shall have the same force and effect, as a judgment of said court below, and shall be executed by the process of the said court, in like manner as judgments of said court, and the lien thereof may be extended to lands and tenements in another county, by means of a testatum fieri facias entered of record, in the office of the prothonotary of such county. Upon affirmance of a judgment in the high court of errors and appeals, the costs of the defendant in error, shall be added by way of increase to his costs in the first judgment, and be a part of said judgment, and the amount may be stated accordingly, in process and pleadings. The lien of a judgment shall not be extended by affirmance to lands, tenements or hereditaments, not bound by the original judgment: and a judgment of the high court of errors and appeals, shall not bind lands, tenements or hereditaments, otherwise than as prescribed by this section.

Clerk of the court below to enter the judgment.

Force of the judgment.

Cons Art VI §18, 1 v. XLIII

Costs in the H. C. of E. & A. on *affirmance* of judgment below.

Duty of clerks on entering judgments.

SECTION 4 *And be it further enacted*, That the clerk of the high court of errors and appeals, each clerk of the supreme court and each prothonotary of the court of common pleas, whenever a judgment is

entered or signed in the court of which he is the officer, (except a judgment upon a verdict when entered before the end of the term, next after that in which the verdict is given) shall set down upon the docket thereof, the true date, (*viz: the day, month and year,*) of actually entering or signing it: it shall be sufficient when such date is contained in the entry. Each clerk of the supreme court, and prothonotary of the court of common pleas, when entering upon the docket, the ascertained amount of a judgment, *given amount to be ascertained by the clerk or other person,* shall set down upon the docket the true date (*viz: day, month and year*) of the entry. Each clerk of the supreme court and prothonotary of the court of common pleas, shall keep to every docket belonging to his office, in which judgments are entered or signed, except the appearance docket, two indexes of such judgments, the one of the names of the plaintiffs, in alphabetical order, according to the first letter of the surnames in connexion with the names of their defendants, and the other of the names of the defendants, in like alphabetical order, in connexion with the names of their plaintiffs, and shall enter in said indexes, the names of the parties to every judgment within twenty-four hours after it is entered or signed, except judgments entered in the appearance docket, which judgments shall. within two weeks after the entry thereof, be transferred to the continuance docket and immediately carried into the indexes. A testatum fieri facias and a judgment of a justice of the peace, entered of record in the prothonotary's office, for the purpose of binding lands and tenements, shall be carried into the indexes, in like manner as judgments. Also when a case is continued after verdict for the plaintiff without judgment, it shall be carried into the indexes in the same manner as if judgment was given; and a judgment of the high court of errors and appeals entered in the court below, shall be carried into the indexes in the same manner as a judgment of the court below.

To note the time.

Clerks shall keep two indexes to judgment dockets.

To alphabet judgments in *twenty four hours* after entry.

If any clerk or prothonotary, shall refuse or neglect to perform any duty, by this act enjoined upon

Penalty for neglect of the above duty.

6 v. 745, §18.

him, or shall not perform the same truly and faithfully, he shall be deemed guilty of a misdemeanor in office; and further he shall be answerable in an action of trespass on the case to any person or persons or corporation injured by his default in the premises for all damages sustained through such default, and furthermore, every such default shall be a breach of the condition of his official obligation. But the duties enjoined by this act upon the clerks and prothonotaries shall not commence until the first day of August, in the year of our Lord, one thousand eight hundred and twenty-nine, and shall not extend to any judgment or matter entered before that day.

Executions—when they shall bind—

Priority of.

Sheriff to note the time of receiving executions.

SECTION 5. *And be it further enacted,* That no writ of execution shall bind goods and chattels until it is delivered to the sheriff or other proper officer to be executed. If several executions against the same defendant be so delivered on the same day, the first delivered shall have priority. The sheriff or other officer receiving an execution shall, in a docket, set down the date of receiving it, and when several executions are delivered on the same day, this docket shall shew the order in which they are received; and the clerk or prothonotary issuing an execution, shall endorse thereon the date of the issue.

§1, 2, 5, do not concern judgments, &c. before justices of the peace.

This section, and the first and second sections of this act, do not concern judgments or executions before justices of the peace.

Judgment confessed for a penalty; real debt &c to be endorsed on the docket—

2 v 927, §5 and on the execution.

The attorney shall give the clerk *written directions* to this effect.

SECTION 6. *And be it further enacted,* That whenever judgment is confessed by virtue of a warrant of attorney for a penalty, the real debt and the time from which interest is to be calculated shall be entered upon the docket thereof; and whenever an execution is issued upon any judgment for a penalty, the real debt and the time from which interest is to be calculated shall be endorsed upon the execution: To this end the attorney confessing the judgment or ordering the execution, or the plaintiff, shall, in a written direction to the officer entering the judgment or issuing the execution, set down in words and figures such real debt and time from which interest is to be calculated, and the said offi-

cer shall enter or endorse the same, as herein required: such real debt and time from which interest is to be calculated need not be set down in a direction with respect to an execution when the same have been previously entered upon the docket.

SECTION 7. *And be it further enacted*, That the fifth section of the "Act directing the manner and form of securities to be given by sheriffs for the due execution of their trust and prescribing a time for their returns on writs of fieri facias" be and the same hereby is repealed.

Repeal of—§5, ch. 178, b. 2 v. 927.

PASSED AT DOVER, *January* 29, 1829.

CHAPTER CXXVII.

AN ACT *for the relief of Mary Harris, an infant, and devisee of Isaac Short.*

PASSED AT DOVER, *January* 29, 1829.

PRIVATE ACT.

CHAPTER CXXVIII.

AN ACT *for repealing certain parts of the "Act for the establishing courts of law and equity within this government;" and of the "Act for the better regulation of the supreme court within this government."*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That the third, sixteenth, seventeenth, eighteenth and twenty eighth sections of the "act for the establishing certain courts of law and equity within this government;" and the last clause, beginning with the word "saving" of the third section, and the fourth, sixth, eighth, eleventh and twelfth sections of the "Act for the better regula-

Repeal of—§3, 16, 17, 18 & 28, of ch. 54. 1 v. 121.

part of §3 & §4, 6, 8, 11 & 12, of ch. 167, a, 1 v. 376.

tion of the supreme court within this government"
part of §2. 375. be and are hereby repealed; and the words "and writs of error" shall be expunged from the second section of the last mentioned act; and the words
part of §5 377. "and made in the name and style of the King, his heirs and successors;" and the words "signed by one of the judges" shall be expunged from the fifth section of said act; and in any edition of the laws hereafter to be printed the expunged words shall be omitted.

PASSED AT DOVER, }
January 29, 1829. }

CHAPTER CXXIX.

AN ACT *to incorporate the Brandywine and Christiana Manufacturing Company.*

Company incorporated.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That John B. Newman, John Hemphill, Nathan Bunker, Jacob B. Clement and Thomas Fisher, now associated, and such others as may be hereafter associated with them for the purpose of carrying on the manufacture of cotton, woollen, paper, flax, iron or any other material which they may from time to time adopt or substitute at their estate, late that of Joshua and Thomas Gilpin, on both sides of Brandywine creek in the county of Newcastle, shall be and are hereby ordained and declared to be a body politic and corporate, by the name of The Brandywine and Christiana Manufacturing Company, and by that name, they and their successors and assigns shall and may have continued succession, for thirty years and no longer; and be capable to sue and be sued in courts of law and equity, to purchase, take, enjoy, sell and alien lands, tenements, hereditaments, goods, chattels and effects of every nature which may be connected with, or conducive to the purpose for

Name.

Powers.

which said company is established, to have a common seal, to ordain by-laws for their own government, not repugnant to the constitution or laws of this state or of the United States, and to enjoy the franchises incident to a corporation; provided always that the said corporation shall not have nor exercise any banking powers whatever, and that their said capital stock shall not exceed five hundred thousand dollars.

Proviso.

SECTION 2. *And be it further enacted,* That the business and concerns of the said corporation shall be managed by five directors, who shall be stockholders, and shall be elected at each annual meeting of the stockholders, which shall be on the second Tuesday of February in every year, and shall continue in office until the next succeeding annual meeting and until successors to them shall be duly chosen: the directors shall be elected by ballot, by the stockholders in person or by proxy, who shall have a vote for every share of stock, and a majority of votes given in, shall be necessary to a choice, and such ballot shall be made from time to time until the requisite number of directors shall have such a majority. If any director cease to be a stockholder, and if any vacancy or vacancies shall occur, either by death, resignation, refusal to serve, or from any other cause, the remaining directors or director shall choose one or more directors to serve until the next election in course or until successors shall be duly chosen; but if vacancies shall at any time exist in all the offices of directors, or if such directors shall not be chosen at the time oppointed herein, this corporation shall not thereby cease, but in the former case, such persons shall manage the business and concerns of the said corporation as may be prescribed by its by-laws; and in the latter case the directors shall continue in office until successors shall be actually chosen and enter upon the duties of their office. The directors shall choose from among their number a president, who shall have such powers and duties as shall be prescribed by the by-laws. The directors, until the first annual meeting after this act shall go into operation and until others shall be appointed and

Board of Directors:

to be elected—when—

how—

President.

shall act, shall be John B. Newman, John Hemphill, Nathan Bunker, Jacob B. Clement and Thomas Fisher.

By-laws—how made.

SECTION 3. *And be it further enacted,* That all by-laws shall be made by the stockholders at their annual or other meetings, called by virtue of by-laws made at an annual meeting, excepting those made before the first annual meeting after this act shall go into operation; for which purpose the stockholders shall be convened as the directors may prescribe, at all which meetings all questions shall be decided by a majority of votes given in person and by proxy, each share having one vote.

Duty of directors.

SECTION 4. *And be it further enacted,* That the directors shall at all times keep, or cause to be kept, proper books of accounts, in which shall be regularly entered all the transactions of the said corporation, which books shall be subject at all times to the inspection of the stockholders, and the directors shall, once in every year take an account of the stock, property and effects belonging to the said corporation, and of all debts owing by or to said corporation, and make a record thereof in a book to be kept for that purpose, and exhibit the same to the stockholders at their annual meeting; and no director shall have any emolument, except such as shall be allowed by the stockholders at their annual meeting, or be prescribed by the by-laws.

Capital stock—price of shares.

SECTION 5. *And be it further enacted,* That the shares of the capital stock shall be five thousand dollars each, and be personal property, and shall be created, certified, held, arranged and assignable according to the provisions of the by-laws.

This act a public act.

SECTION 6. *And be it further enacted,* that this act shall be deemed and taken as a public act;

Proviso.

Provided always, that unless the said John B. Newman, John Hemphill, Nathan Bunker, Jacob B. Clement and Thomas Fisher, and also Thomas Gilpin of the city of Philadelphia, or the survivors of them, or in case of the death of either of them, the executor or administrator of the deceased, shall, on or before the expiration of twelve calendar months after the passage hereof, declare their acceptance of the terms

and provisions of this act by writing severally, to be signed by them and filed in the office of the secretary of this state, then this act, and every matter and thing and clause therein contained, shall be null and void as if the same had not been passed. The State hereby reserves to itself the power of imposing such tax on the capital stock of said company as shall be actually paid in, as may be equitable.

Reservation of power to tax.

PASSED AT DOVER, *January* 29, 1829.

CHAPTER CXXX.

AN ACT *concerning the jurisdiction of justices of the peace in certain actions of trespass, and their powers in certain cases of complaints of assaults and batteries.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the justices of the peace, of this State, shall severally, within their respective counties, have jurisdiction of actions of trespass for direct and immediate injuries in carrying away or taking, destroying or damaging goods or chattles, and for direct and immediate injuries to real property, when the damages claimed in such action do not exceed fifty dollars.

Justices of the peace, to have jurisdiction in cases of trespass to any amount not exceeding *fifty dollars.*

4 v. 310. 5 v. 92 6 v 192. 2 Black. Rep. 895. Scott vs Shepherd.

In such actions the process, modes of trial, right of appeal, and manner and form of proceeding shall be as prescribed by the "act providing for the recovery of small debts," except that in such actions there shall be no set off; there shall be a right to a trial, by freeholders, and a right of appeal in every case, without respect to the sum claimed or recovered; there shall be no attachment unless on execution; the cause shall not continue or survive against executors or administrators; and the first, eighth, tenth, eleventh, twelfth, thirty-first, thirty-second,

Process, &c. to be in the form prescribed by ch 263, 6 v. 433. except &c.

61, 8, 10, 11, 12, 31, 32, 36

§. 37, shall not be applied to this act.

thirty-sixth, and thirty-seventh sections of the said act, shall not be applied; and the said act, subject to said modifications and exceptions, is adopted for regulating the proceedings under this act: provided, that, before a summons or capias is issued in such action, the plaintiff, or his attorney or agent, shall file a written statement under his hand, describing the injury complained of; and in such summons or capias, the form prescribed by the act aforesaid, shall be varied from, by substituting for this clause, viz: "touching a cause of action wherein —— is demanded," the following, viz: *in an action of trespass for*—(here describe the injury according to the statement filed) *whereupon damages to the sum of* ———— *are claimed.* The statement shall be a part of the record; and if the judgment shall in any case be reversed or annulled on certiorari on the ground that the justice had not jurisdiction of the matter mentioned in the statement, the court shall order that the justice pay all the costs in the case, and a neglect to obey such order shall be a contempt of the court.

Proviso—Before summons or capias issues, the plaintiff shall file a statement of the injury. 6 v. 192.

Form of summons or capias, how varied to suit the case.

Statement—to be a part of the record.

Costs, to be paid by the justice—when.

Case to be removed to the supreme court or court of common pleas—when.

Provided, that if an action of trespass for an injury to real property, the defendant say that the place wherein the trespass is alleged, is his freehold, or the freehold of a person under whom he claims, and pray that the cause may be removed to the supreme court or court of common pleas for trial, and give sufficient security, to the acceptance of the justice, in such reasonable sum as he shall deem sufficient under the circumstances, but not exceeding fifty dollars, that the damages and costs which the plaintiff shall recover in said court, shall be satisfied, the justice shall thereupon without delay certify the record of the said action to the supreme court or the court of common pleas, according to the defendant's prayer, and the said court shall receive the same, and hear and determine the cause, proceeding in the same manner as in causes commenced by the usual process. The entry in court of the record certified, shall imply the appearance of the parties and be a sufficient entry of such appearance. In such case the entries before the justice,

Security to be given.

may be according to the following form, viz: "——— day of ——— 18 —; the defendant says that the place wherein the trespass is alleged, is his freehold [or the freehold of ——— under whom he claims] and prays that this cause may be removed into the supreme court [*or court of common pleas*] for trial; and thereupon ——— becomes bound to the plaintiff [*or plaintiffs*] in the sum of ——— that the damages and costs which the said plaintiff [*or plaintiffs*] shall recover in said court, shall be satisfied;" which entry shall be signed by the surety or sureties, or it shall be void.

Form of entry by the justice in such case.

To be signed by the surety.

SECTION 2. *And be it further enacted,* That in every case of complaint before a justice of the peace, by the party injured, of assault, or assault and battery, the party complained against may submit to be tried by the justice; which submission shall be reduced to writing and signed by the said party; and the said justice thereupon shall hear and determine the case; and if he find the said party guilty, shall limit a reasonable fine, according to the circumstances, but in no case exceeding ten dollars; and shall give judgment that said party, pay to the State said fine and costs, and stand committed till payment; and the said justice shall immediately charge a constable present with said party, and shall enter the name of such constable, upon the docket of the case; and the said constable, if the fine and costs be not paid, shall have power to convey said party to the common gaol of the county, to be therein detained by the keeper thereof, until the fine and costs be paid: for which a copy of said judgment, which copy the justice shall make, certify and deliver to the constable on request, shall be a sufficient warrant.

Assault and battery—when it may be submitted to the justice. 4 v. 311.

Submission to be signed.

Fine not to exceed *ten dollars.*

Commitment.

It shall not be lawful, for the justice in any case, to receive the fine by him imposed, or the costs.

Justice shall not receive the fine or costs.

In such case as mentioned in this section, the justice shall have power, for sufficient cause, to adjourn the hearing, taking security for the appearance of the party complained against, at the time adjourned to.

Justice may adjourn the case: taking security.

May permit the parties to settle the case.

It shall be lawful for a justice of the peace, in every case of assault and battery to permit the parties to settle the matter, and either to discontinue any proceedings or to annul any recognisance, upon payment of costs.

The justice shall refuse to determine the case—when.

His duty in such case.

If the justice shall consider that a case submitted to him ought to be subjected to higher authority, he shall refuse to determine it, and shall require sureties for the appearance of the party complained against and of the witnesses at the court having jurisdiction of the matter; and in case of failure to give sureties as required, he shall commit the party failing.

Repeal of—ch. 110, 4 v. 310.

ch. 48, 5 v. 92. §1 of ch. 119, 6 v. 192.

SECTION 3. *And be it further enacted*, That the "Supplement to the act entitled an act for the more easy and speedy recovery of small debts," passed at Dover, January 24, 1810; and the additional supplement to the said act, passed at Dover 3 February, 1815; and the first section of the further additional supplement to said act passed at Dover, February 5, 1822, shall be and hereby are repealed from and after the first day of June next: Provided, that any actions or appeals that shall have been commenced or taken under either of said acts before the said day, and shall then be pending, shall not be abated or discontinued by means of this repeal, but shall be prosecuted, carried on and continued to judgment and execution in the same manner as if this act had not been passed.

Proviso.

PASSED AT DOVER, *January* 30, 1829.

CHAPTER CXXXI.

AN ADDITIONAL SUPPLEMENT *to the act entitled "A further supplement to the act entitled 'An act to alter the times of holding the courts of law and equity it this state."* 4 v. 662. 6 v. 622.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That hereafter the court of common pleas and court of general quarter sessions of the peace and gaol delivery, shall, at the spring sessions thereof, commence and be held in Newcastle county in May, in the second Monday after the commencement of the term of the court of common pleas in April or May (as the case may be) in Kent county, instead of the third Monday after the commencement of the time of the said court in Kent county, as now directed by law.

Spring terms of the court of com. pleas and quarter sessions in Newcastle county, when held.

SECTION 2. *And be it further enacted by the authority aforesaid,* That all actions, suits, indictments, pleas, commissions, writs, processes, bail-bonds and all other proceedings, matters and things, relating to any cause, civil or criminal, which now is, or hereafter shall be depending in, or returnable to the court of common pleas, or the court of general quarter sessions of the peace and gaol delivery, shall be continued and remain in full force and effect, and shall be returnable to the court to which they severally pertain on the day and time herein appointed.

Process—when returnable.

SECTION 3. *And be it enacted, by the authority aforesaid,* That the fifth section of the act to which this is an additional supplement be and the same is hereby repealed.

Repeal of—§5, ch. 322, 6 v. 622.

PASSED AT DOVER, *January* 30, 1829.

CHAPTER CXXXVII.

1829.

CHAPTER CXXXII.

AN ACT *concerning the constitution of the Levy-court and court of Appeal.*

Levy-court, how composed. 2 v. 1086.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the Levy-court and court of appeal, in each county, shall be composed of commissioners for the hundreds respectively in such county as follows:—

Commissioners— Number of— In Newcastle county—

The said court, in Newcastle county, shall be composed of eleven commissioners, to wit; two for Christiana hundred; two for Appoquinimink hundred; and one for each of the other hundreds in said county:—

2 v. 1086. 6 v 270. In Kent—

The said court, in Kent county, shall be composed of nine commissioners, to wit; one for Little-Creek hundred; and two for each of the other hundreds in said county:

In Sussex—

And the said court, in Sussex County, shall be composed of ten commissioners, to wit; one for each hundred in said county.

How elected.

The commissioners of the said court, in each county, shall be elected by ballot, at the general election in such county, by the citizens residing in said county, having right to vote for representatives, and the election shall be conducted according to the law regulating the general election. Each commissioner shall hold his office for the term of three years from his election; except that if an office become vacant before the regular expiration of the term thereof, a commissioner shall be elected to fill such vacancy, and shall hold the office for the residue of said term. In computing the term, the period from a general election to the next general election shall be reckoned a year.

Term of office.

Qualifications.

No person shall be a commissioner of the said court, for a hundred, unless he resides and is a freeholder therein. If a person, being a commissioner of the said court for a hundred, removes from said hun-

dred or ceases to be a freeholder therein, his office shall thereupon become vacant.

No county treasurer, trustee of the poor, coroner or sheriff, shall, during his office, be a commissioner of the said court; and no commissioner shall, during the term for which he is elected, be appointed a collector of a county, poor, road or state tax, county treasurer or trustee of the poor.

Disabilities. 2 v. 1086. 3 v. 151.

The commissioners of the said court, in each county, now in office, shall continue in office for the terms for which they were respectively elected; that is to say; a commissioner elected for a full term shall continue in office for the term of three years from his election; a commissioner elected to fill a vacancy, shall continue in office for the residue of the original term; and if there be now a vacancy in the office of such commissioner, or if the office of any of the present commissioners shall become vacant before the regular expiration of the term thereof, such vacancy shall be filled by a commissioner to hold the office during the residue of the original term, so that the rotation of commissioners heretofore established, shall continue.

Commissioners now in office, shall remain in office, until, &c.

The clerk of the peace for each county shall, after the twelfth, and on or before the fifteenth day of September in each year, under his hand and seal of office, make known to the sheriff of his county, the hundreds for which commissioners of said court, in said county, are to be elected at the next general election; stating the names and hundreds of the commissioners whose terms of office will expire, and the name and hundred of any commissioner whose office has become vacant, if such vacancy have happened; and if afterward, and on or before the twenty-eighth day of September, the said clerk shall be duly informed of a vacancy in said office, not made known to the sheriff as aforesaid, he shall immediately make the same known to the sheriff in manner aforesaid; and the sheriff shall, within two days, give public notice thereof, by a proclamation, posted in one or more of the most public places in each hundred of his county, and also give written notice

Clerk of the peace—shall make known to the sheriff, the hundreds for which commissioners are to be elected—

And notify him of vacancies—

And the sheriff shall give notice thereof, by proclamation.

thereof to the inspector of each hundred in said county.

Commissioners to be sworn, &c.

Every commissioner, before taking his seat as a member of said court, shall make oath or affirmation according to the following form; *I——do solemnly swear* (or affirm) *that I will perform the duties of my office of commissioner of the levy court and court of appeal truly, diligently and faithfully, according to law, and in every case do equal right and justice according to the best of my skill and judgment, so help me God,* (or so I do solemnly affirm:) which oath or affirmation may be administered by the clerk of the peace, or any commissioner of said court, and an entry thereof shall be made in some book of said court.

Oath.

Quorum.

A majority of the commissioners of the said court, in each county, shall constitute a quorum to do business; but a smaller number may adjourn the court, or administer the oath or affirmation, and give instructions to assessors, as prescribed by law, in these particulars.

Repeal of—ch 18, c. 2 v. 1086.

SECTION 2. *And be it further enacted,* That the "Act to amend the laws of this state for raising county rates and levies," be and the same hereby is repealed; provided that no act repealed by the said act shall by this repeal be revived.

Proviso.

PASSED AT DOVER, *January* 30, 1829.

CHAPTER CXXXIII.

AN ACT *concerning the survivership of actions among joint parties.*

Action not to abate, by the death of a joint plff or deft.— where the cause of action survives.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That if one or more of several plaintiffs or defendants, in an action wherein the cause of action survives, die, such action shall not thereupon

and provisions of this act by writing severally, to be signed by them and filed in the office of the secretary of this state, then this act, and every matter and thing and clause therein contained, shall be null and void as if the same had not been passed. The State hereby reserves to itself the power of imposing such tax on the capital stock of said company as shall be actually paid in, as may be equitable.

Reservation of power to tax.

PASSED AT DOVER, *January* 29, 1829.

CHAPTER CXXX.

AN ACT *concerning the jurisdiction of justices of the peace in certain actions of trespass, and their powers in certain cases of complaints of assaults and batteries.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the justices of the peace, of this State, shall severally, within their respective counties, have jurisdiction of actions of trespass for direct and immediate injuries in carrying away or taking, destroying or damaging goods or chattles, and for direct and immediate injuries to real property, when the damages claimed in such action do not exceed fifty dollars.

Justices of the peace, to have jurisdiction in cases of trespass to any amount not exceeding *fifty dollars.*

4 v 310. 5 v. 92 6 v. 192. 2 Black. Rep. 895. Scott vs Shepherd.

In such actions the process, modes of trial, right of appeal, and manner and form of proceeding shall be as prescribed by the "act providing for the recovery of small debts," except that in such actions there shall be no set off; there shall be a right to a trial, by freeholders, and a right of appeal in every case, without respect to the sum claimed or recovered; there shall be no attachment unless on execution; the cause shall not continue or survive against executors or administrators; and the first, eighth, tenth, eleventh, twelfth, thirty-first, thirty-second,

Process, &c. to be in the form prescribed by ch 263, 6 v. 433. except &c.

51, 8, 10, 11, 12, 31, 32, 36

thereof to the inspector of each hundred in said county.

Commissioners to be sworn, &c.

Every commissioner, before taking his seat as a member of said court, shall make oath or affirmation according to the following form; *I——do solemnly swear* (or affirm) *that I will perform the duties of my office of commissioner of the levy court and court of appeal truly, diligently and faithfully, according to law, and in every case do equal right and justice according to the best of my skill and judgment, so help me God,* (or so I do solemnly affirm:) which oath or affirmation may be administered by the clerk of the peace, or any commissioner of said court, and an entry thereof shall be made in some book of said court.

Oath.

Quorum.

A majority of the commissioners of the said court, in each county, shall constitute a quorum to do business; but a smaller number may adjourn the court, or administer the oath or affirmation, and give instructions to assessors, as prescribed by law, in these particulars.

Repeal of—ch 18, c. 2 v. 1086.

Proviso.

SECTION 2. *And be it further enacted,* That the "Act to amend the laws of this state for raising county rates and levies," be and the same hereby is repealed; provided that no act repealed by the said act shall by this repeal be revived.

PASSED AT DOVER, *January* 30, 1829.

CHAPTER CXXXIII.

AN ACT *concerning the survivership of actions among joint parties.*

Action not to abate, by the death of a joint plff or deft.—where the cause of action survives.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That if one or more of several plaintiffs or defendants, in an action wherein the cause of action survives, die, such action shall not thereupon

and provisions of this act by writing severally, to be signed by them and filed in the office of the secretary of this state, then this act, and every matter and thing and clause therein contained, shall be null and void as if the same had not been passed. The State hereby reserves to itself the power of imposing such tax on the capital stock of said company as shall be actually paid in, as may be equitable.

Reservation of power to tax.

PASSED AT DOVER, *January* 29, 1829.

CHAPTER CXXX.

AN ACT *concerning the jurisdiction of justices of the peace in certain actions of trespass, and their powers in certain cases of complaints of assaults and batteries.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the justices of the peace, of this State, shall severally, within their respective counties, have jurisdiction of actions of trespass for direct and immediate injuries in carrying away or taking, destroying or damaging goods or chattles, and for direct and immediate injuries to real property, when the damages claimed in such action do not exceed fifty dollars.

Justices of the peace, to have jurisdiction in cases of trespass to any amount not exceeding *fifty dollars.*

4 v 310. 5 v. 92 6 v 192, 2 Black. Rep. 895. Scott vs Shepherd.

In such actions the process, modes of trial, right of appeal, and manner and form of proceeding shall be as prescribed by the "act providing for the recovery of small debts," except that in such actions there shall be no set off; there shall be a right to a trial, by freeholders, and a right of appeal in every case, without respect to the sum claimed or recovered; there shall be no attachment unless on execution; the cause shall not continue or survive against executors or administrators; and the first, eighth, tenth, eleventh, twelfth, thirty-first, thirty-second,

Process, &c. to be in the form prescribed by ch 263, 6 v. 433. except &c.

§1, 8, 10, 11, 12, 31, 32, 36

& 37, shall not be applied to this act.

thirty-sixth, and thirty-seventh sections of the said act, shall not be applied; and the said act, subject to said modifications and exceptions, is adopted for regulating the proceedings under this act: provided, that, before a summons or capias is issued in such action, the plaintiff, or his attorney or agent, shall file a written statement under his hand, describing the injury complained of: and in such summons or capias, the form prescribed by the act aforesaid, shall be varied from, by substituting for this clause, viz: "touching a cause of action wherein —— is demanded," the following, viz: *in an action of trespass for*—(here describe the injury according to the statement filed) *whereupon damages to the sum of* ———— *are claimed.* The statement shall be a part of the record; and if the judgment shall in any case be reversed or annulled on certiorari on the ground that the justice had not jurisdiction of the matter mentioned in the statement, the court shall order that the justice pay all the costs in the case, and a neglect to obey such order shall be a contempt of the court.

Proviso—Before summons or capias issues, the plaintiff shall file a statement of the injury. 6 v. 192.

Form of summons or capias, how varied to suit the case

Statement—to be a part of the record.

Costs, to be paid by the justice—when.

Provided, that if an action of trespass for an injury to real property, the defendant say that the place wherein the trespass is alleged, is his freehold, or the freehold of a person under whom he claims, and pray that the cause may be removed to the supreme court or court of common pleas for trial, and give sufficient security, to the acceptance of the justice, in such reasonable sum as he shall deem sufficient under the circumstances, but not exceeding fifty dollars, that the damages and costs which the plaintiff shall recover in said court, shall be satisfied, the justice shall thereupon without delay certify the record of the said action to the supreme court or the court of common pleas, according to the defendant's prayer, and the said court shall receive the same, and hear and determine the cause, proceeding in the same manner as in causes commenced by the usual process. The entry in court of the record certified, shall imply the appearance of the parties and be a sufficient entry of such appearance. In such case the entries before the justice,

Case to be removed to the supreme court or court of common pleas—when.

Security to be given.

may be according to the following form, viz: "——— day of —— 18 —; the defendant says that the place wherein the trespass is alleged, is his freehold [or the freehold of ——— under whom he claims] and prays that this cause may be removed into the supreme court [*or court of common pleas*] for trial; and thereupon ——— becomes bound to the plaintiff [*or plaintiffs*] in the sum of ——— that the damages and costs which the said plaintiff [*or plaintiffs*] shall recover in said court, shall be satisfied;" which entry shall be signed by the surety or sureties, or it shall be void.

Form of entry by the justice in such case.

To be signed by the surety.

SECTION 2. *And be it further enacted*, That in every case of complaint before a justice of the peace, by the party injured, of assault, or assault and battery, the party complained against may submit to be tried by the justice; which submission shall be reduced to writing and signed by the said party; and the said justice thereupon shall hear and determine the case; and if he find the said party guilty, shall limit a reasonable fine, according to the circumstances, but in no case exceeding ten dollars; and shall give judgment that said party, pay to the State said fine and costs, and stand committed till payment; and the said justice shall immediately charge a constable present with said party, and shall enter the name of such constable, upon the docket of the case; and the said constable, if the fine and costs be not paid, shall have power to convey said party to the common gaol of the county, to be therein detained by the keeper thereof, until the fine and costs be paid: for which a copy of said judgment, which copy the justice shall make, certify and deliver to the constable on request, shall be a sufficient warrant.

Assault and battery—when it may be submitted to the justice. 4 v. 311.

Submission to be signed.

Fine not to exceed *ten dollars*.

Commitment.

It shall not be lawful, for the justice in any case, to receive the fine by him imposed, or the costs.

Justice shall not receive the fine or costs.

In such case as mentioned in this section, the justice shall have power, for sufficient cause, to adjourn the hearing, taking security for the appearance of the party complained against, at the time adjourned to.

Justice may adjourn the case: taking security.

May permit the parties to settle the case.

It shall be lawful for a justice of the peace, in every case of assault and battery to permit the parties to settle the matter, and either to discontinue any proceedings or to annul any recognisance, upon payment of costs.

The justice shall refuse to determine the case—when.

His duty in such case.

If the justice shall consider that a case submitted to him ought to be subjected to higher authority, he shall refuse to determine it, and shall require sureties for the appearance of the party complained against and of the witnesses at the court having jurisdiction of the matter; and in case of failure to give sureties as required, he shall commit the party failing.

Repeal of—ch. 110, 4 v. 310.

ch. 48, 5 v. 92. §1 of ch. 119, 6 v. 192.

SECTION 3. *And be it further enacted*, That the "Supplement to the act entitled an act for the more easy and speedy recovery of small debts," passed at Dover, January 24, 1810; and the additional supplement to the said act, passed at Dover 3 February, 1815; and the first section of the further additional supplement to said act passed at Dover, February 5, 1822, shall be and hereby are repealed from and after the first day of June next: Provided, that any actions or appeals that shall have been commenced or taken under either of said acts before the said day, and shall then be pending, shall not be abated or discontinued by means of this repeal, but shall be prosecuted, carried on and continued to judgment and execution in the same manner as if this act had not been passed.

Proviso.

PASSED AT DOVER, }
January 30, 1829. }

CHAPTER CXXXI.

AN ADDITIONAL SUPPLEMENT *to the act entitled "A further supplement to the act entitled 'An act to alter the times of holding the courts of law and equity it this state."* 4 v. 662. 6 v. 622.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That hereafter the court of common pleas and court of general quarter sessions of the peace and gaol delivery, shall, at the spring sessions thereof, commence and be held in Newcastle county in May, in the second Monday after the commencement of the term of the court of common pleas in April or May (as the case may be) in Kent county, instead of the third Monday after the commencement of the time of the said court in Kent county, as now directed by law.

Spring terms of the court of com. pleas and quarter sessions in Newcastle county, when held.

SECTION 2. *And be it further enacted by the authority aforesaid,* That all actions, suits, indictments, pleas, commissions, writs, processes, bail-bonds and all other proceedings, matters and things, relating to any cause, civil or criminal, which now is, or hereafter shall be depending in, or returnable to the court of common pleas, or the court of general quarter sessions of the peace and gaol delivery, shall be continued and remain in full force and effect, and shall be returnable to the court to which they severally pertain on the day and time herein appointed.

Process—when returnable.

SECTION 3. *And be it enacted, by the authority aforesaid,* That the fifth section of the act to which this is an additional supplement be and the same is hereby repealed.

Repeal of—§5, ch. 322, 6 v. 622.

PASSED AT DOVER, *January* 30, 1829.

CHAPTER CXXXVII.

1829.

CHAPTER CXXXII.

AN ACT *concerning the constitution of the Levy-court and court of Appeal.*

Levy-court, how composed. 2 v. 1086.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That the Levy-court and court of appeal, in each county, shall be composed of commissioners for the hundreds respectively in such county as follows:—

Commissioners—Number of—In Newcastle county—

The said court, in Newcastle county, shall be composed of eleven commissioners, to wit; two for Christiana hundred; two for Appoquinimink hundred; and one for each of the other hundreds in said county:—

2 v. 1086. 6 v 270. In Kent—

The said court, in Kent county, shall be composed of nine commissioners, to wit; one for Little-Creek hundred; and two for each of the other hundreds in said county:

In Sussex—

And the said court, in Sussex County, shall be composed of ten commissioners, to wit; one for each hundred in said county.

How elected.

The commissioners of the said court, in each county, shall be elected by ballot, at the general election in such county, by the citizens residing in said county, having right to vote for representatives, and the election shall be conducted according to the law regulating the general election. Each commissioner shall hold his office for the term of three years from his election; except that if an office become vacant before the regular expiration of the term thereof, a commissioner shall be elected to fill such vacancy, and shall hold the office for the residue of said term. In computing the term, the period from a general election to the next general election shall be reckoned a year.

Term of office.

Qualifications.

No person shall be a commissioner of the said court, for a hundred, unless he resides and is a freeholder therein. If a person, being a commissioner of the said court for a hundred, removes from said hun-

dred or ceases to be a freeholder therein, his office shall thereupon become vacant.

Disabilities. 2 v. 1086. 3 v. 151.

No county treasurer, trustee of the poor, coroner or sheriff, shall, during his office, be a commissioner of the said court; and no commissioner shall, during the term for which he is elected, be appointed a collector of a county, poor, road or state tax, county treasurer or trustee of the poor.

Commissioners now in office, shall remain in office, until, &c.

The commissioners of the said court, in each county, now in office, shall continue in office for the terms for which they were respectively elected; that is to say; a commissioner elected for a full term shall continue in office for the term of three years from his election; a commissioner elected to fill a vacancy, shall continue in office for the residue of the original term; and if there be now a vacancy in the office of such commissioner, or if the office of any of the present commissioners shall become vacant before the regular expiration of the term thereof, such vacancy shall be filled by a commissioner to hold the office during the residue of the original term, so that the rotation of commissioners heretofore established, shall continue.

Clerk of the peace—shall make known to the sheriff, the hundreds for which commissioners are to be elected—

The clerk of the peace for each county shall, after the twelfth, and on or before the fifteenth day of September in each year, under his hand and seal of office, make known to the sheriff of his county, the hundreds for which commissioners of said court, in said county, are to be elected at the next general election; stating the names and hundreds of the commissioners whose terms of office will expire, and the name and hundred of any commissioner whose office has become vacant, if such vacancy have happened; and if afterward, and on or before the twenty-eighth day of September, the said clerk shall be duly informed of a vacancy in said office, not made known to the sheriff as aforesaid, he shall immediately make the same known to the sheriff in manner aforesaid; and the sheriff shall, within two days, give public notice thereof, by a proclamation, posted in one or more of the most public places in each hundred of his county, and also give written notice

And notify him of vacancies—

And the sheriff shall give notice thereof, by proclamation.

thereof to the inspector of each hundred in said county.

Commissioners to be sworn, &c.

Every commissioner, before taking his seat as a member of said court, shall make oath or affirmation according to the following form; *I—— do solemnly swear* (or affirm) *that I will perform the duties of my office of commissioner of the levy court and court of appeal truly, diligently and faithfully, according to law, and in every case do equal right and justice according to the best of my skill and judgment, so help me God,* (or so I do solemnly affirm:) which oath or affirmation may be administered by the clerk of the peace, or any commissioner of said court, and an entry thereof shall be made in some book of said court.

Oath.

Quorum.

A majority of the commissioners of the said court, in each county, shall constitute a quorum to do business; but a smaller number may adjourn the court, or administer the oath or affirmation, and give instructions to assessors, as prescribed by law, in these particulars.

Repeal of—ch. 18, c. 2 v. 1086.

SECTION 2. *And be it further enacted,* That the "Act to amend the laws of this state for raising county rates and levies," be and the same hereby is repealed; provided that no act repealed by the said act shall by this repeal be revived.

Proviso.

PASSED AT DOVER, *January* 30, 1829.

CHAPTER CXXXIII.

AN ACT *concerning the survivership of actions among joint parties.*

Action not to abate, by the death of a joint pltff or deft.—where the cause of action survives.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That if one or more of several plaintiffs or defendants, in an action wherein the cause of action survives, die, such action shall not thereupon

abate; but the said action may be prosecuted by or against the surviving plaintiff or defendant.

PASSED AT DOVER, *January* 20, 1829.

CHAPTER CXXXIV.

A SUPPLEMENT *to an act entitled "An act to incorporate the trustees of the Middle Town Academy."* 6 v. 585.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That there shall be two additional trustees of the Middle Town Academy. Two additional Trustees.

SECTION 2. *And be it enacted,* That the trustees of the said academy shall, within three months from the passing of this act, five days notice in writing being previously given, by the president, to each of them, meet at the academy in Middle Town, and choose by ballot the aforesaid two additional trustees, a majorty of votes given being sufficient to make a choice, and any three of said trustees shall hereafter constitute a quorum to do business. To be elected.

SECTION 3. *And be it enacted,* That said board of trustees, as enlarged by this act, shall have continuance and succession, and fill all vacancies that may hereafter happen therein, do all acts and duties, and enjoy all rights and privileges as fully and in the same manner as said board, as originally constituted, could do and enjoy. Board, to fill vacancies, &c.

SECTION 4. *And be it enacted,* That so much and no more of the act entitled "An act to incorporate the trustees of the Middle Town academy," as is inconsistent with this supplementary act, be and the same is hereby repealed, made null and void. 6 v. 585.

PASSED AT DOVER, *January* 30, 1829.

CHAPTER CXXXV.
1829.

CHAPTER CXXXV.

AN ACT *to enable Louis M'Lane to remove certain negroes therein named, to and from this state into and from the state of Maryland*

PASSED AT DOVER, *January* 30, 1829. } PRIVATE ACT.

CHAPTER CXXXVI.

7 v. 77.

AN ACT *amending the "act concerning the real estates of intestates."*

Amending—ch. 38, 7 v. 77.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the "act concerning the real estates of intestates," be amended in the first section thereof in every place where the phrase "in the life time" occurs, by expunging the said phrase and inserting instead thereof the words—before the decease; and that in reading and construing the said section, the words—*before the decease,* shall be substituted for the phrase—"in the life-time"—wherever said phrase occurs, and in any edition of the laws of this State hereafter to be published, the act aforesaid shall be printed as amended by this act.

PASSED AT DOVER, *January* 30, 1829. }

CHAPTER CXXXVII.

AN ACT *for the limitation of certain personal actions and of exceptions to accounts.*

Limitation of actions; on sheriff's recognizance,—

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That no action shall

be brought upon the official recognizance of any sheriff, or upon any administration bond, or upon any testamentary bond, against either the principal or sureties, after the expiration of six years from the date of such recognizance or bond.

On administration and testamentary bonds; *Six years.* 2 v 925, §3. 1 v 424, §14. 2 v. 890, §2.

SECTION 2. *And be it further enacted,* That no action shall be brought upon any guardian bond, against either the principal or sureties, after the expiration of three years from the determination or ceasing of the guardianship.

On guardian bonds.— *Three years.* 1 v. 424, §14.

SECTION 3. *And be it further enacted,* That no action shall be brought upon any recognizance taken in the orphans' court with condition for the payment of appraised value or of purchase money of lands, tenements or hereditaments against any surety in such recognizance, or the heirs, terre-tenants, executors or administrators of such surety, after the expiration of three years from the time when the value or money mentioned in the condition, or the last instalment thereof (when it is papable by instalments) is payable.

On recognizances in the orphans' court for the payment of appraised value of lands— against surety, &c. *Three years.*

SECTION 4. *And be it further enacted.* That no action shall be brought upon the official obligation of any state treasurer, secretary of state, county treasurer, treasurer of the trustees of the poor, coroner, register for the probate of wills and granting letters of administration, recorder of deeds, clerk of the supreme court, prothonotary of the court of common pleas, clerk of the peace, clerk of the orphans court, collector or constable, against either the principal or sureties, after the expiration of three years from the accruing of the cause of such action.

On the official bonds of State-treasurer, secretary of State, county-treasurer, treasurer of the poor, coroner, register, recorder, clerks, collector, constable; *three years.* 6 v. 609. 6 v. 72.

SECTION 5. *And be it further enacted,* That no action of trespass, no action of replevin, no action of detinue, no action of debt not founded upon a record or specialty, no action of account, no action of assumpsit and no action upon the case whatever, shall be brought after the expiration of three years from the accruing of the cause of such action: Except that the time prescribed by the preceding limitation shall not begin to run in the case of a mutual and running account between parties, while such account continues open and current; and that when

Actions of *trespass, replevin, detinue, debt not founded on record, &c. account, assumpsit and on the case,* must be brought in *three years,* except, &c 2 v 1031, 3. 1 v 229, 525. 2 Saund. by Wms. 125, 127 and notes 6 &

7. Bal. on lim. 249, n. 4.
On promissory note, &c. *Six years.* 2 v. 1133.

the cause of action arises from a promissory note, bill of exchange or an acknowledgment under the hand of the party of a subsisting demand, the action may be commenced at any time within six years from the accruing of such cause of action.

Proviso, in case of *infancy, coverture and incompetency of mind.* 4 v. 457, 460.

SECTION 6. *Provided,* That if the person entitled to any action comprehended within either of the foregoing sections shall have been at the time of the accruing of the cause of such action under disability of infancy, coverture or incompetency of mind, this act shall not be a bar to such action during the continuance of such disability nor until the expiration of three years from the removal thereof.

Limitation of civil actions for forfeitures upon *penal statutes; One year* 2 v. 1063.

SECTION 7. *And be it further enacted,* That no civil action for a forfeiture upon a penal statute, whether at the suit of the party grieved or of a common informer, or of the state, or otherwise shall be brought after the expiration of one year from the accruing of the cause of such action.

On official bonds given by officers to *corporations.*

SECTION 8. *And be it further enacted,* That no action shall be brought upon any bond given to the president, directors and company of any bank; or to any corporation in the state, by any officer of such bank or corporation with condition for his good behaviour, or for the faithful discharge of his duties in his station, or touching the execution of his office, against either the principal or sureties, after the expiration of two years from the accruing of the cause of such action: and no action shall be brought, and no proceedings shall be had, upon any such bond, or upon any judgment thereupon, against either the principal or sureties for any cause of action accruing after the expiration of six years from the date of such bond.

Two years, from the accruing of the cause of action;

Or *six years* from the date of the bond.

Bonds to be taken from such officers, at least once in six years.

The directors or managers of any bank or corporation are authorized and enjoined to take from each officer thereof required by the charter or by-laws to give bond, a new bond as often as may be deemed expedient, but at furthest every six years, and so that the date of the new bond shall not be more than six years posterior to the date of the bond immediately preceding.

SECTION 9. *Provided*, That when a cause of action arises in this state, if the person liable to such action be not an inhabitant of this state at the accruing of such cause, or abscond or remove from this state before the expiration of the time allowed by this act for bringing such action, the time during which such person shall have been out of this state, shall, in applying either of the limitations in this act, be deducted; and in every such case at least one year from the return of such person into this state shall be allowed for bringing such action.

If defendant resides out of the State, or absconds or removes, the time he is absent shall be deducted in applying this act. 2 v. 1032. 1 v 527.

SECTION 10. *Provided also*, That if in any action, judgment shall be rendered for the plaintiff, and the said judgment be afterward reversed, or verdict be given for the plaintiff, and judgment be arrested, or judgment be given against the plaintiff on a plea in abatement, or the plaintiff or defendant die, after writ sued and before the defendants appearance, a new action may be brought upon the same cause of action at any time within a year after said reversal, arrest, abatement or death. This proviso however shall not avail, if the first action, at the time of bringing it, were barred by this act; but if this act were pleaded in the first action, and verdict thereupon found for the plaintiff, such verdict shall be conclusive evidence that the first action was not at the time of bringing it barred by this act.

If a judgment be reversed, or arrested after verdict, &c. &c. new action may be brought *within one year after*. 1 v. 229, 230.

Unless the first action *was barred* at the time of bringing it. 6 v. 609.

SECTION 11. *And be it further enacted*, That no exceptions to an account of an executor, administrator or guardian settled by the register for the county shall be received or filed in the orphans court after the expiration of three years from the settlement of said account; provided that this limitation in respect to any person under disability of infancy, coverture or incompetency of mind, at the time of the settlement of any such account, shall begin to run from the ceasing of such disability and not from the time of such settlement.

Limitation of *exceptions* to accounts of *executors, administrators* and *guardians*; *Three years*. 6 v. 541

Proviso, in case of *infancy, &c.*

SECTION 12. *And be it further enacted*, That this act shall extend and apply to all recognizances, bonds, obligations and accounts herein mentioned, as well those that have been taken, executed or settled heretofore as those that shall be taken, executed

Application of this act—

To bonds, &c. heretofore given—

or settled hereafter, and to all actions and causes of action herein mentioned, as well those that have accrued heretofore as those that shall accrue hereafter; saving only, that upon sheriffs recognizances taken before the first day of January, in the year of our Lord one thousand eight hundred and twenty-three, the period of limitation shall be seven years from the date of such recognizances, and upon official obligations of constables taken before the first day of January, in the year of our Lord one thousand eight hundred and twenty-seven, the period of limitation shall be four years from the date of such obligations; and this act shall not be a bar to any action commenced before the first day of September, in the year of our Lord one thousand eight hundred and thirty, upon any recognizance taken in the orphans court, or upon the official bond of any officer of a bank or corporation, or of a state-treasurer, secretary of state, county treasurer, treasurer of the trustees of the poor, collector, or for a cause of action arising from a promissory note, bill of exchange or acknowledgment, under the hand of the party, of a subsisting demand.

Except, &c.

2 v. 925.

6 v. 72.

SECTION 13. *And be it further enacted,* That the fourteenth section of the "Act for the amending the laws relating to testamentary affairs and for the better settling intestates estates;" and the "Act for limitation of actions and proving accounts against the estates of persons dying within this government;" and the supplementary act to the said act, passed April 12, 1773; and the additional supplement to the said act, passed February 4, 1792; and the supplement to the said additional supplement, passed June 18, 1793; and the second section of the "Act to compel executors to give security for the faithful discharge of the duty reposed in them by their testators and for other purposes;" and the third section of the "Act directing the manner and form of securities to be given by sheriffs for the due execution of their trust and prescribing a time for their returns on writs of fieri facias; and the thirteenth section of the "Act for better securing personal liberty and easily and speedily redressing all wrongful restraints

Repeal of—

§14. ch 176, a. 1 v 424.

ch 86, a. 1 v. 228.

ch. 216, a. 1 v. 524.

ch. 248, b. 2 v. 1031

ch. 15, c 2 v. 1133.

§2, ch. 146, b. 2 v. 890.

§3, ch. 178, b. 2 v. 925.

§13 ch. 4, c. 2 v. 1063.

thereof;" and the twenty-second section of the "Act concerning awards, &c." to repeal the savings in certain acts of limitation," &c. passed at Dover, February 2, 1811; and the fifth section of the "Act concerning the acknowledgment and recording of acquittances to executors, administrators and guardians, and for limiting the time of excepting to their accounts," and the second section of the "Act requiring certain officers to give security for the faithful performance of their official duties," shall be and hereby are repealed from and after the first day of September next: Except so far as shall concern any action, cause of action or matter, which now is, or on or before the first day of September next shall be barred according to the form or effect of the aforesaid acts or sections, or either of them; and to any action or proceeding upon any recognizance, bond cause of action, account or matter, which action or proceeding now is, or on or before the first day of September next, shall be according to the form and effect of said acts and sections or either of them barred, the said acts and sections, or either of them, shall remain a bar and may be pleaded and shall avail in the same manner and as fully and effectually as if this act had not been passed; Provided also, that no act or section repealed by the aforesaid acts or sections or either of them, shall, by this repeal, be revived.

§22, ch. 158, 4 v. 457.

§5, ch. 296, 6 v. 539.

§2, ch. 328, 6 v. 609.

Exceptions and proviso.

PASSED AT DOVER, *January* 30, 1829.

CHAPTER CXXXVIII.

AN ACT *to empower John D. Anderson, administrator of Vincent Emerson deceased, to sell and convey certain lands therein mentioned.*

PASSED AT DOVER, *January* 31, 1829.

PRIVATE ACT.

CHAPTER CXXXIX.
1829.

CHAPTER CXXXIX.

AN ACT *authorising and empowering Anna M'Callmont and Sarah M'Callmont, administratrixes of Doctor James MCallmont, deceased, to convey, assure and lease to Wm. T. Read, and Sally his wife, late Sally L. Thomas, their executors, administrators and assigns, a lot in the town of Newcastle.*

PASSED AT DOVER, *February* 2, 1829. } PRIVATE ACT.

CHAPTER CXL.

AN ACT *concerning sales of the real estate of deceased persons by executors or administrators for payment of debts.*

4 v. 281.

Proceeding to obtain an order for the sale of real estate, for payment of debts—

By petition to the orphans' court.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That when the personal estate of a deceased person is not sufficient for the payment of his debts, the executor or administrator of such person may prefer to the orphans' court of the county wherein any lands, tenements or hereditaments of such deceased person are situate, a petition representing the truth of the case, and praying said court to make an order for the sale of the said lands, tenements or hereditaments, or a part thereof, for the payment of such part of the debts of said deceased as his personal estate is not sufficient to satisfy; of the intention to prefer which petition, and of the day and place of preferring the same, said executor or administrator shall, at least ten days before the day of preferring the same, give written notice to the parties interested, or if any of said parties be under the age of twenty-one years, and have guardians, to such guardians, if said parties and guardians reside in this state; and also to the tenant or tenants in possession of the premi-

Notice of said petition to be given.

ses intended to be sold; and if either of said parties or guardians do not reside in this state, there shall be such publication or service of such notice in respect to such nonresident, as shall be prescribed by the general rule of said court, or specially directed in any case; and the said executor or administrator shall upon oath or affirmation make and exhibit to said court a just and true account of all the personal estate of the deceased of every nature and description, and of all debts outstanding against the estate of said deceased which shall have come to the knowledge of such executor or administrator, stating in such account the amount of the inventory and appraisement, the amount of the sperate debts, and the amount of the desperate debts due to the deceased, and all other property, rights and credits, belonging to the personal estate of the deceased, whereof such executor or administrator shall have knowledge; and shall also exhibit the inventory and appraisement and list of debts returned to the register, or certified copies thereof; and the orphans' court, to which such petition shall be preferred, if it shall appear to said court that the personal estate of said deceased is not sufficient for the payment of his debts, shall have power to make an order that the said executor or administrator shall sell the said lands, tenements, or hereditaments, or any part thereof, to be described in such order, as to the said court shall deem proper under the circumstances of the case; provided that no more of the said lands tenements, or hereditaments shall be sold than the said court shall deem to be sufficient for the payment of such part of the debts of the deceased, as his personal estate is insufficient to satisfy, unless the said court shall consider, that the condition or circumstances of any premises are such that a part thereof, merely sufficient, could not be laid off and sold, without loss and injury; in which case the said court may order the whole or any part of such premises to be sold as may be deemed best for the parties interested. The circumstance that partition has been made of the lands, tenements, or heredita-

Executor or adm'r shall exhibit an account of all the personal estate; 1 v. 293.

And outstanding debts—

What said account shall contain.

Inventory and appraisement to be exhibited.

Orphans' court may direct a sale of the lands or part thereof.

Partition there of having been

made, shall be no bar of such order

ments of an intestate; shall not be a bar to the making of an order for sale thereof as aforesaid.

Devisee, &c paying his proportionable part of debts—the premises devised to him shall not be sold.

If any devisee, or any person, holding any part of said lands, tenements, or hereditaments, shall contribute so much as the said court shall adjudge to be his proportionable part toward the payment of the outstanding debts, an order shall not be made for the sale of the premises devised to or held by him, or any part thereof; and a devisee, or other owner of premises which shall be sold pursuant to an order as aforesaid, if more than his just proportion toward the outstanding debts be raised by such sale, may compel the other devisees or proper parties to contribute their proportionable parts, so as to equalize the burden.

Contribution among devisees, &c.

Sale to be by public auction;

Advertisements.

Every such sale shall be by public auction; and the court shall direct the executor or administrator to give notice thereof by advertisements, made and signed by the clerk of said court, describing the premises to be sold, and appointing the day, hour, and place of sale, posted at least twenty days before the day of sale, in ten or more of the most public places in the county, and such other notice as may be deemed proper in any particular case; but the executor or administrator shall have the power of adjourning such sale.

Return.

Deed.

The executor or administrator shall return his proceedings to the next orphans' court, after the making or renewing of such order. If the return of a sale be approved by the court, the said executor or administrator shall make a deed to the purchaser, conveying to him, and his heirs, the premises sold. If an order be made to several executors or administrators, upon the death of any, the authority shall survive. An administrator de bonis non of a testator or intestate, to whose executor or former administrator, an order as aforesaid shall be made, shall have authority to return a sale made by such executor or administrator, and to make a deed pursuant to such sale, if the said court shall approve said sale and direct such deed to be made, and shall also have authority under the direction, and by virtue of an

Adm'r. d. b. n may complete the sale.

order of said court, to make a deed pursuant to a sale returned by such executor or administrator, and approved by said court. A deed may also be made by virtue of an order of said court, to the heirs or assigns of a deceased purchaser. But the said court shall not direct or order a deed to be made in any case, unless the purchase money be first paid.

Purchase money.

SECTION 2. *And be it further enacted,* That the grantee in any deed made according to this act, by force of such deed shall take all the estate, title and claim which the testator or intestate, whose lands, tenements or hereditaments shall have been sold as aforesaid, had at the time of his death in law or equity, in and to said lands, tenements or hereditaments, with the benefit of all acts and matters done after his death for perfecting or securing said title, and shall hold the said lands, tenements or hereditaments paramount to all incumbrances created or suffered by, and to all right and title of the heirs of said testator or intestate, and all persons claiming through or under them, and also exonerated and free from the lien of all judgments entered or recovered against the said testator or intestate, or his or her executors or administrators, and of all mortgages and recognizances entered into, or executed, by the said testator or intestate, with condition for the payment of money or interest absolutely, and not dependant upon a contingency; but such sale or deed as aforesaid shall not divest, impair or effect the lien of any recognizance or obligation entered into, or executed by the testator or intestate with condition for the performance of any official duties, or of any recognizance or mortgage entered into, or executed by the testator or intestate, with any other condition than for the absolute payment of money or interest.

Grantee's estate, in the lands so purchased.

SECTION 3. *And be it further enacted,* That the money which shall arise from any sale as aforesaid of lands, tenements or hereditaments of a deceased person, (all just charges to be allowed by the said orphans' court being first deducted) shall be applied to the outstanding debts against said deceas-

Purchase money how applicable.

ed person according to the following order: that is to say:—

First class.

First class, to debts due by judgments against said deceased person which before said sale were liens on the premises sold, and to debts due by recognizance and mortgages entered into, or executed, by said deceased person, with condition for the payment of money or interest absolutely, and not dependant upon contingency, and which recognizances and mortgages were before said sale liens upon the premises sold; such judgments, recognizances and mortgages shall be of equal dignity, but shall be preferred in payment according to the legal priority of their lien respectively; and if in an action or proceeding upon a recognizance, obligation or mortgage entered into, or executed, by said deceased person with other condition than for the absolute payment of money or interest, but which mortgage, recognizance or obligation was, by its own force or legal effect without judgment thereon, a lien upon the premises sold, a sum shall have been assessed or ascertained as payable or recoverable by virtue of said mortgage, recognizance or obligation, or judgment or decree shall, at the time of said sale, have been thereupon given or pronounced, the said sum so assessed or ascertained, with the costs of the said action or proceeding, shall stand in priority according to the date of said obligation or recognizance, or of the depositing of the said mortgage duly acknowledged or proved in the proper office for recording of deeds to be recorded, and shall be preferred in payment, according to such priority, but in no other case shall the proceeds of such sale as aforesaid be applied or retained for the purpose of being applied to any recognizance, obligation or mortgage entered into or executed by said deceased person with other condition than for the absolute payment of money or interest in preference to, or to the postponement of, any debt outstanding against said deceased person.

Second class.

Second class; to debts due by judgments against the executors or administrators of said deceased person, which before said sale, were liens upon the premises

sold, and which shall be preferred in payment according to the legal priority of their lien respectively.

But no debt shall be deemed to be within either of the preceding classes, unless the judgment, recognizance, obligation, or mortgage, by virtue whereof such debt is demandable, was, before the said sale, a lien upon the premises sold; a sum assessed or ascertained as mentioned under the first class, being here understood to be demandable by virtue of the mortgage, recognizance or obligation upon which the action or proceeding was instituted.

Third class.

Third class; to other debts outstanding against the said deceased person, observing the same rule of priority as prescribed at the time by law, for the administration of personal assets; and if their be a surplus over paying all the said debts, the said surplus shall belong to the person or persons to whom the premises sold belonged, at the time of the sale; which said person or persons shall have the same proportion, quantity and manner of interest, in said surplus, which he, she, or they, had in the premises sold; and an executor or administrator shall not detain the said surplus, or any part of it, on account of any mortgage, obligation, or recognizance entered into or executed by said deceased person, with other condition than for the absolute payment of money or interest, and which mortgage, obligation or recognizance was a lien on the premises sold; but if, in an action or proceeding upon such mortgage, obligation or recognizance, a sum shall be legally assessed or ascertained, and judgment or decree thereupon given or pronounced, while such surplus is in the hands of such executor or administrator, such sum, with the costs of said action or proceeding shall be paid out of said surplus, if sufficient for that purpose.

Surplus—to whom it shall belong.

Directions for disposal of surplus. 1 v. 282.

The said orphans' court, upon the petition of any executor, or administrator, shall, give directions for the payment or disposal of said surplus.

Ex'r. or adm'r. to give *bond.*

SECTION 4. *And be it further enacted,* That every executor or administrator, before proceeding to execute an order made for the sale of any lands,

CHAPTER CXL. 1829.

tenements, or hereditaments, pursuant to this act, shall, in the said orphans' court, with one or more sufficient surety or sureties, to be approved by the said court, enter into bond to the state in a penal sum to be determined by said court, with condition in substance to account truly and justly for all the money which shall arise from said sale, and (the just charges to be allowed by the said court being first deducted) to apply all the balance of the said money in or toward payment of the outstanding debts, against the said deceased person, according to their priority as prescribed by law, and to pay the surplus, if any, according to law, and to perform his duty in the premises in all things with fidelity.

Condition.

Adm'r. d. b. n. to give *bond.*

If a sale made by an executor or former administrator shall be returned by an administrator de bonis non, the purchase money shall be payable to such administrator de bonis non; but such payment shall not be made, and said sale shall not be approved until the said admistrator de bonis non shall, in the said court, with sufficient surety or sureties, to be approved by said court, enter into like bond as aforesaid, with like condition as before prescribed; and in that case the court shall have power to discharge the bond of the said executor or former administrator, upon such terms as may be deemed proper. If the purchase money arising from any sale as aforesaid, shall be paid to the executor or administrator before the sale is approved, it shall be the duty of such executor or administrator, if such sale shall not be returned, or shall not be approved, to refund said purchase money without delay; and if in either of the said cases the purchase money shall not be refunded without delay, it shall be a breach of the foregoing condition, altho' such executor or administrator shall have died before the time for returning said sale, as such death shall not excuse from the strict performance of said duty.

Condition.

Purchase money to be refunded—when.

Costs and charges to be taxed

SECTION 5. *And be it further enacted,* That all the charges, whether under the name of commissions or otherwise of any such sale, shall be taxed by the orphans' court after approving the sale, and no other charges shall be allowed on account of

said sale, or of receiving or paying the purchase money, but the account shall be passed before the register, as other administration or testamentary accounts.

Orphans' court may refuse an order for sale.

SECTION 6. *And be it further enacted,* That the orphans' court may, in its discretion, refuse an order for the sale of lands, tenements or hereditaments of a deceased person, or to approve a sale, if it shall be the opinion of said court that, under the circumstances, it is improper that such sale should be made; although it should sufficiently appear, that the personal estate is not sufficient for the payment of the debts, or that said sale was regularly conducted.

Appeal.

SECTION 7. *And be it further enacted,* That any person aggrieved by any order, or decree of the orphans' court, made in any proceeding under this act, may appeal therefrom to the supreme court; and no such order or decree, shall be drawn in question, except upon appeal.

Authority in a will to several ex'rs to sell land, shall survive.

SECTION 8. *And be it further enacted,* That if by any last will and testament, authority be given to several executors, or other persons to sell lands, tenements or hereditaments, if one or more of said executors, or persons die, before executing or completing the execution of said authority, such authority shall survive; and if by a last will and testament, lands, tenements or hereditaments be devised to be sold, and no person be authorized to make such sale, the executor or executors, appointed by the said last will and testament, or the survivors or survivor of them, if several, shall have authority to sell the said lands, tenements or hereditaments, in execution of said devise;—provided that nothing in this section, shall contravene any express direction, contained in any last will and testament.

Lands devised to be sold generally—shall be sold by the ex'r.

Proviso.

Repeal of—ch. 117, a. 1 v. 280.

SECTION 9. *And be it further enacted,* That the "act for repealing an act passed in the twenty-second year of his Majesty's reign, entitled an "act obliging executors to give security in the register's office, in the respective counties within this government, at the time of proving the wills of their testators for the due execution thereof, and likewise empowering the said executors, to sell the lands of

their testators by order of the orphans' courts, and directing how executors shall make such sales, and render accounts of their testator's estates for the future;" and the tenth, eleventh and twelfth sections of the "act for the better settling intestate's estates;" shall be and hereby are repealed, from and after the first day of June next; except so far as shall concern any order or orders, matters or proceedings, that have been, or before the said first day of June next, shall be done, transacted or had, under or by virtue of the said acts or sections; which order, orders, matters and proceedings, shall be as valid and effectual to all intents and purposes, as if this act had not been passed, and the same may, if not completed before the first day of June next, be carried on and completed in the same manner as if this act had not been passed: provided that no act or section repealed by the aforesaid acts or sections, or either of them, shall by this repeal be revived.

§10, 11, 12, ch. 119, a. 1 v 292.

Exceptions and proviso.

PASSED AT DOVER, *February* 3, 1829.

CHAPTER CXLI.

AN ACT *to enable Robert Frame to erect a Mill dam across the main branch of Indian River, called Cow-branch, in Indian River Hundred in Sussex County, at the place therein mentioned, and to construct a grist-mill and saw-mill, and other machinery thereon.*

PASSED AT DOVER, *February* 4, 1829.

PRIVATE ACT.

CHAPTER CXLII.

CHAPTER CXLII. 1829.

AN ACT *to prevent certain nuisances.*

Penalty for exhibiting certain shows. 1 v. 119.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* If any circus rider, or other person or persons, at any place within this state, shall exhibit or cause to be exhibited, or aid in exhibiting, tumbling or other feats in riding upon, or managing a horse or horses, or any circus show, or sport whatever, for the purpose of gain, or for admission to be present at, or to see which, any money, or value shall directly or indirectly, be demanded or received, or if any rope dancer, tumbler, mountebank, or other person, shall exhibit, or cause to be exhibited, or aid in exhibiting, at any place in this state, rope dancing, tumbling, tricks or puppet shows, for he purpose of gain, or for any gratuity, every person so offending in either of said particulars, shall forfeit and pay the sum of fifty dollars to any person who will sue for the same before any justice of the peace, with costs of suit, proceeding therefor, according to the "Act for the recovery of small debts," with a right of appeal under the same provisions as therein provided. 6 v. 433.

Penalty on owner of lands, &c. permitting such shows to be exhibited thereon.

SECTION 2. *And be it further enacted,* That if any person or persons shall wilfully suffer to be erected, constructed, or made in or upon any land, or building in his, her or their possession, any structure, tent, stage or place for the purpose of exhibiting any circus show or sport, rope dancing, tricks, or other shows, contrary to the form or effect of the preceding section, or either of the provisions thereof, or shall erect, construct or make, or procure, counsel or abet the erecting constructing or making of any structure, tent, stage or place, for the said purpose, or shall wilfully suffer any circus show, or sport, rope dancing, tricks or other shows, to be exhibited contrary to the form or effect of the preceding section, or any provision thereof, in any house or build-

CHAPTER CXLIII. 1829.

ing, or on any land in his, her, or their possession, every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall forfeit and pay to the state, a fine not less than fifty dollars nor exceeding one hundred dollars.

SECTION 3. *And be it further enacted,* That this act shall commence and be in force from and after the first day of May next.

PASSED AT DOVER, *February* 4, 1829.

CHAPTER CXLIII.

AN ACT *granting to Elias Hopkins and Samuel Fisher, a certain piece of land therein mentioned.*

PASSED AT DOVER, *February* 4, 1829.

PRIVATE ACT.

CHAPTER CXLIV.

AN ACT *for granting power to the courts to grant licences respecting slaves in certain cases.*

Licenses to export or import slaves;

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the Supreme court, or court of common pleas, shall have power to grant licenses to the owner or owners of any negro or mulatto slave, to export the same to the State of Maryland, or to bring the same into this state therefrom, upon such conditions, as may be deemed proper, and whenever, in the opinion of the court, the facts and circumstances set forth in the petition therefor, will justify granting such licenses; and every license granted as aforesaid, shall be issued by the clerk or prothonatory, under his

How obtained.

How issued.

hand and seal of office; and if any negro or mulatto slave shall be exported or brought into this state pursuant to a license issued as aforesaid, such negro or mulatto slave, shall not thereby be entitled to his or her freedom.

Tax $10. for each slave imported.

SECTION 2. *And be it enacted*, That for every negro or mulatto slave to be brought into this state as aforesaid, the owner or owners thereof, shall before granting a license therefor, pay to the clerk or prothonotary the sum of ten dollars, for the use of the fund for establishing schools in this state; and for every such negro or mulatto slave to be exported as aforesaid, the sum of five dollars, for the use aforesaid; and to the said clerk or prothonotary one dollar for issuing said license.

$5. for each slave exported.

$1. to clerk.

PASSED AT DOVER, *February* 4 1829.

CHAPTER CXLV.

AN ACT *to carry into effect the last will and testament of George Cummins deceased.*

PASSED AT DOVER, *February* 4, 1829.

PRIVATE ACT.

CHAPTER CXLVI.

AN ACT *to confirm and give effect in the State of Delaware to an act of the General Assembly of Maryland, entitled "an act to incorporate the Pennsylvania, Delaware and Maryland Steam Navigation Company.*

Preamble.

Whereas the general assembly of Maryland heretofore at the December session of the said general assembly, in the year eighteen hundred and twenty-five; passed an act entitled " an act to incorporate, the Pennsylvania, Delaware and Maryland steam

navigation company," in the words or to the effect following; to wit:—

Company.

Be it enacted by the General Assembly of Maryland, That Thomas Tenant, James L. Hawkins, George Riston, William Meeter, Charles Burd, Joseph Dugan, Thomas Fassett, William W. Seaton, Edward T. Baily, John B. Morris, Elisha Tyson, Sheppard C. Larkin, Hugh W. Evans, John Diffenderfer, Charles W. Carthus, Amand Rubec, James M'Lure, Richard M'Cubbin, R. D. Millholland. R. G. Cox, Ann Millholland, John Gooding, Jr., Marcus Denisen, Rezen Rowles, John Caduc, Charles Gwynn, S. L. Fowler, Godfrey Myres, William Massicott, Jacob Bezer, Samuel D. Walker, J. F. Tuzier, William Lovel, Mathew Kelley, James Beachem, A. B. Murry & Co., G. S. & J. P. Oldfield, Richard Stevens, Parker & Buverman, J. L. Bridges, William D. M'Kim, Joseph Meads, F. W. Hineck, Kizer & Crawford, E. J. Cole, J. H. Knight, George M'Dowell, Benjamin Edes, Charles Salmon, Felix Jenkins, Alexander Funaster, J. &A. Smith, William Reeves, Edward Morgan, Ann Barnes, John H. Short, Heslip & Jefferson, James Smith, James Rezburn, Michael Diffenderffer, Joseph Blackwood, D. A. Smith, Thomas Welsh, Newurt & Bolton, Dobbin, Murphy, and Bese, John Fallon, William Street, Lewis Grass, Jr. J. H. Hoogernorff, Thomas P. Levy, Henry Webb, Nicholas Hiss, James Heden, James Hindman, Ford & Parker, H. W. Bool, Jr., W. Cook, Margaret Patterson, T. Galloway, Geddes & Stewart, Edward Priestly, Jacob Daley, A. Stever, H. Niles, R. H. Douglass, Keyser & Schaffer, Charles Diffenderfer, Isa Littler, L. Kimble, Benjamin G. Benson, Reverdy Johnson, Isaac N. Toy, Henry Miller, John Fitzgerald, John Hamm, Jr., William Hanna, Henry G. Jacobsen, George W. Fitzgerald, John Manly, Anthony Kiernan, L. Eichleburger, M'Fadden & Harris, Richard Butler, Josiah Lee, & Co. Robert Leslie, Sarah Ann Brown, Richard Griffeth, G. C. Stiles, E. F. Stiles, William Stiles, Hester Stiles, Jane Stiles, Thomas G. Atkinson, R. H. Maul, Henry M'Ardle, Henry Bar-

ickman, Jos. Gales, Jr. Richard White, Thomas T. Rily, Thomas & James Fassett, George M'Dowell, J. Hurst, William Swaim, John Lewis, George Huffingle, Daniel Saint, John Adams, Lewis Rush, Enoch Allen, Henry Apple, W. S. Hatharous, Isaac Durial, Neville & Jake, Henrietta Miller, Samuel & William Meteer, their associates, successors and assigns, be, and they are hereby created and made a corporation and body politic, by the name, style and title of the Pennsylvania, Delaware and Maryland steam navigation company; and by that name, style and title shall have perpetual succession, and shall be able and capable in law to sue and be sued, to plead and be impleaded, answer and be answered, in any court of law or equity, to make, have, and use, a common seal, and the same at pleasure to change, alter and renew, and generally to do all such acts as shall be proper and necessary for the purpose of establishing and conducting a line or lines of steam boats, vessels and stages or other carriages, between Philadelphia and Baltimore, for the conveyances of passengers and transportation of merchandise and other articles.

Incorporation.

And be it enacted, That the capital stock of said corporation shall be divided into shares of fifty dollars each; and shall not exceed ten thousand such shares, including the shares already subscribed for by the persons hereinafter named and incorporated, the residue of said number of shares, or so many of them, as from time to time, shall be deemed necessary, shall be subscribed for or disposed of, from time to time, in such manner as the resolution or by-laws made in pursuance of this charter shall provide or direct, each subscriber for one or more shares of stock who hath paid or shall pay five dollars on every such share, to the use of this corporation, and every person who shall obtain by transfer, or in whom shall be vested by law, one or more shares of stock, shall be deemed a stockholder, and in virtue thereof a member of the corporation hereby created and shall so continue, until he shall cease to be a stockholder, by transferring all his or her shares of stock, or by forfeiting the same in the manner

Capital.

hereinafter mentioned, and every person on so ceasing to be a stockholder, shall cease to be a member of this corporation.

Commissioners.

And be it enacted, That the first named nine members of the said corporation shall be and they are hereby appointed commissioners to receive subscriptions and payments for shares of stock, and to do such other acts previous to and at the elections of directors, as are herein authorized and directed; any two of the said commissioners shall be authorized to receive subscriptions and payment for stock and a majority of them shall be authorised to do all the other acts hereinafter mentioned.

Books where opened.

And be it enacted, That the subscription books heretofore used for the purpose, shall be again opened at Philadelphia and Baltimore and elsewhere, if deemed necessary, under the direction of the said commissioners, for shares of stock in this company, and no one person shall be permitted to subscribe more than fifty shares until the twenty-fifth day of March next, on which day the said commissioners shall meet at Baltimore when all the subscription books shall be produced; if the number of shares subscribed shall exceed ten thousand, the commissioners shall appertion them among the subscribers, by deducting from the highest subscription until they shall be reduced to the stipulated number and the commissioners shall appoint a time and place for the stockholders to meet to choose from among themselves, seven directors to manage the business of the company until the first Thursday of December, 1826, or until a new election shall take place and the commissioners shall cause an advertisement of such appointment, and the object, to be published as a notice to the stockholders in such manner as to them shall seem proper.

Stockholders.

And be it enacted, That each subscriber for one or more shares of stock, before he shall be considered a stockholder, and entitled to vote, shall pay to the commissioners or to such person as they shall appoint, the sum of five dollars on each share of stock, which sum shall be paid over to the treasurer, when he shall be appointed and duly qualified, agreeably

to the charter and by-laws, each stockholder at every election or general meeting of the stockholders, shall be entitled to vote in person or by proxy, one vote for every share of stock, which he shall hold in the company on which all the instalments due, shall have been paid, and the president and directors may, at any time, prescribe the form of proxies and the mode of proving them.

And be it enacted, That the commissioners above named, or a majority of them, shall be judges of the first election of directors, and the president and directors, shall appoint the judges of all subsequent elections, and direct such notice thereof, to be given as they shall deem proper.

Meeting of Stockholders.

And be it enacted, That the stockholders shall meet annually on the first Thursday in December, or on such day within sixty days thereafter, and at such place, as the directors shall appoint, for the purpose of electing from among the stockholders, seven directors, who shall choose a president from among their own number, and the directors so elected, shall be entitled to hold their offices, and a majority of them to fill all vacancies, which shall occur in their own body, or in the office of president, by death, resignation, or ceasing to be a stockholder, until the next annual election.

Directors—Their powers.

And be it enacted, That the directors or a majority of them, shall have full power to appoint and employ, and in their discretion to remove, and dismiss a secretary, treasurer, and all such other officers, clerks, agents, mechanics, labourers and servants, as they shall deem necessary from time to time, to attend to and transact or execute all the affairs and business of the company, and fix their compensations, to contract, agree for and purchase, rent or hire all such lands, chattels, materials, rights, privileges, and effects whatever, and to make and repair, or cause to be made and repaired, all such roads, wharves, boats, vessels, carriages and other conveniences, as they shall deem necessary for effecting the objects of the company, and the same or any part thereof, in their discretion, to sell or otherwise dispose of, to call for monthly or other instal-

ments of the stock not exceeding ten dollars, on each share per month, on at least two weeks notice being given, to apply the said instalments when received, and all other funds of the company, so far as may be necessary to effect the object aforesaid, and in payment of the necessary expenses of the company, and to pass all such resolutions and by-laws, as may be necessary to carry into effect the powers vested in them by the charter, and the said resolutions and by-laws, to alter, repeal, annul or renew, subject nevertheless to the revision and control of the stockholders in the manner hereinafter provided.

Treasurer—to give bond.

And be it enacted, That the treasurer, before he proceeds to act, shall give bond to the said corporation in such penalty as the directors shall prescribe, and with such sureties, other than directors, as a majority of the directors shall approve, conditioned that he shall faithfully execute the said office of treasurer, and account for, pay and deliver at such time and times, and to such person and persons as the said directors shall require, and direct all monies, notes, and other securities, papers and effects belonging to the said corporation, which shall be entrusted to his care or be in his possession.

Roads—how laid out.

And be it enacted, That the directors or a majority of them shall have power to cause to be laid out, and with the consent of the owners of the land, to open and make passable any road or roads from any landing place which they shall deem convenient to use on the Chesapeake bay, or on any of the rivers or inlets on the eastern shore of this State, to the line of the state of Delaware, and if the owners or any owner of such land as may be designated, selected or laid out by the said directors for a road or landing place shall be legally incapable of consenting, or if the said directors cannot, from any cause, obtain the consent of any owner or owners of any land deemed by them necessary for a road or landing place as aforesaid, it shall be the duty of the sheriff of the county in which such land may be, on the application or request of the said directors, to summon within ten days after he shall receive such application, twelve good and law-

ful men, freeholders in the said county, not interested or related to any of the said owners, or to any member of the said corporation, as a jury to meet on and examine the lands so deemed necessary for a landing or road; and on their oaths, to be administered by the said sheriff, carefully and impartially to enquire and ascertain as well who are the owners or owner of the land required, as the damages which will be sustained by such owner of any such land, and make an inquisition thereof, under their hands and seals, which inquisition shall be returned by the said sheriff, to the clerk of the county court of his county, to be by him recorded, and the costs of taking and recording such inquisition, shall be paid by the said corporation, and on payment of the damages, so ascertained, or tendering the amount thereof, to the person or persons entitled to receive the same, or in case of their refusal to accept, depositing the amount in the Franklin Bank of Baltimore, to the credit of the person or persons so entitled; the right to use such land for a road or landing place, shall be vested in the said company hereby incorporated.

Damages.

And be it enacted, That the directors shall declare dividends of the profits realized by the company, or of so much thereof, from time to time, as a majority of them shall deem expedient, after reserving such sum as they shall decide to be reasonable to meet the expense of repairs, and to provide for the building or purchase of any new boat, carriage or other articles necessary for the use of the company, and at the time of each annual election, and also at the time of paying each dividend of the profits, a statement of the affairs of the company shall be exhibited for the inspection of the stockholdolders.

Dividends.

And be it enacted, That the president and directors, or a majority of them, shall have full power after giving at least thirty days notice by advertisements, inserted in at least one newspaper in Baltimore, and one in Philadelphia to forfeit and dispose of for the use of the company, any share or shares

Stock—how forfeited.

CHAPTER CXLVI. 1829.

of stock upon which one or more instalments shall be due, unless the instalments so due, with the interest thereon, from the time when the same shall have been payable, shall be paid before the day limited in such notice, or the owner of such stock may be compelled by action, to pay all such instalments.

Record of proceedings.

And be it enacted, That the directors shall cause regular minutes of their proceedings as a board to be made and preserved in a book, and regular books to be opened and kept, containing a record of the number of shares of stock owned by each stockholder, and of all transfers of stock, and such transfers shall only be made in the books so provided and kept by the stockholder, or his legal representative in person or by attorney authorised in such manner as the by-laws shall provide, and certificates of stock and transfers may be issued in such manner and form as the board shall from time to time direct.

By-laws—how repealed, &c.

And be it enacted, That the stockholders at any general annual meeting or at any special meeting called in such manner as the by-laws shall provide at which the holders of a majority of the whole number of shares of stock shall be present, shall have power to alter and repeal any by-laws made by the President and directors, and also to make such new by-laws, rules and regulations, as a majority of the whole number of votes of the stockholders shall assent to, which shall be binding on the president and directors, provided that such by-laws shall not be contrary to any of the provisions of this charter or to the laws of this state or of the United States.

Liability of company for debts.

And be it enacted, That all the joint stock, property, funds, and effects of the said company shall be answerable for all the contracts made by or for the said company, and for all just claims against the same; but none of the stockholders shall be liable in person or property for any contracts of, or claims against the said corporation, and the service of legal process on any of the directors shall be a sufficient service on the corporation.

Reservations.

And be it enacted, That nothing in this act shall be construed to authorize said company to obtain possession of, or use, any private wharf already es-

tablished, without the consent of the owner or owners of such wharf.

And be it enacted, That nothing contained in this act shall be construed to restrict the right of the legislature which is hereby reserved in its fullest extent, to impose from time to time and at all times hereafter, and levy such reasonable tax by license or otherwise upon all vessels or other property, estate and funds, in which the capital stock of the said company hereby incorporated shall be invested in common with similar vessels, property, estate or funds of any other company, corporation, or individuals of this state.

Limitation.

And be it enacted, That this act shall continue in force until the expiration of the year eighteen hundred and fifty, and until the end of the next session of the general assembly which shall happen thereafter.

And whereas the persons so incorporated by the said recited act of the general assembly of Maryland, in pursuance thereof, have proceeded to elect a president and directors of the said company, who have undertaken and are actively engaged in effecting the objects of their said incorporation; and to aid in effecting those objects the said directors have prayed that this general assembly will assent to, confirm and give effect, in the state of Delaware, to the said act of the general Assembly of Maryland.

Therefore--

The above act assented to, &c.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the above recited act of the general assembly of Maryland, and every section, clause and provision thereof, be, and the same is hereby assented to, confirmed and extended to the State of Delaware, so as to have full effect, validity and operation therein, subject nevertheless, to such additional provisions, and modifications, as are contained in this act.

Roads in this State, how opened.

SECTION 2. *And be it enacted,* That whenever it shall be deemed necessary by the Pennsylvania, Delaware and Maryland steam navigation company

CHAPTER CXLVI. 1829.

aforesaid, to extend or open any road through this state from the Maryland line, to the Delaware river or bay, or to any of the creeks, inlets, or waters connected with the said bay, or to obtain a landing place on the shore of the said river or bay, or of any water connected therewith, and the consent of the owners, or of any owner, of any land necessary for that purpose, cannot, from any cause whatever, be obtained; it shall and may be lawful for the president and directors of the said company, to apply to the clerk of the court of quarter sessions of the peace, for the county through, or in which such road may be intended to pass, or in which any land wanted may lie, who, upon such application, is hereby empowered and required to issue a writ, or writs, as occasion shall require, in the nature of a writ of "*ad quod damnum*" to be directed to the sheriff of the county, thereby commanding said sheriff, that by the oaths or affirmations of twelve disinterested freeholders of his bailiwick, he inquire who is or are the owner or owners of such land, and shall view the road and county from a place in Delaware City in Newcastle county, to be designated by said company, and at such a place, lay out a wharf and sufficient ground for a landing place for steam boats and stages and stables, and from thence to Lum's Mill, and from thence to the Maryland line, to intersect such road as may or shall be laid out in Maryland to said line, under the above recited act, and shall lay out and establish such new and old road from and to such points, and in such place or places, between such points, as they or a majority of them shall deem most suitable for a public road, and shall cause a map of said road to be made and returned, showing what is new and what is old road, and shall value and assess the damages which will be sustained by the owners of any land in laying out said wharf and landing place on said road or any part thereof, taking into the estimate the benefit to such owner from the location of such wharf, landing place or road being near to his land or property, but only in extinguishment of the claim for an estimate of damages to be justly and impartially valued, and the said

Clerk of the peace to issue writ;

To sheriff—

To enquire of owners, &c.

To lay out wharf, roads, &c.

Damages.

sheriff and jury, or a majority of them, shall make an inquisition, under their hands and seals, of all matters so inquired of and decided by them, which inquisition, the said sheriff shall, forthwith, return with said writ annexed thereto, to the clerk aforesaid, and upon paying the costs of said proceedings to the sheriff, for the use of those entitled thereto, and the damages assessed as aforesaid into court for the use of the person entitled thereto, the said court shall enter judgment of confirmation on said return, and the said company may thereupon, cause the said road to be made and constructed, and after the same shall be made and be put in good order and condition, the same shall be a public road and common highway and the landing place, and wharf, shall, by said return and confirmation, be vested in fee in said company, their successors and assigns.

Costs.

Confirmation of return.

SECTION 3. *And be it enacted*, That if any owner aforesaid, shall deem himself aggrieved in the assessment or omitting to assess damages as aforesaid, and shall apply to the court to which the return aforesaid shall be made, by petition, stating such grievance, the said court shall order a new writ to issue, and the said clerk shall issue the same, directed to the sheriff of Newcastle county, commanding him to inquire by the oaths or affirmations of twelve other disinterested freeholders of his bailiwick, what damages such owner or petitioner, has or will sustain by laying out said landing place, or said road, or any part thereof, and the said jury, or a majority of them, agreeing shall sign an inquisition, under their hands and seals, which shall be returned to the next court thereafter, of the damages any such owner or petitioner has, or will sustain by laying out said wharf, landing place, or said road, or any part thereof, taking into the estimate the benefit to such owner or petitioner, from the location of said wharf, landing place, or road being near to his land or property, but only in extinguishment of the claim for an estimate of damages, to be justly and impartially valued; and if by such inquisition any greater damages are allowed to any such owner or petitioner, the said court shall confirm the

Review, how obtained.

CHAPTER CXLVI. 1829.

said return and enter judgment thereon against said company in favour of the owner or petitioner in whose favour such damages shall be allowed for which, and the costs of said proceedings, execution may issue and be executed to enforce payment thereof, but the said clerk shall endorse on said execution, the sum allowed to such owner or petitioner, by the first inquisition aforesaid as a credit, and the balance only shall be collected under such execution. But no greater damages shall be allowed to any owner who shall not petition to said court for a new writ as aforesaid, except such owner be an infant and in that case the said jury may increase, but not diminish the damages, such infant may sustain as aforesaid. And if no greater damages shall be allowed, then and in that case, the petitioner for said writ shall pay the costs of such writ or proceedings.

Costs.

Width of road.

SECTION 4. *And be it enacted*, That the road to be laid out, made and constructed as aforesaid, shall be of the same width as other public roads and common highways in Newcastle county.

Any other company, &c. using the road for certain purposes, shall pay a share of the damages.

SECTION 5. *And be it enacted*, that if any other Steam-Boat company or individual shall at any time hereafter use or employ any stages or waggons in transporting persons or goods from any steam boat or other vessel on said road, such other company or individual shall be bound to pay to the Pennsylvania, Delaware, and Maryland steam navigation company, an equal share of all the damages which shall be paid by such company, in laying out, making and constructing said road, and in addition, shall pay all the costs of the proceedings aforesaid.

PASSED AT DOVER, *February* 5, 1829.

CHAPTER CXLVII.

AN ACT *to enable Samuel W. Woodland, of Newcastle County, in the State of Delaware, to remove, for the purpose of his own employment, from and into said state, certain negro slaves, and return them at his pleasure, without effecting his property therein.*

PASSED AT DOVER, *February* 5, 1829. } PRIVATE ACT.

CHAPTER CXLVIII.

An act concerning conveyances.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That lands, tenements, and hereditaments, may be aliened, and possession thereof transferred, by deed, without livery of seisin; and the legal estate shall accompany the use, and pass with it.

Lands may be aliened by *deed.* 1 v. 121, §4. 2 Blac com. 313, &c. The legal estate shall pass with the *use.*

A deed concerning lands, tenements or hereditaments, may be acknowledged in any county, by any party to the same, in the supreme court, or in the court of common pleas, or before the chancellor, or any judge of either of the said courts, or before two justices of the peace for the same county: such deed may also be acknowledged in either of said courts, by attorney, by virtue of a power contained in it or separate from it, the power being first proved: also such deed may be proved in either of the said courts, by one or more of the subscribing witnesses.

Deeds—how acknowledged. Cons. Art. vi. §6, 1 v. 220, 3 v. 69, 4 v. 666, 1 v 208. By attorney.

The deed of a married woman, executed by her during her marriage, to which her husband is also a party, concerning lands, tenements, or hereditaments, if she, upon private examination, apart from her husband, to be taken and certified according to this act, acknowledge that she executed said deed,

Deed of married woman, when valid. 1 v. 144, 528. Private examination. 2 v 1199. 4 v. 461.

willingly, without compulsion or threats, or fear of her husband's displeasure, shall be valid and as effectual as if she were sole; but such deed shall not bind her to any warranty except a special warranty, against herself, and her heirs, and all persons claiming by or under her, and no covenant on her part of a more extensive or different effect in such deed shall be valid against her. Such private examination may be taken in any county before the chancellor, any judge of either of the courts aforesaid, or two justices of the peace for the same county.

Not to bind her in any but a special warranty.

Private examination, how taken.

Such acknowledgment, proof or private examination, as aforesaid, shall be certified under the hand and seal of office of the clerk or prothonotary of the court in which, or under the hand of the chancellor, judge or justices of the peace, before whom the same is taken, in a certificate endorsed upon or annexed to the deed.

Acknowledgment, &c. how certified.

It shall not be necessary that such acknowledgment, proof or private examination be taken in the county wherein the premises are situate.

Deed *made out of this State* of lands within this State,—acknowledgment and proof and private examination, how taken—1 v. 308, 529. 4 v. 461 §25

When a party making a deed concerning lands, tenements or hereditaments in this State, is out of this State, the acknowledgment of said deed by such party or proof of the execution of said deed, by such party, or if such party be a married woman, her private examination may be taken before the judge of any district court of the United States, or the chancellor or any judge of a court of record of any state, territory or county, or the mayor or chief officer of any city or borough, and certified under the hand of such chancellor, judge, mayor, or officer, and the seal of his court, city or borough, by certificate endorsed upon, or annexed to the deed, or such acknowledgment or proof may be taken in any such court, and certified under the hand of the clerk or other officer of said court, and the seal of said court, in like manner. In case of such certificate by a judge, the seal of his court may be affixed to his certificate or to a certificate of attestation of the clerk or keeper of the seal.

How certified.

5 Binney 300, 301.

Letter of Att'y to sell lands &c.

A letter of attorney to sell or dispose of lands, tenements or hereditaments, or to acknowledge a deed

concerning lands, tenements or hereditaments, may be acknowledged or proved, and the acknowledgment or proof certified as herein before prescribed, in respect to the acknowledgment or proof of a deed; and if a party making a letter of attorney be out of this State, the preceding provision concerning the acknowledgment or proof of a deed, when the party making it is out of this state, shall apply. When such a letter of attorney is acknowledged or proved and the acknowledgment or proof is certified as aforesaid, and the same is recorded according to this act, a deed may be acknowledged by the attorney in such letter in any county before the chancellor, or any judge of the supreme court, or court of common pleas, or two justices of the peace for the same county, if the letter of attorney authorize such acknowledgment; an authority to sell or dispose of premises, if not restrained, shall extend to authorise the acknowledgment of a deed therefor.

how acknowledged—and proved. 1 v. 122, §3. 308.

Made out of the State—how proved, &c.

But nothing in this act shall enable a married woman to make a letter of attorney.

SECTION 2. *And be it further enacted,* That a deed or letter of attorney concerning lands, tenements, or hereditaments, being acknowledged or proved, and the acknowledgment or proof certified, according to this act, shall, with the certificate of the acknowledgment or proof, and all endorsements and annexations, be recorded in "the office for recording of deeds" in the county, wherein such lands, tenements or hereditaments, or any part thereof, are situate, if lodged in such office within one year after the day of the sealing and delivering of such deed or letter of attorney; and the said record or an office copy thereof shall be sufficient evidence; and after the first day of January, in the year of our Lord one thousand eight hundred and thirty, a deed or letter of attorney shall not be recorded unless lodged in such office within one year after the day of the sealing and delivering the same; but this limitation or prohibition shall not extend to a written contract of a deceased person for the conveyance of lands, tenements, or hereditaments, proved with a view to

Deed, &c. acknowledged, &c. shall be *recorded,* within *one year* 1 v. 220, §2, 221, §4.

Record to be *evidence.*

Not to be recorded after *one year.*

apply to an executor or administrator for the fulfilment of such contract.

Private examination of feme covert; valid; tho' deed be not recorded.

SECTION 3. *And be it further enacted,* That the private examination of a married woman, duly taken and certified according to this act, shall remain valid, although the deed upon which it is taken and certified is not recorded; but any other acknowledgment or proof, according to this act duly certified, of a deed or letter of attorney, shall not make such deed or letter of attorney, evidence without its being duly recorded.

Deed not recorded within one year, shall not avail against a subsequent creditor, &c. unless, &c.

A deed concerning lands, tenements, or hereditaments, made after the first day of June, in the year of our Lord, one thousand eight hundred and twenty-nine, if it be not recorded in the proper office, within one year after the day of the sealing and delivery of it, shall not avail against a subsequent fair creditor, mortgagee, or purchaser, for a valuable consideration, unless it shall appear that such creditor, when giving the credit, on such mortgagee or purchaser, when advancing the consideration, had notice of such deed.

Not to extend to a lease for 21 years, with possession, 1 v. 222.

But this provision shall not extend to a lease under a fair rent, for a term not exceeding twenty-one years, when the possession accompanies the lease, or the lessee is to come into possession within one year after the making of it.

Mortgages—priority of—1 v. 222. 5 v. 429.

A mortgage, or conveyance in the nature of a mortgage, of lands, tenements, or hereditaments, shall have priority according to the date of recording it in the proper office, without respect to the time of its being sealed and delivered, and shall be a lien from said date of recording it and not before; but if two or more mortgages, or conveyances in the nature of mortgages, of the same premises be lodged in the same office, at the same time, they shall stand in priority in relation to each other, according to their respective dates;

Mortgage for purchase money—if recorded in 60 days, preferred to other liens.

and if lands, tenements, or hereditaments be sold, and a mortgage of the same or any part thereof made by the purchaser to the vender, for securing the purchase money or any part thereof, and if such mortgage be recorded, within sixty days after making it, the lien of said mortgage on said lands, tenements, or hereditaments,

purchase money whereof is secured by it, shall have preference to any judgment against the mortgager, or any other lien created or suffered by him, although such judgment or lien be of a date prior to the mortgage.

If a conveyance of lands, tenements, or hereditaments, be absolute on the face of it, and there be a defeasance, or written contract in nature of a defeasance, or for a reconveyance of the premises, or any part thereof, the person to whom such conveyance is made shall cause to be endorsed thereon, and recorded therewith, a note, stating that there is such defeasance or contract, and the general purport of it, or the recording of such conveyance shall be of no effect; and such defeasance or contract must be duly acknowledged, or proved, and recorded in the office for recording of deeds in the county, wherein such lands, tenements, or hereditaments, are situate, within sixty days after the day of making the same, or it shall not avail against a fair creditor, mortgagee, or purchaser for a valuable consideration, of or from the person to whom such conveyance is made; unless it shall appear that such creditor, when giving the credit, or such mortgagee or purchaser when advancing the consideration, had notice of such defeasance or contract. Such contract, altho' not under seal; may be acknowledged or proved in the same manner as a deed.

If there be a *defeasance* to a conveyance, a note thereof shall be endorsed. 1 v. 223.

Defeasance to be proved, &c. and recorded—

Within 60 days.

When a deed or other instrument proper to be recorded, with a certificate endorsed or annexed of its being duly acknowledged or proved, is lodged in the office for recording of deeds in either county, it shall be the duty of the recorder to make a note thereon under his hand of the date, specifying the *day*, *month* and *year*, and in case of a mortgage, or conveyance in nature of a mortgage, the *hour* and *minute* of its being so lodged, in words at length, and to record the same with all endorsements, and annexations, and said note of said date, without delay; and the said recording of said deed or instrument shall take the said date of its being so lodged in said office: which date shall be the date of the recording in said office. The recorder shall certify

Recorder to note the time of receiving a deed &c.

5 v. 430.

He shall endorse a certificate of the recording a deed, &c.

under his hand and seal of office, on each deed or instrument recorded, that it is recorded, and the date of the recording, and the designation and page of the book wherein it is recorded. The recorder if required, shall give to a person lodging a deed or instrument in his office a certificate under his hand of the date of lodging the same, and shall receive therefor a fee of twelve and one half cents.

Recording shall avail only as to lands in the county.

The recording of a deed or instrument in the office for recording of deeds in one county shall avail only for the lands, tenements or hereditaments contained in said deed or instrument, situate in said county, and shall have no effect in respect to any lands, tenements or hereditaments, contained in said deed or instrument, situate in any other county.

Satisfaction of mortgage, &c. to be recorded. 1 v. 222.

SECTION 4 *And be it further enacted,* That whenever the debt or duty secured by a mortgage or conveyance in nature of a mortgage is satisfied or performed, the person or corporation who is the legal holder of such mortgage or conveyance at the time of the satisfaction or performance completed, shall, within sixty days after satisfaction or performance completed, cause an entry of such satisfaction or performance to be made upon the record of such mortgage or conveyance. Such entry shall be signed by the holder of such mortgage, or conveyance, or his attorney duly constituted, or when a corporation is the holder, by the cashier or treasurer, and attested by the recorder, and it shall extinguish the mortgage or conveyance; and the effect shall be the same as if such mortgage or conveyance had not been made. If any person or corporation being the holder of a mortgage or conveyance in the nature of a mortgage, shall upon the debt or duty thereby secured being satisfied or performed, refuse or neglect to perform and fulfil the duty herein before enjoined, such person, or corporation, shall forfeit and pay to the person or persons or corporation by whom or on whose behalf such satisfaction or performance shall be made or completed, a sum not less than ten dollars nor exceeding five hundred dollars, to be assessed by a jury and recovered with costs of suit in an action of trespass on the case in the supreme court or

Within 60 days.

Penalty for neglect.

the court of common pleas. Also when a debt or duty secured by a mortgage, or conveyance in the nature of a mortgage, is satisfied or performed, the person or corporation in whom the title under such mortgage or conveyance is, shall, upon the reasonable request and at the proper cost of the mortgager, his heirs or assigns, execute and acknowledge a sufficient reconveyance and of the premises contained in such mortgage or conveyance in nature of a mortgage.

And re-conveyance to be made. 1 v. 224.

SECTION 5. *And be it further enacted,* That when there is no express covenant in a deed, the words *grant, bargain* and *sell* shall, unless specially restrained, imply a special warranty against a grantor and his heirs and all persons claiming under him.

Force of the words *grant bargain and sell.* 1 v. 222. 2 Binney 95. Co. Lit. 384. & n. 332 by Butler. 4 v. 460.

SECTION 6. *And be it further enacted,* That a deed executed before the first day of May, in the year of our Lord one thousand eight hundred and eleven, by a married woman, of lands or tenements, belonging to her husband, shall be sufficient, without her examination apart from her husband, to bar her of dower in such lands or tenements.

Deed made before 1 May, 1811, by feme covert, good, without private examination.

SECTION 7. *And be it further enacted,* That two justices of the peace, when taking and certifying an acknowledgment or private examination must be together: and a certificate of acknowledgment and private examination taken before them may be according to the following form:

Justices of the Peace taking acknowledgment of a deed, must act *together.*

State of Delaware, —— county, ss. Be it remembered, that on the —— day of —— in the year of our Lord one thousand eight hundred and —— before the subscribers, two of the justices of the peace for —— county aforesaid — —— and — —— his wife named in this indenture, personally appeared and acknowledged said indenture to be their act and deed respectively, and desired that it might be recorded;—and that on the same day the said —— —— wife of the said —— —— being privately examined by us apart from her husband acknowledged, that she executed the said indenture willingly without compulsion or threats or fear of her husband's displeasure. Witness our hands the day and year aforesaid.

Form of certificate of acknowledgment. 4 v. 667.

If the instrument acknowledged be not an indenture, the word *instrument* may be substituted for the

To be varied to suit the case.

CHAPTER CXLVIII. 1829.

word "*indenture*" in the form; if it be not under seal, the words "and deed" in the form must be omitted. If an acknowledgment only, or private examination only, be taken, the form must be varied from, to conform to the case; and so of other cases requiring a variance, the form being given for general direction.

Repeal of—

§9. ch. 60, a. 1 v. 144.

ch 218, a. 1 v. §28.

§2, 3, 4, 5, 6, 7, 8, 9, 10. of ch. 82, a. 1-v. 219.

ch 127, a. 1 v. 308.

ch. 237, 5 v. 429.

ch. 67, c. 2 v 1198.

ch. 30, 3 v. 69.

ch 246, 4 v. 666.

§23, 24, 25, of ch. 158, 4 v. 460.

SECTION 8. *And be it further enacted*, That the ninth section of the supplement to an act of this government entitled "An act for the better confirmation of the owners of lands, &c. in their just rights and possessions," and the supplementary act thereto, passed April 12, 1773, and the second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth sections of the "Act for acknowledging and recording deeds," and the supplement to said act passed 25 Geo. 2; and the supplement to the said act passed at Dover, 10 February, 1819, and the "Act to impower the chancellor and the judges of the supreme court to take the private examinations of femes covert on the conveyance of lands in certain cases," and the "Act for rendering the acknowledgment of deeds more easy," and the supplement to the said act, and the twenty-third, twenty-fourth and twenty-fifth sections of the "Act concerning awards," &c. &c. passed at Dover, February 2, 1811, shall be and hereby are repealed from and after the first day of January next; except so far as shall concern any rights or acts confirmed by, or any matters or things done or transacted under or according to said acts or sections or either of them: and provided that no act or section repealed by either of said acts or sections shall be revived by this repeal; and also that the following clause, to wit:—"and shall be kept in some convenient place in the said respective counties," and the following words to wit:—"according to the true intent and meaning of this act" of the first section of the act for acknowledging and recording of deeds" shall be and hereby are repealed and expunged from said section, from and after the first day of January next—and the said section shall be read and construed in the same manner as if said clause and words had not been in-

Exceptions and proviso.

Repeal of part of ch. 83, a 1 v. 219.

serted therein, except so far as shall concern any matter transacted on or before the said day, and in any subsequent edition of the laws, said clause and words shall be omitted from said sections.

CHAPTER CXLVIII. 1829.

PASSED AT DOVER, *February* 5, 1829.

CHAPTER CXLIX.

AN ACT *concerning the office of Coroner.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That if any person die in prison, or if any person be slain, or die an unnatural death, except by sentence of law, or if the dead body of a person be found and the circumstances of the death be unknown; information shall be immediately given to the coroner of the county, and he shall without delay summon not less than twelve nor more than twenty-three substantial and judicious men of his county, to appear at an appointed hour at the place where the body lies, and shall empannel those appearing in an inquest; but if twelve do not appear, he shall summon others until the inquest consists of that number; and he shall administer an oath or affirmation to them respectively, according to the following form:—you do solemnly swear (or affirm) that you will diligently inquire into the time, cause, manner, and circumstances of the death of the person, whose body lies before you, and that you will thereupon make presentment of the truth, the whole truth and nothing but the truth, that shall come to your knowledge, so help you God, (or so you do solemnly affirm.)

Information to be given to coroner of the death of persons in certain cases. 1 Blac. com. 348.

He shall summon a jury.

Jury to be sworn, &c.

Oath.

The coroner and inquest after viewing the body shall, in some convenient place, inquire into the cause, manner, and circumstances of the death. The coroner shall cause to come before the inquest, all suspected persons who can be taken, and all pro-

To enquire into the cause, &c. of the death.

Suspected persons to be

brought before the inquest, per witnesses, and all proper means shall be used for ascertaining the truth. Suspected persons shall be examined, their voluntary declarations being taken without threats or promises, and reduced to writing and read to the respective persons examined, and signed by them respectively, if willing. The testimony, if material, of each witness, shall be reduced to writing and read to, and signed by the witness. The examinations and depositions, shall be certified and signed by the coroner, and in case of the death of a witness, his deposition shall be evidence on the trial of any person present at his examination. Twelve at least, of the inquest must agree in an inquisition. The inquisition may be according to the following form

and examined. Voluntary declarations to be reduced to writing: And the testimony.

Form of inquisition.

——— county ss. An inquisition taken the ——— day of ——— A. D. one thousand eight hundred and ——— at ——— in said county, before ——— coroner of the said county, upon view of the dead body of ——— *(here insert the name and addition of deceased—or if unknown, a description of the person, by sex, apparent age, size, clothes, &c.)* by the oath and affirmation of ——— substantial and judicious men of the said county, who being in due manner sworn or affirmed, say that the said ——— came to his death *(here insert the time, cause, manner, and circumstances of the death, as found by the inquest.)* In testimony whereof, as well the said coroner as the said jurors have hereunto set their hands and seals, the day and year aforesaid.

Coroner may summon witnesses, and compel their attendance.

The coroner shall have authority to summon witnesses, and in case of their neglect to appear pursuant to the summons, to arrest them and compel their attendance. He may also issue subpœna for, and attachment for contempt against, witnesses, directed to any constable of the county. It shall be the duty of the coroner, on probable cause, supported by oath or affirmation to believe, that a person has committed murder, or manslaughter, to arrest such person and safely keep him for examination. If it be found by the inquisition that the death of the deceased was caused by the act, abetment, procurement, command or counsel of any person, such per-

His duty in certain cases, to arrest suspected persons.

Certain crimes not bailable.

son, shall not be bailable by the coroner, nor by a justice of the peace, unless it appear by the inquisition, that it was a case of excusable homicide, or of manslaughter; and it shall be the duty of the coroner, to apprehend every such person, if not under arrest, unless it appear by the inquisition to be a case of excusable homicide, and he shall if necessary issue his warrant, under his hand and seal, directed to any constable of either county, grounded upon the said inquisition, for the apprehension of any person accused therein; such warrant may be according to the following form.

Warrant for the apprehension of persons accused by the inquisition.

——County ss. The State of Delaware to any con- (SEAL.) stable of either of our counties. It having (____) been found by an inquisition taken the —— day of —— A. D one thousand eight hundred and —— before —— our coroner of the county aforesaid, upon view of the dead body of —— that the said —— came to his death *(here set forth the time, cause, manner and circumstances of the death, substantially, as found by the inquisition.)* We do therefore command you to take the before named —— wheresoever he may be found, and bring him before our said coroner, to be dealt with according to law. Witness the hand and seal of the said coroner, the —— day of 18 ——

Form thereof.

——— Coroner.

A person arrested by such warrant, desiring to give bail, shall upon his request, be carried before either of the judges of the supreme court in the county where he is arrested, for the determination of the question of bail, according to the "act concerning bail."

Person arrested to be carried before a Judge to determine the question of bail.

The coroner shall have power to commit any person for trial. The commitment shall be by warrant under his hand and seal, and it may be according to the following form.

Coroner may *commit for trial*

——County ss. The State of Delaware to the she- (SEAL.) riff of said county. It having been found (____) by *(proceed as in the foregoing warrant to the words* "we do therefore" *and then proceed,)* "We do therefore herewith send to you

Form of commitment.

CHAPTER CXLIX. 1829.

the before named —— and command you to receive him, and safely keep him for trial, or until he shall be discharged, according to law. Witness the hand and seal of the said coroner, the —— day of —— 18—— ——— Coroner.

He may take recognisance of bail.

The coroner shall have authority to take recognizance of bail. He shall admit to bail any person who is bailable and offers sufficient bail. The recognizance may be according to the following form:

Form.

—— county, ss. Be it remembered, that on the —— day of —— A. D. one thousand eight hundred and —— before —— ——, coroner of said county, came —— —— of —— in their proper persons, and acknowledged themselves to be jointly and severally held to the state of Delaware in the sum of —— to be paid to the said state; and granted that the said sum should be levied of their goods and chattels, lands and tenements respectively, for the use of the said state; upon condition that if the said —— —— shall appear before the next court of oyer and terminer and general gaol delivery, which shall be held in and for —— county in the state aforesaid, to answer to all matters and things that shall be objected against him, and shall not depart the said court without leave, then the above recognizance shall be void.

The recognizance shall be signed by the recognizors and also by the coroner.

Recognisance of witnesses

The coroner shall require each witness, whose testimony he deems material, to enter into recognizance to the state to appear at the proper court and give evidence.

Form.

An entry in these words "I am bound in recognizance to the state of Delaware in the sum of —— to appear at the next court of oyer and terminer and general gaol delivery in —— county to give evidence on behalf of the state against ——, dated the —— day of ——, 18—" signed by a witness and attested by the coroner, shall be a sufficient recognizance for a witness, and shall be conclusive evidence to support a scire facias or declaration upon a recognizance in due form; and any number of witnesses may sign the same entry, and it shall be conclusive against each, as his separate recognizance.

The coroner may require a witness to find surety in his recognizance, under the same circumstances, under which a justice of the peace is authorized to require such surety—and on his failure may commit him, and the witness if committed shall be entitled to fees in like manner as if committed by a justice. The recognizance of a witness with surety may be in like form as the above recognizance of bail substituting the words *to give evidence on behalf of the state*—for the words "to answer to all matters and things that shall be objected against him."

Witnesses may be required to give *surety*, and *committed* on failure.

When the inquisition is taken after the term of the supreme court, and before the court of general quarter sessions of the peace and gaol delivery in a county, the witnesses shall be bound to appear before the court last mentioned, instead of the court of oyer and terminer and general gaol delivery, unless there be special reason to the contrary.

When witnesses shall be bound to appear at the court of *quarter sessions*.

The coroner shall deliver every inquisition, with all the examinations, depositions and recognizances concerning the case, to the attorney general, on the first day of the court of general quarter sessions of the peace and gaol delivery, or the first day of the court of oyer and terminer and general goal delivery, which ever shall be first held in the county, immediately after the opening of the court.

Coroner to deliver inquisitions, &c to the Att'y Genl.—when—

If any person summoned by the coroner to appear for the purpose of being impanneled in an inquest as aforesaid, shall fail to appear, or shall refuse to serve, the coroner shall have power to issue an attachment for contempt against him, directed to any constable of the county, and he may order him to pay the costs of the attachment, and a fine not exceeding ten dollars, and may enforce obedience to such order, by imprisonment.

Penalty on person summoned as a juror, refusing, &c. to serve.

If a body upon which an inquisition ought to be held, be interred without an inquisition, the coroner may, upon a recommendation of a justice of the peace, for the county, in writing, cause the body to be disinterred, to hold an inquisition thereon.

A body may be *disinterred*—when.

Bac. Abr. coroner C.

Such recommendation shall not be given unless there be reasonable cause to suspect that the death was caused by violence, poison or other criminal means.

Penalty for improperly burying a body on which an inquisition ought to be held. 1 Burns J. 786

If any person shall cause a body on which an inquisition ought to be held, to be buried without an inquisition he shall, (unless a justice of the peace for the county, shall have certified in writing his opinion, that there was no necessity for an inquisition) be deemed guilty of a misdemeanor and on conviction thereof, shall pay to the State a fine not less than ten, nor more than one hundred dollars.

A justice of the peace shall have discretion to give such certificate.

Vacancy, &c. in the office of coroner—how supplied.

SECTION 2. *And be it further enacted,* That if a death happen as mentioned in the preceding section; while the office of coroner is vacant, or while the coroner is absent from the county, or unable to perform his duty, the justice of the peace for the county residing nearest to the place where the body is, shall, in respect to such death, perform the office of coroner, and have all the authority given by the preceding section to the coroner.

Coroner to execute the office of sheriff—when.

SECTION 3. *And be it further enacted,* That the coroner shall execute the officer of sheriff of the same county in every case, in which there is a legal exception to the sheriff, and also in case the said office is vacant. Accordingly in the specified cases, process shall be directed to the coroner, and he shall have all the powers and be liable to all the duties of sheriff of his county. If process be directed to him during a vacancy in the office of sheriff, his power in respect to such process shall not cease on said office being filled, but he shall execute the process.

In capital cases sheriff to furnish judges with a copy of the commitment.

SECTION 4. *And be it further enacted,* That the sheriff of each county, upon a person being committed to his custody, charged with a capital offence, or with the crime of manslaughter, shall send a copy certified under his hand of the commitment to the chief justice of the supreme court and like copy to the judge of said court in the county where the commitment is.

PASSED AT DOVER, }
February 5, 1829. }

CHAPTER CL.

AN ACT *for the relief of Outten Davis.*

PASSED AT DOVER, *February* 6, 1829. } PRIVATE ACT.

CHAPTER CLI.

AN ACT *concerning the action of ejectment.*

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the legal title to lands, or to any tenements, whereon entry can be made, whenever in controversy, may be tried in an action of ejectment, and no objection shall be made to the form of action or to the right of the lessor of the plaintiff to make the demise, if he could recover the premises in any form of action.

Action of Ejectment extent of.

When after recovery in ejectment, action is brought for the mesne profits, if such action be commenced within six months after the judgment or if there be a writ of error, within six months after the affirmance of said judgment or other determination of the proceeding in error, the said action shall, so far as to avoid the intermediate operation of the act of limitation, be deemed a continuation of the proceeding in ejectment, so that the plaintiff shall not be debarred by the act of limitation from recovering mesne profits for three years next preceding the commencement of the ejectment.

Actions for mesne profits, not barred by the act of limitation, in certain cases.

PASSED AT DOVER, *February* 6, 1829. }

CHAPTER CLII.

5 v. 194. AN ACT *to repeal the act entitled "An act to authorize the owners and possessors of the swamp and low grounds, situated upon a branch leading into Assawaman bay, to cut a ditch or drain through the same," and the supplement thereto.*

PASSED AT DOVER, *February* 6, 1829. } PRIVATE ACT.

CHAPTER CLIII.

AN ACT *to enable Joseph Brown to bring certain negroes therein named from the state of Maryland into this state, and to remove them from this state to the state of Maryland.*

PASSED AT DOVER, *February* 6, 1829. } PRIVATE ACT.

CHAPTER CLIV.

AN ACT *to enable Elizabeth Shockley, Sarah Adkins, Lemuel B Shockley, John C. Davis and William Shockley, heirs at law and devisees of William Shockley, deceased, and Levi Warren, deceased, to sell and convey certain lands therein mentioned.*

PASSED AT DOVER, *February* 1829. } PRIVATE ACT.

CHAPTER CLV.

CHAPTER CLV.
1829.

AN ACT *directing the entry of satisfaction of judgments, decrees and recognizances and of payments on executions.*

Satisfaction of judgments, &c. to be entered on the record. 3 v. 190.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That whenever a person to whom a sum is due by judgment or decree, or by a recognizance taken in the orphans' court, receives satisfaction of the sum so due, it shall be the duty of such person to cause such satisfaction to be entered upon the record of such judgment, decree or recognizance, within sixty days after satisfaction received: and in case of default, the person against whom the judgment or decree is, and each of them, if there be several, or each of the recognizors in such recognizance, or the executor or administrators of such person or recognizor, shall have an action of trespass on the case, against the person making default or his executors or administrators and shall recover damages, which shall not be less than ten nor more than fifty dollars, unless it shall be alledged in the declaration and proved that special damages have been sustained to a greater value.

within 60 days:

penalty for neglect.

How entered.

Such satisfaction shall be entered by the clerk or prothonotory upon the application of the party or his attorney, who must sign the entry.

Not to apply to judgments before justices of the peace—unless, &c.

This section shall not extend to a judgment of a justice of the peace, unless a transcript be entered in the common pleas when satisfaction shall be entered there: and when a sum due by judgment is received from the sheriff or other officer on execution the case shall not be within this section.

Sheriff receiving payment on execution, shall return the fact.

SECTION 2. *And be it further enacted,* That whenever the sheriff or other officer, to whom an execution is directed, levies or receives the sum due thereon or any part thereof or obtains a settlement of executions, he shall return the fact, with the sum and date of each payment if the execution be not fully satisfied: Such return shall be under

CHAPTER CLV.

1829.

hand of the sheriff or other officer; and it shall be endorsed on the execution, or if the receipt or settlement be after the execution is returned it shall be delivered to the clerk or prothonotary, in whose office the execution is, within thirty days after the receipt or settlement, and he shall annex the same to the execution. Every such return shall be entered on the docket of the execution: and when a judgment is thus satisfied the clerk or prothonotary shall note it on the record of such judgment. If any sheriff, clerk, prothonotary or other officer shall make default herein, the party against whom the execution is, or each of them, if there be several, shall have an action of trespass on the case against him, and shall recover damages, which shall not be less than ten, nor exceeding fifty dollars, unless it is alledged in the declaration and proved, that special damages have been sustained to a greater value.

It shall be entered on the docket.

Penalty on shff. or clerk, for neglect.

This section shall not extend to an execution issued by a justice of the peace.

Repeal of—ch. 79, 3 v. 189.

SECTION 3. *And be it further enacted,* That the act entitled "A supplement to an act entitled 'An act for regulating and establishing fees and for other purposes," passed at Dover, January 29, 1801, shall be and hereby is repealed, from and after the first day of next July, except so far as shall concern any forfeitures incurred under the same, and on and after the said day this act shall commence and be in operation.

PASSED AT DOVER, *February* 7, 1829.

CHAPTER CLVI.

AN ACT *to enable William Cooch of Newcastle county, to bring into this state a certain negro slave therein mentioned.*

PASSED AT DOVER, *February* 7, 1829.

PRIVATE ACT.

CHAPTER CLVII.

AN ACT *to authorize the "Newcastle Turnpike Company" to make a rail road from the town of Newcastle to the place called Clarks' corner.* 4 v. 411.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the President and Managers of the company incorporated by the name, style and title of "The Newcastle Turnpike Company" or a majority of them, be and they are hereby authorized and required to call a meeting of the stockholders of the company aforesaid, at such time and place, as they may deem convenient, after giving at least two weeks notice of such time and place, and the object of the meeting, in two newspapers published in the Borough of Wilmington, and one newspaper published in the city of Philadelphia, and eight printed advertisements set up in public views in the town of Newcastle aforesaid; at which meeting the holders of the major part in amount of the stock of the said company, attending in person or by his proxy, shall be competent to decide, whether or not the capital stock of the said company shall be increased, for the purpose of locating and constructing a rail road from the town of Newcastle, to the place called Clark's Corner, in the manner and on the terms authorized and provided by this act; and if at such meeting it shall be decided to increase the stock for the purpose aforesaid, the said president and managers, shall provide for opening a book to receive subscriptions for such increase to the capital stock of the said company in shares of twenty-five dollars each, at such time and place, and on such notice and terms of payment as a majority of the said president and managers shall deem proper, and the said book shall be continued open until so many shares shall be subscribed, as shall amount to two hundred thousand dollars, or such smaller sum as shall be sufficient to complete the road hereby au-

Meeting of stockholders to be called:

Notice—

To decide whether the capital shall be increased—

To make a rail road.

Books to be opened—when.

CHAPTER CLVII. 1829.

thorized, and on such amount being subscribed, the said president and managers may proceed to require and enforce the payment of the stock so subscribed, agreeably to the terms of subscription, in the manner authorized by their act of incorporation, passed at Dover, the thirtieth day of January, eighteen hundred and eleven, chapter one huedred and fifty-one; and after the payment of five dollars per share on the stock so subscribed, each subscriber shall be entitled to the rights and privileges of a stockholder of the said company, and vote at elections and other meetings of the stockholders, on complying from time to time with the terms of payment, as required by the president and managers.

4 v. 411.

Corporate name changed, when.

SECTION 2. *And be it enacted*, That when the said amount of increased stock, shall be subscribed, and five dollars per share paid thereon as above provided, the corporate name of the said company shall be and the same is hereby changed and altered to "the Necastle Turnpike and Rail Road Company" and by that new corporate name the holders, as well of the original as the increased stock, are hereby incorporated, and shall possess all the rights and privileges of a corporation, and be entitled to all the property, rights and privileges, and to exercise all the powers granted to and vested in the president, managers and company and corporation herein first above mentioned, by the charter aforesaid, or by any other law of this state, and all powers granted by this act; and the said corporation, shall by the said new name, be seized and possessed of and entitled to all the effects and claims of the first aforesaid corporation, and may hold and dispose thereof, and may sue and be sued, and may make and use a corporate or common seal, and the same may break or alter and renew, and do all other acts which corporate bodies may lawfully do, and shall be answerable and bound for all existing contracts and claims whatsoever, in the same manner as if the said corporate name had not been changed.

Name.

Company incorporated—

Powers.

Rights.

Directors—election of.

SECTION 3. *And be it enacted*, That the said president and managers, within thirty days af-

ter the increased stock shall be subscribed and five dollars paid on each share thereof, shall appoint a day and place, of which three weeks notice shall be given as aforesaid, for the stockholders in the said Newcastle turnpike and rail road company to meet for the purpose of choosing seven of the stockholders, as directors, to manage the affairs of the said company, of which election the said president and managers or any three or two of them shall be judges, and at such election, and all future elections by, and meetings of the said stockholders in said company, each share of stock shall entitle the holder to one vote: provided, however, that no person shall have more than twenty-five votes at any election or in determining any question arising at such or any other meeting, whatever number of shares such person may be entitled to. And the directors elected at such meeting, and their successors to be elected annually by the stockholders as aforesaid, or a majority of them shall have power and they are hereby authorized to elect a president, who may or may not be a stockholder, and appoint and employ all such other agents, servants, labourers and other persons, as they shall deem necessary in the exercise of the powers and performance of the duties hereby vested in, and required of them, and fix the salary and other compensations to be paid, or allowed to every person so elected, appointed or employed, and in their discretion to remove or dismiss, all or any of the said persons, to make all contracts, and agreements necessary for the performance of any work or purchase of any article which they deem advisable, to fix the time and place, and direct notice of the annual election of directors, and other meetings of the stockholders, and the same from time to time to change, to appoint judges of all elections, to fill up all vacancies which shall occur in their own body, and to pass all such by-laws as shall be necessary for the full and beneficial exercise of all the powers which are or shall be vested in them, and such by-laws from time to time to altar and repeal: Provi-

Votes.

Directors—their powers.

ded, that such by-laws shall not be contrary to the laws of this State, or of the United States.

May locate and construct a rail road—where.

SECTION 4. *And be it enacted*, That the directors aforesaid, when elected shall be vested with full power to locate and construct a rail road from the town of Newcastle to the place called Clark's Corner, within the limits of the road mentioned and referred to in section 7, of the charter or act of incorporation of the said turnpike company passed at Dover, the thirtieth day of January eighteen hundred and eleven, beginning at the intersection of Delaware and Union Streets in the said town, and thence extending as far as the intersection of the same road, with the Wilmington Bridge road at Clark's Corner, aforesaid, with as many tracks as they shall think necessary either on the bed of the turnpike road, authorized to be laid out by the same charter aforesaid, or varying therefrom in whole or in part as the more beneficial and convenient construction of the said rail road may require. And whenever it shall be necessary to locate any part of the said rail road, over or on any other ground than the said bed of the turnpike road aforesaid, the said directors, may either obtain the right to make such location by contract, with the owner of such ground or in the manner authorized by the charter, herein before referred to, and in locating and constructing the said rail road, and preserving, repairing and protecting the same from injury, the said directors shall be entitled to exercise all the powers and authority, vested by the aforesaid act of incorporation, passed on the same day and year aforesaid, chapter one hundred and fifty-one, in the president managers and company in the same act mentioned so far as they are not inconsistent with the provisions of this act.

4 v. 414.

Ground for new road—how obtained.

Company to keep open and in repair, thirty-feet, in breadth, of road from Newcastle to Clark's Corner.

Penalty for neglect.

SECTION 5. *And be it enacted*, That it shall be the duty of the said Newcastle turnpike and rail road company, to keep open and in good repair, at least thirty feet in breadth of the turnpike road, aforesaid, from Newcastle to Clark's Corner, subject to the same penalties for neglect, and entitled to the same tolls prescribed and allowed by the act of As-

sembly herein before mentioned, and whenever in the construction of the rail road authorized by this act it shall be necessary to cross or intersect any established road or way, it shall be the duty of the directors of the company aforesaid so to construct the said rail road across such established road or way as not to impede the passage or transportation of persons or property along the same, or where it shall be necessary to pass through the land of any individual it shall be the duty of the said directors, to provide for such individual, proper waggon ways across the said rail road, and if any road shall be hereafter authorized by the legislature or courts of this state, the direction of which shall lead across the rail road hereby authorized, it shall be the duty of the company in this act mentioned so to construct or alter that part of the rail road as shall permit the passage of any road hereafter to be allowed by the legislature or courts of this state, at the expense of the person or county opening the same.

Not to obstruct other roads, public,— or private.

SECTION 6. *And be it enacted,* That the said directors may procure and use on any rail road which shall be constructed by them in virtue of this act, all machines, waggons, carriages and other vehicles which they deem proper or necessary for the purpose of transportation on the said road; and they shall have power to charge and receive as tolls for using the said road, not exceeding three cents per ton, per mile, for the transportation of passengers not more than one and a half cents per mile, including customary baggage not exceeding one hundred pounds weight for each, for transporting the whole distance any trunk, box, bale, basket, or package, not being the baggage or part of the baggage of a passenger, and not exceeding one hundred pounds weight, twelve and a half cents, and it shall not be lawful for any other company, or any person or persons whatsoever to travel upon or use any part of the said rail road, or to transport persons or property of any description thereon, without the payment of the tolls by this section required; and using appropriate and suitable carriages for travelling and passing on said rail road: Provided however, *and be it enacted,*

May procure waggons, &c.

and charge *tolls.* Toll *per ton— for passengers;*

boxes, &c.

No other company or individual to use said road, but on payment of toll. *See post ch. 177. p.*

Proviso.

ded, that such by-laws shall not be contrary to the laws of this State, or of the United States.

May locate and construct a rail road—where.

SECTION 4. *And be it enacted*, That the directors aforesaid, when elected shall be vested with full power to locate and construct a rail road from the town of Newcastle to the place called Clark's Corner, within the limits of the road mentioned and referred to in section 7, of the charter or act of incorporation of the said turnpike company passed at Dover, the thirtieth day of January eighteen hundred and eleven, beginning at the intersection of Delaware and Union Streets in the said town, and thence extending as far as the intersection of the same road, with the Wilmington Bridge road at Clark's Corner, aforesaid, with as many tracks as they shall think necessary either on the bed of the turnpike road, authorized to be laid out by the same charter aforesaid, or varying therefrom in whole or in part as the more beneficial and convenient construction of the said rail road may require. And whenever it shall be necessary to locate any part of the said rail road, over or on any other ground than the said bed of the turnpike road aforesaid, the said directors, may either obtain the right to make such location by contract, with the owner of such ground or in the manner authorized by the charter, herein before referred to, and in locating and constructing the said rail road, and preserving, repairing and protecting the same from injury, the said directors shall be entitled to exercise all the powers and authority, vested by the aforesaid act of incorporation, passed on the same day and year aforesaid, chapter one hundred and fifty-one, in the president managers and company in the same act mentioned so far as they are not inconsistent with the provisions of this act.

4 v. 414.

Ground for new road—how obtained.

Company to keep open and in repair, thirty-feet, in breadth, of road from Newcastle to Clark's Corner.

Penalty for neglect.

SECTION 5. *And be it enacted*, That it shall be the duty of the said Newcastle turnpike and rail road company, to keep open and in good repair, at least thirty feet in breadth of the turnpike road, aforesaid, from Newcastle to Clark's Corner, subject to the same penalties for neglect, and entitled to the same tolls prescribed and allowed by the act of As-

sembly herein before mentioned, and whenever in the construction of the rail road authorized by this act it shall be necessary to cross or intersect any established road or way, it shall be the duty of the directors of the company aforesaid so to construct the said rail road across such established road or way as not to impede the passage or transportation of persons or property along the same, or where it shall be necessary to pass through the land of any individual it shall be the duty of the said directors, to provide for such individual, proper waggon ways across the said rail road, and if any road shall be hereafter authorized by the legislature or courts of this state, the direction of which shall lead across the rail road hereby authorized, it shall be the duty of the company in this act mentioned so to construct or alter that part of the rail road as shall permit the passage of any road hereafter to be allowed by the legislature or courts of this state, at the expense of the person or county opening the same.

Not to obstruct other roads, public,— or private.

SECTION 6. *And be it enacted,* That the said directors may procure and use on any rail road which shall be constructed by them in virtue of this act, all machines, waggons, carriages and other vehicles which they deem proper or necessary for the purpose of transportation on the said road; and they shall have power to charge and receive as tolls for using the said road, not exceeding three cents per ton, per mile, for the transportation of passengers not more than one and a half cents per mile, including customary baggage not exceeding one hundred pounds weight for each, for transporting the whole distance any trunk, box, bale, basket, or package, not being the baggage or part of the baggage of a passenger, and not exceeding one hundred pounds weight, twelve and a half cents, and it shall not be lawful for any other company, or any person or persons whatsoever to travel upon or use any part of the said rail road, or to transport persons or property of any description thereon, without the payment of the tolls by this section required; and using appropriate and suitable carriages for travelling and passing on said rail road: Provided however, *and be it enacted,*

May procure waggons, &c. and charge *tolls.* Toll *per ton— for passengers, boxes, &c.*

No other company or individual to use said road, but on payment of toll. *See post ch.* 177 p.

Proviso.

CHAPTER CLVII. 1829.

That this section shall not be so construed as to prevent all or any other persons or companies from making or procuring all machines, waggons, carriages, and other vehicles proper or necessary for the purpose of transportation on said rail road.

Stock, personal estate.

SECTION 7. *And be it enacted*, That the shares of the capital stock of the said company, both original and increased, shall be deemed and considered personal estate, and the directors shall semi-annually divide the profits derived from both the turnpike and rail road (except what they may deem necessary to reserve for the repairs) among all the stockholders, in proportion to the amount of stock held by them respectively, and they shall cause a notice of such dividend to be published in two newspapers in the Borough of Wilmington and one in the city of Philadelphia, and shall annually report the same to the legislature of Delaware.

Dividends.

Notice thereof.

To be reported to the Legislature.

This act *conditional*.

SECTION 8. *And be it enacted*, That unless such rail road is commenced within two years from the passage of this act, and finished within five years thereafter, this act and all the rights and privileges which it confers on said company shall cease, and be utterly void.

Reservation.

SECTION 9. *And be it enacted*, That the state hereby reserves the right to alter or abolish said charter at any time after the period of twenty years from the completion of said road, on providing that such compensation shall be made to the stockholders, as the Legislature shall deem reasonable.

Other companies may join their roads to this.

SECTION 10. *And be it enacted*, That it shall and may be lawful for any other turnpike and rail road company or companies or either, to form junctions of their road or roads at any part or parts of the said road, with the same road.

Reservation.

SECTION 11. *And be it enacted*, That the state hereby reserves the power of laying such tax as may be expedient, upon so much of the capital stock of the said company as may be actually paid in, not exceeding one half of one per centum, per annum.

PASSED AT DOVER, *February* 7, 1829.

CHAPTER CLVIII.

CHAPTER CXLVIII. 1829.

AN ACT *to authorize the Newcastle and French Town Turnpike company, heretofore incorporated by the name of the President, Managers, and Company of the Newcastle and French Town Turnpike to make a rail road from the place called and known by the name of Clark's Corner, in the county of Newcastle, in this state, as far as the Maryland line, in a direction towards Frenchtown on Elk River.*

Preamble.

Whereas the General Assembly of Maryland by an act passed the —— day of December, in the year of our Lord, one thousand eight hundred and twenty-seven, entitled an act to authorize the Newcastle and French Town turnpike company, to make a rail road from French Town, on Elk river, to the Delaware line, in a direction towards Newcastle, did by the ninth section of the same act, enact, that the same act should not take effect until the legislature of Delaware pass an act similar in all its provisions to the aforesaid act.

And whereas it is expedient that this general assembly enact a law similar in its provisions with the said act of the General Assembly of Maryland to make a rail road from the said place, called Clark's Corner, to the Maryland line, where it is intersected by the said turnpike road.

Meeting of stockholders to be called.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the President and managers of the company incorporated by the name, style and title of the president, managers and company of the Newcastle and French Town turnpike company, or a majority of them be and they are hereby authorized and required to call a meeting of the stockholders of the said company at such time and place as they may deem convenient, after giving at least three weeks notice of such time and place, and the object of the meeting, in one newspaper published in Cecil county, state of Maryland,

one in the city of Baltimore, and one in the state of Delaware; at which meeting, the holders of the major part in amount of the stock of the said company, attending in person or by proxy, shall be competent to decide whether or not the capital stock of the said company shall be increased, for the purpose of locating and constructing a rail road from the said place called Clark's Corner, towards French Town to the Maryland line where it is intersected by the said turnpike road in the manner and on the terms provided by this act; and if at such meeting it shall be decided to increase the stock for the purpose aforesaid, the said president and managers shall provide for opening a book to receive subscriptions for such increase to the capital stock of the said company in shares of twenty-five dollars each, at such time and place and on such notice and terms of payment as a majority of the said president and managers shall deem proper; and the said book shall be continued open until so many shares shall be subscribed as shall amount to two hundred thousand dollars, or such smaller sum as shall be sufficient to complete the road hereby authorized; and on such amount being subscribed, the said president and managers, may proceed to require and enforce the payment of the stock so subscribed, agreeably to the terms of subscription, in the manner authorized by the original act of incorporation, passed at Dover, the twenty-fourth day of January, in the year of our Lord, one thousand, eight hundred and nine, the seventh section whereof is hereby revived and re-enacted, and made a part of this act for that purpose, and after the payment of five dollars per share on the stock so subscribed, each subscriber shall be entitled to the rights and privileges of a stockholder of the said company, and to vote at elections and other meetings of the stockholders on complying from time to time with the terms of payment, as required by the president and managers.

to decide, &c.

Books to be opened—when.

4 v. 245.

SECTION 2. *And be it enacted,* That when the said amount of increased stock shall be subscribed, and five dollars per share paid thereon as above pro-

Corporate name, changed.

vided, the corporate name of the said company shall be, and the same is hereby changed and altered to the "Newcastle and Frenchtown turnpike and rail road company," and by that new corporate name the holders of the original as well as of the increased stock are hereby incorporated, and shall possess all the rights and privileges of a corporation, and be entitled to all the property, rights and privileges, and to exercise all the powers granted to and vested in the president, managers and company and corporation herein first above mentioned by the charter aforesaid, or by any other law of this state, and all powers granted by this act; and the said corporation by the said new name shall be seized and possessed of and entitled to all the property, effects and claims of the first aforesaid corporation, and may hold and dispose thereof, and may sue and be sued, and may make and use a corporate or common seal and the same may break or alter and renew, and do all other acts which corporate bodies may lawfully do, and shall be answerable and bound for all existing contracts and claims whatsoever in the same manner as if the said corporate name had not been changed.

New name.

Re-incorporated.

SECTION 3. *And be it enacted,* That the said president and managers within thirty days after the increased stock shall be subscribed, and five dollars paid on each share thereof, shall appoint a day and place of which three weeks notice shall be given as aforesaid, for the stockholders in the said Newcastle and French Town turnpike and rail road company to meet for the purpose of choosing seven of the stockholders as directors to manage the affairs of said company, of which election the said president and managers or any three or two of them shall be judges, and at such election, and at all future elections by, and meetings of the said stockholders in said company, each share of stock shall entitle the holder to one vote: Provided however, that no person shall have more than twenty-five votes at any election or in determining any question arising at such or any other meeting, whatever number of shares such person may be entitled to. And the di-

Directors—

when chosen—

rectors elected at such meeting, and their successors to be elected annually by the stockholders as aforesaid, or a majority of them, shall have power, and they are hereby authorized to elect a president who may or may not be a stockholder, and appoint and employ all such other officers, agents, servants, laborers and other persons as they shall deem necessary in the exercise of the powers and performance of the duties hereby vested in and required of them, and fix the salary or other compensation to be paid or allowed to every person so elected, appointed or employed, and in their discretion to remove or dismiss, all or any of the said persons, to make all contracts and agreements, necessary for the performance of any work, or purchase of any article which they deem advisable, to fix the time and place, and direct notice of the annual election of directors, and other meetings of the stockholders and the same from time to time to change, to appoint judges of all elections, to fill up all vacancies which shall occur in their own body, and to pass such by-laws as shall be necessary for the full and beneficial exercise of all the powers which are or shall be vested in them, and such by-laws from time to time to alter and repeal: Provided that such by-laws shall not be contrary to the laws of this state or of the United States.

powers of.

Rail road—location of.

SECTION 4. *And be it enacted*, That the directors aforesaid, when elected, shall be vested with full power to locate and construct a rail road from the place called Clark's Corner aforesaid, towards French Town, to the Maryland line, where it is intersected by the said turnpike road, with as many tracks as they shall think necessary either on the bed of the turnpike road authorized to be laid out by the original charter above mentioned, or varying therefrom in whole or in part, as the more beneficial and convenient construction of the said rail road may require; and whenever it shall be necessary to locate any part of said rail road over or on any other ground than the bed of the said turnpike road, the said directors may either obtain the right to make such location by contract with the owner

of such ground or in the manner authorized by the existing acts of incorporation of the said turnpike company; and in locating and constructing the said rail road, and preserving, repairing, and protecting the same from injury, the said directors shall be entitled to exercise all the powers and authority vested by the aforesaid acts of incorporation in the president, managers, and company in the said acts mentioned so far as they are not inconsistent with the provisions of this act.

Road, thirty feet wide, to be kept open.

SECTION 5. *And be it enacted,* That it shall be the duty of the said Newcastle and French Town turnpike and rail road company, to keep open and in good repair, at least thirty feet in breadth of the turnpike road aforesaid, from Clark's Corner to French Town, subject to the same penalties for neglect, and entitled to the same tolls prescribed and allowed by the acts of assembly, hereinbefore mentioned. And wherever in the construction of the rail road authorized by this act, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the directors of the said company so to construct the said rail road across such established road or way as not to impede the passage or transportation of persons or property along the same, or where it shall be necessary to pass through the land of any individual, it shall also be the duty to the said directors, to provide for such individual, proper waggons across said rail road, and if any road shall be hereafter authorized by the legislature or courts of this State, the direction of which shall lead across the rail road hereby authorized, it shall be the duty of the company in this act mentioned, so to construct or alter that part of the rail road, as shall permit the passage of any road hereafter to be allowed by the legislature or courts of this state, at the expense of the county or person opening the same.

SECTION 6. *And be it enacted,* That the said directors may procure and use on any rail road which shall be constructed by them in virtue of this act, all machines, waggons, carriages and other vehicles, which they may deem proper, or necessary for the purposes of transportation on said road, and they

Tolls.

shall have power to charge and receive as tolls for using the said road, not exceeding three cents per ton, per mile, for the transportation of passengers, not more than twenty-five cents each, for the whole distance, including customary baggage, not exceeding one hundred pounds weight for each; for transporting the whole distance any trunk, box, bale, basket or package, not being the baggage or part of the baggage of a passenger, and not exceeding one hundred pounds weight, twelve and a half cents; and it shall not be lawful for any other company or any person or persons whatsoever, to travel upon or use any part of the said rail road, or to transport persons or property of any description thereon, without the payment of the tolls by this section required, and using appropriate and suitable carriages for travelling and passing on said rail road: Provided however, and be it enacted, that this section shall not be so construed as to prevent all or any persons or companies from making or procuring all machines, waggons, carriages and other vehicles proper or necessary for the purposes of transportation on said rail road.

Other rail roads, &c. may be joined with this.

SECTION 7. *And be it enacted,* That it shall and may be lawful for any other turnpike and rail road company or companies, or either, to form junctions of their said road or roads, at any part or parts of the said road, with the same road.

Stock, personal property.

SECTION 8. *And be it enacted,* That the shares of the capital stock of the said company, both original and increased, shall be deemed and considered personal estate, and the directors shall semi-annually divide the profits derived from both the turnpike and rail road, except what they may deem necessary to reserve for repairs, among all the stockholders in proportion, to the amount of stock held by them respectively, and they shall cause a notice of such dividend, to be published in one newspaper in Wilmington, one in Baltimore, and one in Elkton, Maryland, and shall annually report the same to the Legislatures of Delaware and Maryland.

Dividends—

to be published,

and reported to the legislature.

Limitation of this act.

SECTION 9. *And be it enacted,* That unless said rail road is commenced within two years from the

passage of this act, and finished within five years thereafter, this act and all the rights and privileges which it confers upon said company, shall cease and be utterly void.

Reservation of power to alter &c. this charter,

SECTION 10. *And be it enacted,* That the State hereby reserves the right to alter or abolish said charter, at any time after the period of twenty years from the completion of said road, on providing that such compensation shall be made to the stockholders as the legislature shall deem reasonable: Provided always nevertheless, and be it enacted, that unless the said turnpike company, and the company to be incorporated by virtue of this act, and the said act of the legislature of the State of Maryland, shall and do within said term of two years, lay out, make, continue and extend the said turnpike road, and the said rail road, so as aforesaid authorized to be constructed and made, in a direct course or route, or as nearly so as the existing improvements and nature of the ground will admit, to low water mark of Elk river, in the State of Maryland, and erect or cause to be erected, a commodious and sufficient wharf and public landing, at deep water in the said Elk river, to be connected with the said turnpike road and the said rail road, that then, and in such case of failure to comply herewith, this act shall be, and hereby is declared to be, void and of no effect.

and to tax the company.

SECTION 11. *And be it enacted,* That the State hereby reserves the power of levying such tax as may be expedient, upon so much of the capital stock of the said company, as may be actually paid in, not exceeding one half of one per centum per annum.

This act not to take effect, until &c.

SECTION 12. *And be it enacted,* That this act shall not take effect until the legislature of Maryland pass an act, similar in all its provisions to this act; or until said legislature shall by necessary enactments, make an act entitled "an act to authorize the Newcastle and Frenchtown turnpike company, to make a rail road from Frenchtown on Elk river to the Delaware line, in a direction towards Neweas-

CHAPTER CLVIII. 1829.

tle," passed by that legislature, December session 1827, to conform in all its provisions to this act.

PASSED AT DOVER, *February* 7, 1829.

CHAPTER CLIX.

AN ACT *to incorporate the Wilmington and Brandywine Amicable Society.*

Company incorporated.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That Jeremiah Dodsworth, Robert Keddy, Richard Topham, Robert Topham, John Shaw, John Rylands, Joseph Bromily, John Bradshaw, Harvey Stump, and such other persons as are, or hereafter shall become members of the Wilmington and Brandywine Amicable Society, be, and forever hereafter shall be, by virtue of this act, one body politic and corporate, in fact and in law, and shall have perpetual succession, by the name, style and title, of the Wilmington and Brandywine Amicable Society.

Name.

Corporate powers.

SECTION 2. *And be it further enacted,* That the said corporation and their successors, shall forever hereafter be able and capable in law, to purchase, receive and hold any lands, tenements, rents, goods or chattels, or any property whatsoever, which may be given, conveyed or devised to them, and also to give, grant, let, sell or assign the same, and to do all other matters touching the same, by the name and title aforesaid, and they shall have a common seal, may sue and be sued, plead and be impleaded, in any court of law or equity in this State, in all manner of actions, suits, complaints, pleas, causes and matters whatsoever, and of what nature or kind soever.

Officers.

SECTION 3. *And be it further enacted,* That the members of this society shall have power to appoint such officers as they may deem proper or neces-

sary to conduct the affairs of the society, and from time to time to make and establish such by-laws, rules and ordinances, not contrary or repugnant to the laws and constitution of this State, or of the United States, as they shall deem necessary and proper for the good government of the society.

SECTION 4. *And be it further enacted,* That it shall not be lawful for the said corporation, and it shall not have power to have, possess, nor in any manner hold goods, chattels, rights or credits, lands or tenements, or property of any kind, the clear yearly income or revenue of which shall exceed one thousand dollars. Income.

SECTION 5. *And be it further enacted,* That this act shall continue and be in force until the thirty-first day of December, in the year eighteen hundred and fifty, and until the end of the next session of the General Assembly, thereafter. Limitation.

PASSED AT DOVER, *February* 7, 1829.

CHAPTER CLX.

AN ACT *to amend the "Act concerning certain crimes and offences committed by slaves, and for the security of slaves properly demeaning themselves.* 7 v. 120.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met; That the twelfth section of the act, mentioned in the title of this act, be amended by expunging from the said section the word "fifth" where it first occurs therein, so that a part only, as subsequently expressed in said section, and not the whole of the fifth section of the "act concerning negro and mulatto slaves" shall be repealed; and said twelfth section shall be construed as hereby Amending—ch. 50 ante p. 129.

CHAPTER CLX. 1829.

amended, and shall have the same effect, as if the original expression had been according to this amendment, as was intended.

PASSED AT DOVER, *February* 7, 1829.

CHAPTER CLXI.

A SUPPLEMENT *to the "act to establish an uniform militia throughout this State."*

Repeal of—

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the "act respecting the arms belonging to the State of Delaware," and the supplement to the said act, passed at Dover, 23d January, 1816; and the additional supplement to the said act, passed at Dover, 6 February, 1818; and the further additional supplement to said act, passed at Dover, January 29, 1821, be and hereby are repealed; and the joint resolution concerning the commissary of military stores, adopted at Dover, February 16, 1816, is hereby rescinded.

ch. 241, 4 v. 647.
ch. 67, 5 v. 117.
ch. 199, 5 v. 363.
ch. 40, 6 v. 40.
ch. 30, 5 v. 55.

PASSED AT DOVER, *February* 9, 1829.

CHAPTER CLXII.

AN ACT *to enable Everest Maury to introduce the production and manufacture of Silk in the State of Delaware.*

This act not to be printed, until, &c.

SECTION 7. *And be it enacted,* That this act shall not be printed among the acts of the General Assembly, until the commissioners aforesaid, or a majority of them, shall file in the office of Secretary of State, a certificate stating that five thousand dollars have been subscribed and paid in, then it shall be

the duty of the secretary of state, to cause this act, to be published, with the acts passed at the next session of the General Assembly thereafter.

CHAPTER CLXII. 1829.

PASSED AT DOVER, *February* 9, 1829.

CHAPTER CXLIII.

AN ACT *concerning the Orphans' Court.*

Orphans' court, terms of. 1 v. 87.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That there shall be yearly in each county, two terms of the orphans' court which shall commence on the same days, as the terms of the court of chancery. Also the chancellor shall have authority to hold special orphans' courts, as he shall see occasion. The clerk of said court shall have power to open and adjourn the same, in the chancellor's absence, from day to day or as the chancellor shall order.

Clerk may open and adjourn the court.

Power of the court to enforce orders, &c. 1 v. 92. 4 v. 44.

The said court shall have authority to arrest and imprison the body, and to sequester goods and chattles, rights and credits, lands and tenements. It may issue process of citation, subpœna, attachment for contempt and sequestration.

Process of citation, &c. may be issued into every county—return days.

Process of citation, subpœna and attachment for contempt may be issued into every county upon filing in the office of the clerk, a petition to the court; process of citation, if prayed for, shall be issued of course. Process of subpœna shall be issued on application to the clerk. The court may appoint return days of process, and direct how process shall be made returnable: process issued in vacation, in respect to which there shall be no such appointment or direction, shall be returnable, on the first day of the next term.

Sequestration, force of.

A sequestration shall bind goods and chattels, rights and credits, lands and tenements, from the time of the service thereof on the same, respectively,

and shall hold the same paramount to any transfers, liens or acts of a subsequent date.

Commissions to take depositions.

The said court shall have authority to award commissions for taking depositions of witnesses beyond the reach of process, and depositions of witnesses aged, infirm or about to depart from the state, to be read if the attendance of the witnesses cannot be procured.

Issues may be sent to other courts to be tried by jury.

The said court shall have authority to direct issues of fact to be tried by a jury at the bar of another court.

Testimony to be reduced to writing—*when.*

In cases, in which there is an appeal from the said court, the testimony at the request of either party shall be reduced to writing, and signed by the witnesses respectively; and on appeal the original depositions thus taken shall be sent to the court having the appellate jurisdiction. Neither party shall be deprived of the benefit of an appeal, because of the testimony not being reduced to writing; but in such case the parties may produce and examine witnesses in the court having appellate jurisdiction.

Clerk shall record all petitions, orders, &c.
4 v. 41.

SECTION 2. *And be it further enacted,* That the clerk of the orphans' court, shall record in a fair plain hand, in well bound and convenient books, provided by him, (the costs of which shall be allowed to him by the levy court of the county) all petitions, orders, appointments, returns, certificates, assignments, recognizances, exceptions, decrees and proceedings, preferred, made, returned, taken, filed or had to, in or by the said court, and shall keep an accurate index to every such book, arranged according to the alphabetical order of the surnames and in which the proper entry or entries of reference to each record shall be made immediately upon the recording. Recognizances shall be recorded in a seperate book; and each recognizance shall be recorded within five days after taking it. Every other matter shall be recorded in a reasonable time, not exceeding three months from the time when it becomes proper to record it. A petition on which no order is made, a return or certificate set aside, interrogatories or depositions, citations or other process shall not be recorded without special order; a note of the issu-

Index to records.

Record of recognizances.
6 v. 225.

ing, filing, or other act shall, unless there be other direction, be sufficient. The court may order the recording of papers. The court shall have the inspection of the records and may make rules concerning the keeping of the same. The books aforesaid shall be public records, and shall belong to the office.

Penalty on the clerk for neglect of duty herein.

If any clerk shall neglect to perform well and faithfully any duty incumbent upon him according to this section, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall pay to the state a fine of fifty dollars. It shall be the duty of the orphans' court to report such negligence to the General Assembly.

Counter security, how obtained by surety to an ex'r. adm'r. or guardian. 1 v. 425. 2 v. 891.

SECTION 3. *And be it further enacted*, That if any surety of an executor, administrator or guardian, shall believe that there is danger of his suffering injury from his suretyship, he may prefer to the orphans' court a petition for relief; and the said court shall have jurisdiction of the case, and shall have authority, if it shall appear that there is danger to the petitioner of suffering injury from the suretyship, to make an order that the executor, administrator or guardian complained against give to the petitioner sufficient counter-security to be approved by the court, and to enforce obedience to such order by attachment for contempt or sequestration, as shall be deemed expedient; and in case of refusal or neglect to obey such order, the said court shall have authority to remove the executor, administrator or guardian from office, and to order him to pay and deliver all the money, effects and estate in his hands, as such executor, administrator or guardian, to a receiver by the said court appointed, and to enforce obedience to such order by attachment for contempt or sequestration; but a receiver, before an order of payment and delivery to him is made shall become bound with sufficient security to the state in a joint and several obligation to be approved with the security by said court, conditioned to account for all money, effects, and estate, which shall come to his hands pursuant of his appointment, and to pay and deliver the same as the said court shall order,

Ex'r. &c. neglecting to give such counter security, may be *removed*; and ordered to pay the money, &c. in his hands to a *receiver*.

Receiver to give bond and surety. 1 v. 425.

Condition.

and to well and faithfully execute the trusts and duties of his office of receiver.

The court may direct money in the hands of an ex'r. &c. to be *lent out*— upon security. 1 v. 90. For what time.

SECTION 4. *And be it further enacted*, That the orphans' court, upon the application of an executor, administrator, or guardian, may direct money in his hands to be lent at interest, for any time not exceeding one year and ten days from the date of such direction, upon security to be approved by the said court, and may from time to time direct such loan to [be] continued on the same security for any time not exceeding one year, and an executor administrator, or guardian faithfully following such direction shall be exempted from any loss arising from the failure of such security. It shall not be necessary that the security be taken and inspected by the court before the direction; but the direction may be given and the security taken pursuant thereto.

If money cannot be so lent, the ex'r &c. shall not pay interest. His duty in such case.

If money cannot be lent at interest on good security; the executor, administrator or guardian shall not be charged with interest; but it shall be the duty of the executor, administrator or guardian to represent the case to the orphans' court, and observe the direction of the said court thereupon.

Appeal from the orphans' court, within what time it may be taken. 1 v. 539.

SECTION 5. *And be it further enacted*, That no appeal from any decree or order of the orphans' court, shall be received in the supreme court, unless the petition, or assignment of causes of appeal, with a certified copy of the record, be filed in the supreme court or in the office of the clerk thereof, within one year after the making of such order or decree; Provided that this limitation in respect to any person under disability of infancy, coverture or incompetency of mind, at the time of making the order or decree, shall begin to run from the ceasing of such disability, and not from the making of the order or decree.

An appeal no stay of proceedings, without security. 1 v. 539.

An appeal shall not be a stay of proceedings in the orphans' court, unless the appellant give security to be approved by the said court, to prosecute the said appeal with effect, and perform the order or decree appealed from, if not reversed upon the appeal, and to abide by and fulfil such order or decree

as shall upon the appeal be made against the appellant.

SECTION 6. *And be it further enacted,* That the orphans' court shall have authority to appoint guardians to minors; the guardianship to continue of males till their age of twenty-one years, and of females, till their age of twenty-one years or marriage. But when a guardian is appointed of a minor under the age of fourteen years, unless such appointment be according to a deed, or the last will and testament of the minor's father, if the minor after arriving to the age of fourteen years shall choose for a guardian another person, the court, if there be no just cause to the contrary, shall appoint the person so chosen, and the preceding guardianship shall be thereby superceded. The said court shall have authority to remove a guardian for sufficient cause.

Guardians, appointment of; 1 v. 91.

removal of.

A father may by deed or last will and testament, name a guardian for his child, and the person named shall be appointed unless he refuse or neglect to give security, or there be other sufficient cause against appointing him. A minor of the age of fourteen years or upwards, may choose a guardian, and the court, if there be no just cause to the contrary, shall appoint the person chosen. When a minor is under the age of fourteen years, or resident out of this state and cannot conveniently appear in court to choose a guardian, or refuses or neglects to choose a person whom the court can approve, or who will give security, the court may appoint a guardian according to its own discretion.

Testamentary guardians. 1 v. 93.

A minor 14 years old may choose a guardian.

5 v. 364.

SECTION 7. *And be it further enacted,* That every person appointed guardian, upon being appointed, shall, with sufficient surety or sureties, become bound to the ward in a penal sum to be determined by the court, by a joint and several obligation to be with the security approved by said court, with condition according to the following form:

Guardians to give *bond* and *security.*

1 v. 90.
1 v. 421.
2 v. 1070.

The condition of this obligation is such, that if the said ——, guardian of —— shall duly render, according to law, just and true accounts of his guardianship, and if the said ——, his executors or administrators, upon the determination or ceasing of

Condition of the bond.

CHAPTER CLXIII. 1829.

the said guardianship, shall deliver and pay to the said ——, his executors or administrators, all the property belonging to him in the possession of the said ——, and all that shall be due to him from the said ——, and if the said —— shall in all things faithfully perform and fulfil his duty as guardian as aforesaid, then this obligation shall be void.

May be varied.

The condition may be adapted to the case of several guardians, or of a female guardian or ward by the requisite variation from said form.

Appointment of a guardian shall not be recorded, till security given.

1 v. 422.

No entry of the appointment of a guardian shall be made until obligation be given and approved; and a note of the giving of the obligation and of the penalty, and of the surety or sureties shall be subjoined to the record of the appointment. The obligation shall be carefully preserved in said court. It shall not be necessary to the validity of the obligation, that there be a certificate of the approving of it or of the security.

Further security may be required by the court.

1 v. 422.

If it shall appear in any case, that the obligation or the security is insufficient, whether it originally was or has become insufficient, the orphans' court shall order the guardian to give further security, and in case of neglect or refusal to obey said order shall remove him from office. Further security shall be by obligation with surety or sureties in the same manner and form as original security.

Valuation of ward's lands.

1 v. 422.

SECTION 8. *And be it further enacted*, That upon the appointment of a guardian, if the ward have any lands or tenements, the orphans' court shall make an order that three judicious freeholders of the said county, impartial toward the parties, and named by the said court, view such lands or tenements, and estimate the yearly rental value thereof, and note the buildings, orchards and improvements, the estimated portion of cleared land and woodland, and of meadow or marsh, whether any and what part may be cleared, and whether any, and what repairs are necessary to the tenable condition of the premises, and probable costs of such repairs, and make return to the said court under their hands or the hands of a majority of them. All the freeholders must view the premises; but a majority

may determine any matter. The freeholders before viewing the premises under the order, for the purpose of executing it must be sworn or affirmed to perform their duty faithfully and impartially according to the best of their skill and judgment. It shall be the duty of the guardian to procure such order to be executed within three months from the making of it. If he neglect this duty, or if the freeholders, after reasonable request, refuse or neglect, duly to execute and return such order, it shall be a contempt of the court, which the court may punish by a fine not exceeding thirty dollars.

Guardian to execute the order in 3 months. 1 v. 423.

SECTION 9. *And be it further enacted*, That every guardian shall render an account of his guardianship at the end of one year from the date of his appointment, and shall fully account for all the money, effects and property of his ward that shall have come to his hands; and shall afterwards render accounts of his guardianhsip from time to time as the register shall require; but the register shall not require accounts to be rendered oftener than once a year unless there be special occasion. The clerk of the orphans' court shall, within twenty days after the appointment of a guardian, deliver a memorandum, under his hand and seal of office, of such appointment, and the date thereof, and within twenty days after any valuation is returned, a memorandum of the amount thereof to the register of the county: and if the guardian shall fail to render an account at the end of one year from the date of his appointment, it shall be the duty of the register to issue process of attachment for contempt against him and inforce the performance of his duty in this respect by imprisonment; but the register may for sufficient cause; extend the time not exceeding six months. The register shall have authority to order guardians to render accounts and to enforce obedience to such orders by attachment for contempt and imprisonment.

Guardian shall render an account at the end of *one year*, and afterwards at the discretion of the register. 4 v. 46.

Clerk of the orphans' court to notify the register, of appointments of guardians—and of valuation of lands—*within twenty days*.

Register to compel the guardian to file his accounts.

The orphans' court upon a proper case may direct a guardian to expend for the maintenance and education of his ward, a specified sum, although such sum may exceed the income of the ward's estate;

Court may direct a guardian to expend more than the income—

not to be done without such direction.

but without such direction the guardian shall not be allowed in any case for the maintenance and educacation of the ward, more than the clear income of his estate.

Powers of guardians.

SECTION 10. *And be further it enacted,* That a guardian shall have the care of the person of the ward and the possession and management of the real and personal property of the ward, and shall have authority to receive all debts, rents, and things in action due or belonging to the ward, and to sell the personal property of the ward, of a perishable nature, and also with the direction of the orphans' court to sell any other personal property of the ward; and the receipts, discharges and transfers of the guardian made in good faith, in the exercise of this authority shall be valid and effectual. Such guardian shall be admitted to sue or defend for his ward. An infant may also sue by his next friend. In no suit at law or in equity shall the parol demur or proceedings be deferred, because of the infancy of a party plaintiff or defendant.

1 v. 92.

No *parol demurer* shall be allowed. 3 Blac. com 300.

Court may order property to be delivered over to the ward on his coming of age, &c. 1 v 424.

The orphans' court shall have power to order that any property, real or personal, that shall come to the possession of a guardian as guardian, and shall be in possession at the determination or ceasing of the guardianship; shall be delivered to the person who was ward, his heirs, executors or administrators, and to enforce obedience to such order by attachment for contempt or sequestration.

Guardian shall not dispute the right of the ward, to property in his hands as guardian, unless,&c

The guardian or his heirs, executors, administrators or assigns shall not dispute the right of the ward to any property that shall have come to his possession as guardian, except such property shall have been recovered from the guardian, or there be a personal action pending on account of it.

No person shall have authority as guardian without appointment by the orphans' court.

Guardians *pro lite.*

SECTION 11. *And be it further enacted,* That no person shall have any right or authority as guardian, unless such person shall have been duly appointed guardian by the orphans' court, except that a court of law or equity may, in an action or suit against an infant, admit any person to defend such action or suit, as guardian of the said infant.

SECTION 12. *And be it further enacted*, That if a minor have real or personal property and have no guardian, the orphans' court shall have authority to appoint some person or persons to take charge of such property; such charge shall be during the pleasure of the court, and shall cease on the appointment of a guardian; and the court may make such regulations, touching the same, as shall be deemed proper under the circumstances; in case of real estate, the rent shall be payable into court, and shall be directed to be deposited in some bank or otherwise disposed of for the minor's benefit.

Court may appoint a person to take charge of a minors' property. 1 v. 424.

Rent in such case to be paid into court.

SECTION 13. *And be it further enacted*, That this act shall commence and be in operation from and after the first day of July next; and from and and after the said day, the "act for establishing the orphans' court;" and the seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fifteenth and sixteenth sections of the "act for the amending the laws relating to testamentary affairs, and for the better settling intestates' estates;" and the sixth section of the "act for making perpetual" said act; and the fourth section of the "act to compel executors to give security for the fathful discharge of the duty reposed in them by their testators, and for other purposes;" and the fourth section of the "act to revive and perpetuate" the said act; and the seventeenth, eighteenth, twentieth and twenty-first sections of the "act to regulate certain proceedings in the court of chancery; in the orphans' court, and in the register's court; and to compel justices of the peace to furnish copies of their records;" and the second section of the supplement to the act entitled an "act to amend the intestate laws of this state;" and the "act to enjoin certain duties on the clerks of the orphans' court" shall be and hereby are repealed: Provided, that no act or section repealed by either of the acts or sections aforesaid, shall by this repeal be revived, and provided further, that this repeal shall not annul, affect or extend to any matter, right or remedy, which on or before the first day of July next shall have been done or transacted, or

Repeal of—

ch. 30, a. 1 v. 87

§7, 8, 9, 10, 11, 12, 13, 15 & 16 of ch. 186, a. 1 v 417.

§6, ch. 222, a. 1 v 539.

§4, ch. 146, b. 2 v. 891.

§4, ch. 7, c. 2 v 1070

§17, 18, 20 and 21. ch. 21. 4 v. 32.

§2, ch. 200, 5 v. 364.

ch. 133, 6 v. 225.

Proviso.

CHAPTER CLXIII. 1829.

shall have arisen or accrued, but every such matter, right and remedy shall be and hereby is excepted from the effect of this repeal.

PASSED AT DOVER, *February* 10, 1829.

CHAPTER CLXIV.

AN ACT *for expediting suits against Corporations.*

Suits against corporations—how brought

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That suits may be brought against any corporation by their corporate name, before any court or justice of the peace, of competent jurisdiction, by summons, or if before the chancellor, by subpœna, which may be served on the president or other principal officer, if residing in this state, and if not then on the president or other principal officer, or cashier, treasurer, secretary, or any director, or manager of such corporation; and if any attorney of such corporation shall appear in behalf thereof according to the requisition of summons or subpœna, then the suit so brought shall proceed to trial, judgment or decree, as in cases between individuals; and if no such attorney shall appear as aforesaid, then if it shall appear from the return of the writ that the said corporation was summoned in said suit, the plaintiff may and shall have judgment against such corporation as in ordinary cases of judgment by default; service of a writ of summons or subpœna as aforesaid, shall be a sufficient notice to, and summons of such corporation; and whenever an action shall be brought on a promissory note, of any incorporated bank, payable at a branch of such bank, then service of the writ of summons or subpœna upon the president or cashier of such branch, shall be a sufficient notice to and summons of, such incorporated bank. Copies of any rule of court, notice of

Process, how served.

any inquisition, or of any process, or order, which may be necessary to expedite any suit or execute any judgment or order against a corporation, may be served on the attorney, or any president or other principal officer, if residing in this state, and if not, then on the president or other principal officer, or on the cashier, treasurer, secretary, or any director or manager of such corporation, and such service or notice when proved, shall be sufficient notice to such corporation.

Proceedings where the president, managers, &c. *reside out of the State.*

SECTION 2. *And be it enacted,* That in any suit at law or in equity, against any corporation, if the president or other principal officer, and directors or managers thereof reside out of this state, the sheriff, or other proper officer, to whom process may be directed, against any such corporation, shall cause to be inserted in one or more newspapers published in this state, and in the state where such president or principal officer, and directors or managers may reside, twenty days before the return thereof, the name of the process, the names of the parties, the time when, and place where the defendants or corporation shall be required to appear; and if any attorney of such corporation shall appear on behalf of such defendant or corporation, then the suit so brought shall proceed to trial or hearing, and judgment or decree, as in other cases: and if no such attorney shall appear as aforesaid on the return of such process, then if it shall appear from the return of the officer, endorsed on the writ, that publication was made as aforesaid, the plaintiff or complainant shall have judgment, or a decree against such defendant or corporation, as in ordinary cases of judgment by default, or a decree taken pro confesso, and thereon such other proceedings may be had as may be necessary and proper to execute the said judgment or decree.

Notice of rules, &c. how served.

SECTION 3. *And be it enacted,* That in all causes or proceedings at law or in equity within this state, against or for any corporation, if the president or principal officer and directors or managers reside out of this state, and notice of any application to a court, or of rules, or of executing a writ of

CHAPTER CLXIV. 1829.

inquiry, or of any matter or thing, be necessary to be given to such corporation, such notice shall be sufficient, if given ten days before the time when the application or rules are to be heard, the writ of inquiry to be executed, or other matter or thing to be done, by serving personal notice on the attorney, or the president or other principal officer, or any of the directors, or managers of such corporation, or by enclosing a copy of the record entry of such application or rules, writ of inquiry or other matter, and forwarding the same by mail to the usual place of abode of the president or other principal officer of said company, or by causing the same to be published in one or more newspapers of the state in which he may reside.

Tolls of the Chesapeake & Del. canal, may be attached—when.

SECTION 4. *And be it enacted,* That in case any judgment shall be obtained under the provisions of this act, or otherwise, in this state, against the "Chesapeake and Delaware Canal Company" and the same shall not be satisfied within sixty days after the rendition or entry of such judgment, then the plaintiff may attach the tolls due, or to become due, of said company, and the proceedings on such attachment shall be the same as in other cases of attachment, and in case the said canal company shall cause to be overflowed with water, any land, marsh or cripple, within this state, whereby any person shall suffer any damage, the court of chancery, supreme court, or court of common pleas, of the state of Delaware, are hereby authorized and required, upon the application of the person injured, and affidavit of the fact, to enjoin, prevent and restrain, the said company from using such land, marsh and cripple by overflowing the same, until the said company shall pay to the owner or possessor thereof, the damages sustained thereby, or give such security for the payment of the same, as may be approved by the court, in which application shall be made.

Injunction against overflowing lands—how obtained.

Stock may be attached,

SECTION 5. *And be it enacted and declared,* That the shares of any person in any company, which has been, or hereafter may be, incorporated by the Legislature of this State, with all the rights and privileges appertaining to such shares, have been

and are liable to be attached, and may be attached for debt or other demands; and if any such shares have been, or shall be attached upon process of attachment, issued before or after judgment, so many of such shares may be sold at public vendue, to the highest bidder, as shall be sufficient to satisfy the debt or other demand, interest and costs, upon an order issued therefor, by order of the court, out of which such process issued, and after notice given of the time and place of sale as hereafter provided, that is to say, the officer ordered to sell as aforesaid, shall give the same notice as is required by law for the sale of personal property under execution; and if the debtor resides out of the county in which process issued, or shall issue, then by causing an advertisement, expressing the time and place of sale, the names of the parties, and incorporate name of the company in which such shares are, or shall be held, to be published three weeks successively, before the day of sale, in some newspaper printed in the city, borough or county and state, in which such debtor resides, and also by depositing in a post-office to be mailed, ten days before sale, a letter containing a copy of such advertisement, directed to said debtor, with the name of his place of abode thereon; and when any such shares shall hereafter be attached, an attested copy of the process of attachment, shall, by the officer holding the same, be left with the president, clerk or cashier of such company, and in case said shares, or any of them, shall be sold as aforesaid, any assignment or transfer of the shares so sold by the debtor, after such attested copy shall be left with the president, clerk or cashier as aforesaid, shall be absolutely null and void; and in case the officer making the sale, or his deputy, or the purchaser of any such shares do cause an attested copy of the order of sale, and the officers return thereon to be left with such president, clerk or cashier, after the return of said sale, such purchaser shall be thereby entitled to the shares by him purchased, with all the privileges appertaining thereto, and the income or dividends, which may have been declared or become payable on said shares

and sold—

notice of sale—

where the debtor resides out of the county.

Copy of the attachment to be left with the president, &c. of the company—

after which, any assignment of the stock shall be void.

Purchasers right to stock, bought at such sale.

CHAPTER CLXIV. 1829.

subsequent to the notice to said president, clerk or cashier, and such attested copy of said order and return of sale, shall have the same force and effect for transferring and assigning the shares sold to the purchaser, as if the person or debtor against whom process of attachment issued, had in person assigned and transferred the same to said purchaser on the books of said company, or in any other manner according to the charter or by-laws of said company; and the said purchaser, and his assigns shall, by force thereof, be entitled to receive all the future income or dividends on said shares, any thing in the act incorporating said company, or the by-laws thereof, to the contrary notwithstanding: Provided that no order of sale shall be issued as aforesaid, in a case where the attachment process shall hereafter issue before judgment, until final judgment shall be rendered in such case.

Order of sale, not to be issued until final judgment.

Cashier or clerk shall give to the officer attaching stock, a certificate of the number of shares holden by the debtor.

SECTION 6. *And be it enacted,* That whenever any officer having a writ of attachment against any person having shares in any such company, shall leave an attested copy of such attachment with the clerk or cashier as aforesaid, it shall be the duty of such clerk or cashier, to give to the said officer a certificate of the number of shares, holden and owned by the debtor in such company, and therein express the number or other marks, if any, by which such shares are distinguished, any thing in the act incorporating such company, or the by-laws thereof, to the contrary notwithstanding.

Money arising from the sale of stock, how applied.

SECTION 7. *And be it enacted,* That the money arising from the sale of such shares, shall be applied and paid by the officer receiving the same, in the same manner as by law is directed, as to the sale of personal property in cases of attachment.

Repeal of—ch. 231, 5 v. 421.

Proviso.

SECTION 8. *And be it enacted,* That the act entitled "an act for expediting suits against corporations," passed the 9th of February, 1819, be and the same is hereby repealed. But this repeal shall not impair the rights of any plaintiff, who may have heretofore brought suit under the act hereby repea-

led, and any suit so brought, may be prosecuted and continued agreeably to the provisions of this act.

PASSED AT DOVER, *February* 10, 1829.

CHAPTER CLXV.

AN ACT *to incorporate the Trustees of the School in Delaware City, in Newcastle county.*

Trustees incorporated.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That Adam Deihl, John Exton, John Higgins, John Jones and Daniel Newbold, and their successors, be and they are hereby declared to be one body politic and corporate; to have continuance forever, by the name of "The Trustees of the School in Delaware City in Newcastle county," and by that name shall have perpetual succession.

Name.

Corporate powers.

SECTION 2. *And be it enacted,* That the said trustees and their successors in office, shall be capable in law to purchase, receive and hold any lands, tenements, rents, goods or chattels, which shall be given, conveyed or devised to them for the use of said school, and to sell, rent or dispose of the same in such manner as to them shall seem beneficial to the said institution.

SECTION 3. *And be it enacted,* That the said trustees or a majority of them and their successors, or a majority of them, shall have power to make, alter, repeal, and enact laws, ordinances and regulations which they may deem necessary for the government and good order of said school: Provided the same shall not be contrary to the laws and constitution of this state or of the United States.

SECTION 4. *And be it enacted,* That the said trustees may appoint such professors, tutor or tutors or such other officers or persons as they may deem requisite for such school, under such rules and stip-

CHAPTER CLXV. 1829.

ulations, and for such pecuniary or other compensation as they may deem right and proper.

SECTION 5. *And be it enacted,* That said corporation shall be able and capable in law to sue and be sued, plead and be impleaded, defend and be defended in any court of law or equity in this state; and to do and execute all other matters and things which bodies corporate may lawfully do.

SECTION 6. *And be it enacted,* That the said corporation, may have and use a common seal, with such device as they may think proper, and the same break and amend or alter at pleasure.

Trustees to be elected annually.

SECTION 7. *And be it enacted,* That the aforesaid trustees shall continue in office one year from and after the first Monday in March next and no longer, unless re-elected; and their succession shall be kept up and continued by annual meetings in each and every year thereafter, upon the first Monday in every March: Provided however, that if no such election should be held upon any day herein appointed for that purpose, then and in that case the trustees of the last year shall continue in office until the next annual election, or until their places shall be supplied with other trustees as hereinbefore directed.

School voters.

SECTION 8. *And be it enacted,* That such free white persons as shall have contributed to the erection of the school house, the sum of five dollars or upwards, or who shall hereafter contribute not less than five dollars to the funds of the institution, or who shall for and during the last preceding year have sent by subscription one scholar or more to the said school, shall be entitled to vote, at each annual election for trustees of said school.

PASSED AT DOVER, *February* 10, 1829.

CHAPTER CLXVI.

CHAPTER CLXVI. 1829.

AN ACT *to authorize and empower Henry Colesberry, of the town of Newcastle, to make and execute to Peter Bowman of St. George's hundred, Newcastle county, a deed of conveyance of one full, equal, and undivided fifth part of a tract of land therein mentioned.*

PASSED AT DOVER, *February* 10, 1829. } PRIVATE ACT.

CHAPTER CLXVII.

AN ACT *to authorize Benjamin Potter to erect a gate across a public road therein mentioned.*

PASSED AT DOVER, *February* 10, 1829. } PRIVATE ACT.

CHAPTER CLXVIII.

AN ACT *to repeal military fines and forfeitures imposed by the act entitled "An act to establish an uniform militia throughout this state," passed at Dover, 9th February,* 1827.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That so much of said act as imposes or creates any fine, penalty or forfeitures for any neglect of duty required by said act, to be done and performed, and so much of said act, as allows to the adjutant general three hundred dollars to be paid out of the treasury of this state, be and are hereby repealed; and all fines and forfeitures incurred or imposed under said act for the neglect of any duty in the year eighteen hundred

Repeal of part of ch. 1, 7 v. p. 3. Fines, &c.

Adj't. Genl's. compensation.

Fines imposed

in 1828, remitted— judgments therefor, released.

and twenty-eight, be and the same are hereby remitted, and if judgments have been obtained for any such fines and forfeitures, the same shall be and are hereby released, upon the payment of the costs and commissions, and if any such fines or forfeitures have been paid to the commissary or any collector, the same shall be refunded after deducting the commissions: provided that no commissary shall be bound to refund more than shall remain in his hands after deducting such commissions, and all sums lawfully expended by him pursuant to said act, and for which he shall have proper vouchers.

Fines paid, to be refunded.

Proviso.

This act and the act hereby altered not to be printed in the digest.

SECTION 2. *And be it enacted,* That in case the Legislature shall order a digest of the laws passed before this session of the general assembly to be published, the aforesaid recited act and this act shall form no part of said digest.

PASSED AT DOVER, *February* 10, 1829.

CHAPTER CLXIX.

AN ACT *concerning landlords and tenants.*

Rent in arrear may be distrained for— 3 Blac. com. 6—15. 4 v. 262. 2 v. 1150.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That whenever any rent, whether of money or a quantity or share of grain or other produce, or of any thing certain or that can be reduced to certainty, is in arrear, upon a demise of lands, tenements, or hereditaments for life, or a term of one or more years, or a less time, or at will, the person entitled to such rent, whether the original lessor or an assignee, heir, executor or administrator, either personally or by his bailiff, may, during the demise and afterwards, while the tenant or any person coming into possession, by or under him, shall continue to hold the demised premises and the title to said premises shall remain in the person to whom the rent accrued, or his heirs,

who may distrain. 2 v. 1155. Bac. Abrig't. distress, A.

devisees, executors or administrators, or be in his immediate reversion or remainder-man, distrain for the said rent in arrear, as well the grain, grass and other produce found upon the demised premises, whether growing or severed, in sheaves, stocks, or otherwise, as the horses, cattle and other goods and chattels being upon said premises: except goods and chattels not the property of the tenant, but being in his possession, in the way of his trade or upon the demised premises in the regular course of any occupation or business there carried on, which exception shall extend to horses and carriages at a livery stable, to property of boarders in a boarding house, and to the beasts of a drover depastured while passing through the country, as well as to the more obvious cases of exemption, according to the common law, and also except stoves not the property of, but hired by the tenant, and beasts not the property of the tenant, escaping into the demised premises, through defect of fences, which the tenant or his landlord was bound to repair.

What may be distrained— 2 v. 1150. 3 Blac. com. 10. exceptions. 3 Burr. 1498. 3 Blac. com. 8 & n. 4. 4 v. 171.

If the tenant, either during his term or estate, or after the end thereof, remove his goods and chattels, or any part thereof, from the demised premises, without payment of the rent due, or growing due for the said premises, and without license from the landlord or his agent, in writing under hand, the goods and chattels so removed, unless sold fairly for a valuable consideration and delivered to the buyer, shall be liable wherever found to be distrained for said rent, for forty days after the removal, or if the rent be not in arrear at the time of the removal, for forty days after the rent shall become in arrear. Notice to the tenant to remove from the demised premises, shall not be a license within this provision.

Goods removed without license may be followed for forty days after removal— 2 v. 1149. 6 v. 297. or for forty days after the rent becomes due.

Every distress shall be reasonable and not too great; any person taking an unreasonable distress shall answer the damages to the party injured in an action on the case.

Penalty for taking unreasonable distress. Bac. Abr. Distress, E. 3 Blac. Com. 12.

SECTION 2. *And be it further enacted*, That the person or bailiff distraining as aforesaid, shall either deliver to the tenant, or leave at the mansion

Notice of distress.

2 v. 1148.

house, or if there be none, at the most notorious place on the demised premises, written notice of the property distrained, and the cause of the distress. If said property be not replevied in five days after the day of such notice, the sheriff or under sheriff of the county, or any constable for the county or place where the distress is taken, shall upon application, summon two judicious and impartial freeholders of said county, and administer to them respectively, an oath or affirmation to appraise the said property at its true value in money, according to the best of their skill and judgment; and they shall certify their appraisement with the date under their hands. If the rent be not of money, the said sheriff, under sheriff, or constable, shall also summon the said appraisers, and another judicious and impartial freeholder of said county, to determine the value of said rent in money, and shall administer to them respectively, an oath or affirmation to inquire diligently concerning the true value in money of the rent, for which the distress was taken, in arrear at the time of distraining and faithfully determine the same. Upon such inquiry the freeholders shall afford such opportunity as they shall deem reasonable to the parties to be heard; and they shall severally have power to administer an oath or affirmation to witnesses; and the said freeholders, or any two of them agreeing, shall certify under their hands, the value of the rent in arrear. The certificate may be according to the following form:

Property to be *appraised* if not replevied in *five* days.

Appraisers to be *sworn*.

4 v. 263.

To certify the appraisement.

Value of *grain rent*, how ascertained.

Parties to be heard.

Certificate of the freeholders on ascertaining the value of grain rent.

—— County, ss. Upon a distress for rent on the demand of ——— against ——— ——— We the freeholders summoned to determine the value of said rent in money, upon our oath and affirmation respectively say, that at the time of taking said distress there was rent in arrear from the said ——— ——— to the said ——— ——— to the value of ———. Witness our hands, the ——— day of ——— 18 —

The value so certified shall not be questioned, except upon replevin of the goods distrained. No further certificate, either of the summoning or the swearing or affirming of the freeholders, shall be necessary: if all the freeholders be sworn, or if all be

Not to be questioned but on replevin.

2. v. 1140.

affirmed, the certificate shall be adapted to the case by omitting the words "and affirmation" or the words "oath and."

The sheriff or under sheriff of the county, or any constable for the county or place, where the distress is taken, shall have power to sell the property distrained, if not replevied, or so much thereof as shall be necessary to satisfy the rent in arrear, and all costs, by way of public vendue, to the highest and best bidder or bidders, at any time after the expiration of six days, from the day of the appraisement of said property; giving notice of said sale by advertisements, posted in at least five of the most public and suitable places in said county, at least six days before the day of sale. If there be a surplus of the proceeds of such sale, over satisfying the rent and costs, it shall be refunded to the owner or applied according to law, without delay. If through mistake or other cause, a sufficient distress be not taken, distress may be made for the balance of the rent in the same manner as for the entire sum.

The distress may be sold—when:— 2 v 1148. 3 Blac. com. 10.

Notice of sale.

Surplus to be refunded.

A second distress may be taken, when. 3 Blac com. 11, 12. Woodfall 395. 2 Sellon 268, 269.

It shall not be an objection to any officer acting in any the premises, that he as bailiff made the distress.

SECTION 3. *And be it further enacted,* That the person or bailiff, making a distress may suffer the property distrained, to remain at large upon the demised premises, or may impound the same, either on the said premises, or in any other convenient place in the same county. A distress shall not be removed out of the county, where the demised premises are situate; but if the said premises lie in different counties, a distress taken on any part thereof, may be carried to the mansion house, or other most notorious place thereon, which shall for all purposes be deemed to be the place of the taking; and grain or other produce growing on any part of such premises, shall be subject to be appraised by freeholders, and to be sold by the sheriff, under sheriff or constable, and to be replevied by writ of replevin, directed to the sheriff or coroner; all of the county where the mansion house, or other most notorious place on said premises is situate, in the same manner

Property distrained may be left on the premises, or *impounded.* 2 Dallas rep. 68, 69. Har. & But. Co. Lit. 47 b. n. 4. Com. Dig. Distress, D. 1.

as if every part of said premises, was in said county.

Distrainer to have a special property in the distress—

The person on whose demand a distress is made, shall have a special property in the things distrained, until replevin or sale thereof, so that he may take the same wherever found, and recover damages for carrying away or injuring them.

and may go upon the premises to appraise, purchase or take the same;

In case the property distrained, remaining or being impounded on the demised premises, the distrainer and every other person shall have right to go upon said premises to view, appraise, or purchase, said property, or to take the same, when purchased; and if grain or other produce in the ground be sold, the purchaser shall have right to do all acts requisite for saving, cultivating, gathering and taking the same.

and to save the crop.
2 v. 1150.

In case of *pound breach* or *rescous* double damages may be recovered.
2 v. 1148.

SECTION 4. *And be it further enacted*, That, if any pound breach, or rescous, be made of property distrained, the party injured shall, in a special action on the case recover double damages and costs against the persons making such pound breach, or rescous, or any of them or against the owner of the property, if it have come to his possession or use.

Penalty for taking a distress when there is no rent in arrear.
2 v. 1149.

SECTION 5. *And be it further enacted*, That if any distress and sale be made for rent demanded, when no rent is in arrear, the person, upon whose demand such distress is made, or his executors or administrators shall pay to the owner of the property so distrained and sold, or his executors or administrators, double the value of said property, to be recovered with costs in an action of debt, in which a less sum than that demanded may be recovered.

Distrainer not liable *as a trespasser*, for irregularity of proceeding when the rent is justly due—but liable in damages.
3 Blac. com. 14, 15.
Woodfall 622.

SECTION 6. *And be it further enacted*, That when a distress is taken for rent justly due, no subsequent irregularity shall make it a trespass or vitiate it; but the party injured by such irregularity may recover the damages sustained on occasion of such injury and no more, in a special action on the case; unless sufficient amends shall have been tendered before action brought, in which case there shall be no recovery.

On replevin, bond and security to be given.

SECTION 7. *And be it further enacted*, That the sheriff or his deputy, or the coroner having a writ of replevin for property distrained, shall, be-

fore serving the writ, take bond from the plaintiff or some substantial person for him with sufficient surety to such sheriff or coroner, in a penalty double the value of said property (to be estimated by the officer serving the writ, or to be appraised, if either party request it, by two judicious persons, to be summoned and sworn or affirmed by such officer,) with condition according to the following form:

2 v. 1152.

The condition of the above written obligation is such; that if ——at whose suit against——a writ of replevin has been issued out of the (describe the court) of the state of Delaware for——county, returnable to——term next, or his executors or administrators shall prosecute said suit with effect, and shall fully and without delay satisfy any judgment, which shall be given against the said —— or his executors or administrators in the said suit, then the said obligation shall be void.

Condition of the bond.

In every such suit, the defendant may avow or make cognizance generally, *for rent in arrear, stating to whom, for what premises and for what time,* without other particulars. Such avowry or cognizance may be entered upon the record, by way of suggestion, if in consequence of the plaintiff being nonsuit, or judgment being given on demurer, or for other cause, it cannot be entered in the regular course of the pleadings. The jury upon the trial of the action shall find the sum due for rent in arrear; and after issue joined, the plaintiff becoming nonsuit, shall not prevent a jury from being drawn, or sworn, or affirmed, or from trying the cause, or from giving their verdict.

Avowry or cognisance, how made. 2 v. 1152.

The jury shall find the sum due. 7 Bac. abr. Replevin L. Tidd. 798. Sellons Prac. 2 v. replevin, 267, ch. 16, §5.

If there be judgment of nonsuit or upon demurrer or otherwise without trial by jury, the sum due for the rent in arrear may be found either by a jury drawn and sworn or affirmed, and giving their verdict, at the bar of the court, as in cases of jury trials (the action being put upon the trial list for that purpose) or by a jury of inquiry, upon a writ of inquiry awarded for that purpose, or otherwise, as the court may in their discretion order; or the same may be ascertained with or without avowry or cognizance, as the parties shall agree; judgment shall

In case of a judgment without a jury trial, how the amount may be ascertained Woodfall 640, 608.

be given for the defendant, for any sum so found or ascertained as debt, with costs of suit, and like execution shall be had as on judgments for debt.

Assignment of bail-bond. 2 v. 1153 § 11,

If judgment be given for the defendant or his executors or administrators, the sheriff or coroner, to whom the bond was taken upon the service of the writ shall, on request assign the said bond, by assignment under hand and seal, before at least one credible witness, to the defendant or his executors or administrators, or if the defendant be bailiff to the person on whose demand the distress was made, or his executors or administrators: the assignee may sue on the bond in his own name.

Remedy of husbond on the death of his wife for rent due to the wife Woodfall 382, Chap. xiii §1. Bac. abr debt, C.

SECTION 8. *And be it further enacted,* That the husband of a woman entitled to any rent in fee simple, fee tail, for life, or other estate, shall have the same remedy by debt or distress after her decease as during her life, for the arrears of said rent accruing during the marriage.

Remedy of a person entitled to rent *per autre vie,* after the death of *cestui que vie.*

A person entitled to any rent for the life of another person may distrain in the same manner after the death, as during the life of such other person for any arrears of said rent.

Debt lies for rent arrear. Bac. abr. 6 v. 355. 3 Blac. com. 231, ch. 15.

An action of debt shall lie for the arrears of any rent, whether in fee, in tail or for life either during the continuance, or after the determination of the freehold.

Remedy of Ex'rs. &c. for rent in arrear. Bac. abr. debt, C. Replevin K. 4 v. 390. Woodfall 374.

The executors or administrators of any person, to whom any rent was in arrear at the time of his death, whether such rent were in fee, in tail, for life, years or other estate shall have the same remedy by action or distress for such arrears as the testator or intestate if living could have.

Rent of land held *under tenant for life,* &c. to be apportioned, if the lessors estate determine before the end of the year. Bac. abr. rent, H. & L. Wooodfall, 249, 250.

When any lands, tenements or hereditaments are held by demise of a person having an estate therein, determinable on a life or any contingency, if such estate determine before the end of any year, or quarter, if the rent be payable quarterly, the rent shall be apportioned according to the time; and the proportion thereof for the time the same has been growing due to the determination of said estate, shall be paid to the lessor or his executors or administrators, and may be recovered by action of debt,

or on the case; and if in case of the determination of such estate before the end of the year or quarter, the whole rent for such year or quarter shall have been paid before such determination, a just proportion thereof, according to the time for which the rent has been paid, to run after such determination, shall be refunded.

Action on the case for *use and occupation*, Bac. abr. rent, K. 366. Woodfall 430. not to be defeated by evidence of a demise, without deed, &c.

Satisfaction for the use and occupation of lands, tenements or hereditaments, by premission of a person without demise by deed or contract under seal for the rent, may be recovered in an action on the case upon assumpsit; and evidence of any demise without deed, or of a contract not under seal, for a certain rent shall not defeat such action, but may be used to maintain the same.

Proceedings when a tenant is about to remove his goods before the rent is due. 6 v. 295.

SECTION 9. *And be it further enacted*, That when there shall be sufficient ground to believe, that a tenant intends to remove his effects from the county, where the demised premises are, before the rent will become due, so as to defeat a distress for said rent, the landlord or any credible person for him may, before the clerk of the supreme court or the prothonotary of the court of common pleas in said county, or any person officiating for either of said officers, make oath or affirmation, stating the rent and when it will be due, and that he does on good grounds believe, that the tenant intends to remove his effects from said county, and will remove the same before the said rent will be due; and thereupon a writ of attachment shall be issued out of said court, returnable to the next term thereof, directed to the sheriff, or in case of legal exception to him, to the coroner of said county, against the goods and chattels, rights and credits of such tenant, and for summoning the garnishees; if the tenant shall give to the landlord bond, with sufficient surety to be approved by the sheriff or coroner, having such writ before the return thereof, or by the court at the term of the return to pay the rent when due, with the costs that may be awarded to the landlord in the case of said attachment, the goods and garnishees shall be discharged therefrom; if bond as aforesaid be not

Upon application on oath, &c.

Substance of the oath.

Attachment may issue.

Tenant giving bond and security, his goods shall be discharged.

If bond be not given, the goods may be sold by order of the court

Judgment to be given against garnishees upon their answer—or on verdict after trial,

given, the court shall make an order for the sale of the goods and chattels attached, or so much thereof, as shall be necessary to pay said rent, with the costs, and shall render judgment against every garnishee summoned upon the attachment, upon his answer confessing goods, monies, rights or credits in his hands, or upon the verdict of a jury against him, if required to plead, as in other proceedings by attachment.

If the tenant deny the rent, the court shall direct an issue to be tried.

If the tenant deny the demand of rent, the court whether he have given bond as aforesaid or not, shall direct an issue to be tried by a jury, at the bar of said court, for ascertaining whether there be a just demand of rent and the amount thereof; and the verdict upon such issue, unless set aside by the court, shall be conclusive.

Costs, &c.

The court in respect to the costs and touching the premises generally, may exercise equitable powers.

Residue.

The residue of the goods or money after satisfying the rent and costs, shall be restored or paid to the tenant without delay, unless there be legal cause to apply the same otherwise.

Proceedings in case the tenant is about to leave the state, before the rent is due.

Oath of landlord.

Also a landlord or any credible person for him, may in manner aforesaid, make oath or affirmation stating the rent which his tenant is to pay or render, and when it will be due, and that he does on good grounds believe, that the said tenant does intend to leave this State, and will depart from the same, before said rent will be due, and that there are not goods and chattels, rights and credits of said tenant that can be attached, sufficient to secure said rent, and that the said tenant does not intend to make any provision for the payment of said rent, and thereupon, proceedings shall be had against said tenant according to the twentieth section of the "act directing the manner of suing out attachments within this government." Nothing in this section shall be construed to extend to more than one year's rent.

1 v. 469.

Goods taken on execution, &c. to be liable to one year's rent; 2 v. 1149.

SECTION 10. *And be further it enacted,* That if goods and chattels of a tenant, being upon premises held by him, by demise under a rent of money, be taken by virtue of any process of execution, at-

tachment or sequestration, the said goods and chattels shall be liable for the rent of said premises, in arrear or growing due at the time of such taking in preference to such process; provided that this preference shall not extend to more than one year's rent; accordingly the landlord shall be paid such rent (not exceeding one year's rent) out of the proceeds of the sale of such goods and chattels, before any thing shall be applicable to such process; but if the landlord before the taking of the goods and chattels of his tenant, by virtue of such process as aforesaid, have distrained such goods and chattels for rent in arrear, such distress or the levying of the rent in arrear under it, shall not preclude him from the preference given by this section.

4 v. 263.

to be paid out of the sale.

And if the grain or other produce growing or being upon premises held by a tenant, by demise under a rent of a quantity or share of grain or other produce, be taken by virtue of any process of execution, attachment or sequestration; such grain or produce shall be liable for the year's rent proper to be rendered thereout, in preference to such process; that is to say; the indian corn shall be liable for the quantity or share of indian corn, to be rendered as rent, the wheat shall be liable for the quantity or share of wheat to be rendered as rent; and so of the other produce, this preference extending only to the rent for one year; and such grain or produce, if sold in pursuance of being so taken, shall be sold subject to such rent, and the purchaser shall be liable for said rent, and the delivery thereof, according to the tenant's contract and for the proper cultivation and care of the crop; and in addition to the remedy arising from this liability, such grain or other produce may be distrained for the rent, proper to be rendered thereout when due, in the same manner as if the same had not been sold: and it shall not be lawful to remove said grain or produce from the demised premises, without either paying the rent, proper to be rendered thereout or giving or tendering to the landlord or person entitled to said rent, good security to pay the same when due; and in case of a removal contrary to this provision, the landlord or

Grain taken in execution, &c. to be liable to one year's rent; 4 v. 264.

in what manner.

Grain to be sold *subject to such rent.*

Not to be removed without payment of rent.

CHAPTER CLXIX. 1829.

person entitled to such rent, may immediately follow and distrain the grain or produce removed, and may proceed in the same manner as if the rent had been in arrear at the time of removal.

Officer selling the goods of a tenant, to give notice to the landlord. 4 v. 264.

The sheriff or other officer, who shall sell goods and chattels of a tenant, taken upon process of execution, attachment or sequestration, shall at least ten days before such sale, give written notice of the time and place thereof, to the landlord, if residing in the county, and if not, to any known agent of the landlord in the county.

Goods taken in execution may be distrained upon and sold. 4 v. 265.

Notice of such distress to be given to the pltfs.

The levy of process of execution, attachment or sequestration upon goods and chattels, shall not prevent such goods and chattels from being taken and sold as a distress for rent, but the landlord or person making such distress, shall at least six days before the sale of the goods and chattels distrained, give written notice of such distress, and the time and place of such sale, to the plaintiff or one of the plaintiffs, if several, in every such process, or his attorney (if such plaintiff or attorney reside in the county) or he shall forfeit the benefit of this provision. Such distress shall not impair the levy, nor obstruct the authority of the officer to sell said goods and chattels by virtue of the process, at any time before the sale thereof, pursuant to the distress; and such distress, or a sale pursuant to it shall not vary the rights of the parties in respect to the application of the proceeds of the goods levied on, so as to give to the demand of rent, any additional preference over the other process.

Straw, husks, &c not to be removed— 4 v. 266.

penalty.

SECTION 11. *And be it further enacted,* That if any person shall carry from demised premises any straw, corn-husks or manure, without the consent of the owner of said premises, he shall pay to such owner double the value of such straw, corn-husks, or manure, to be recovered with costs in an action on the case; but this section shall not extend to any premises of less quantity than five acres.

A contract of renting generally, to be construed a lease for one year.

SECTION 12. *And be it further enacted,* That any contract or consent pursuant to which a tenant shall enter into or continue in possession of lands, tenements or hereditaments, under an agreement to

pay rent, shall be a demise; if no term be expressly limited, the demise shall be construed to be for a year, except of houses and lots, usually let for a less time; and no demise, except it be by deed shall be effectual for a longer term than one year. When lands, tenements or hereditaments are demised for a term of one or more years, if, three months or upwards before the end of the term, either the landlord do not give notice in writing to the tenant in possession to remove, or the tenant do not give notice to the landlord of his intention to remove from the demised premises, the term shall be extended for another year, for which the tenant shall pay the rent, and all stipulations of the demise shall continue in force. If the tenant, three months or upwards before the end of the term, shall give such notice, and shall not deliver up the demised premises accordingly, such tenant shall pay double the rent that was payable according to the demise; and the withholding of the possession in such case shall be deemed a forcible detainer and may be proceeded upon as such; or if the tenant or any person coming into possession by permission or collusion with the tenant, shall hold over the demised premises after the end of the term, and after notice in writing given three months or upwards before the end of such term to the tenant then in possession to remove from said premises, such tenant or person so holding over shall pay double the rent that was payable according to the demise.

Three months notice to quit, necessary to determine a tenancy. 6 v. 297. Har & But. Co. Lit. 57, B. A. 2.

Penalty for not giving up after notice.

Double rent payable according to this section may be levied by distress, or recovered by action, in the same manner as the single rent, if the said demise had continued, could have been.

SECTION 13. *And be it further enacted*, That, if a tenant, on whom a declaration in ejectment shall be served, shall not give notice thereof to his landlord or his agent without delay, such tenant shall forfeit and pay to such landlord, the value of two years full rent of the premises to be recovered with costs by action of debt. The landlord upon entering into the common rule shall be admitted defendant with his tenant in such ejectment; but if the tenant refuse to

Tenant to give his landlord notice of *declarations in ejectment*— 2 v 1151. penalty for neglect.

CHAPTER CLXIX. 1829.

appear, and the landlord apply to be admitted defendant, judgment shall be entered against the casual ejector with stay of execution subject to the order of the court, and the landlord on entering into the common rule and admitting on record, that he is, and at the time of commencing the action was, in possession of the premises mentioned in the declaration or any described part thereof, for which he defends, shall be admitted defendant.

An ex'r &c. shall not distrain after six months.

SECTION 14. *And be it further enacted,* That an executor or administrator shall not distrain for rents in arrear to the testator or intestate after the expiration of six months from the death of the testator or intestate; any other person entitled to the rent of premises, but having no estate in said premises, shall not distrain for said rent after the expiration of six months from the time of the same becoming in arrear; and in no case shall a distress be taken for rent after the expiration of two years from its becoming in arrear.

No distress to be taken after two years—

nor to remain in force more than 60 days.

No distress shall remain in force more than sixty days from the time of making it. If the property distrained be not sold within the said sixty days, it shall, at the expiration of that period be discharged from the distress.

A distress without sale does not satisfy the rent.

A distress without a sale shall not satisfy the rent for which such distress was taken; but a second distress shall not be taken for the said rent.

Fees upon a distress. 4 v. 266.

SECTION 15. *And be it further enacted,* That the fees upon a distress shall be—

For making distress and giving notice	$0 50
For summoning and qualifying freeholders	50
To each freeholder - -	20
For advertising - - -	40

and the rate of two cents a dollar on the proceeds of the sale applied to the rent.

4 v. 265.

In cases in which freeholders value the rent as well as appraise the goods there shall be allowed only one fee for summoning, and qualifying freeholders, and one fee only to each freeholder. For giving notice to landlord of sale of his tenant's goods a fee of twenty cents, and the rate of two cents a mile from the demised premises to the landlord's residence, shall be allowed. This fee shall be

chargeable to the tenant and first paid on the sale of his goods. But an officer shall demand only one fee for giving such notice whatever number of executions or writs he may have in his hands against the tenant at the time. If there be executions or attachments in the hands of several constables at the time of giving such notice, he only, who made the first levy shall be entitled to the fee allowed by this provision. 4 v. 442.

SECTION 16. *And be it further enacted*, That rent in arrear or growing due may be attached. If the rent attached be not due at the return of the attachment, the court may render judgment upon such terms, and may make such order, as shall be deemed proper to secure the parties and carry the attachment into effect. After attachment served, distress may be made for the rent attached, if in arrear, unless the tenant will pay it to the sheriff to be paid into court; and in case of such distress, or of a distress made before service of the attachment, the attachment shall not prevent proceeding upon the distress; but if the distress proceed to sale, the officer selling shall pay the money into court, where the attachment is depending, to abide any order that may be made in said court. In case of replevin, the court in which the attachment is, shall have power to order any assignment of the interest in the action of replevin and of the replevin bond that may be necessary to give effect to the attachment, and to enforce obedience to such order by imprisonment; and such order in respect to the interest in the action shall have the effect of an assignment, and any person to whom said bond shall be assigned pursuant to such order may sue thereon in his own name.

Rent may be attached.

Attachment not to prevent a distress.

Money to be paid into court; when.

SECTION 17. *And be it further enacted*, That the "Act for the better regulation of distresses for rent, and for other purposes therein mentioned" and the several supplements to the said act, passed January 26, 1809, February 2, 1811, and February 3, 1823, and the "Act to exempt stoves on hire from being seized for rent, shall be, and hereby are repealed, from and after the first day of June next, except so far as shall concern any rent, now in arrear, or which shall be in arrear before that day, and any procee-

Repeal of— ch. 39, c. 2 v. 1147. ch. 88, 4 v. 262. ch 156, 4 v. 441. ch. 180, 6 v. 295. ch. 55. 4 v. 171.

CHAPTER CLXIX. 1829.

ding for such rent or any replevin bond or any matter, that has been or before that day shall be commenced, executed or transacted.

PASSED AT DOVER, *February* 10, 1829.

CHAPTER CLXX.

3 v. 170, 246. 4 v. 348.

A FURTHER SUPPLEMENT *to an act entitled "An act to incorporate a company for the purpose of cutting and making a canal between the Chesapeake bay and bay or river Delaware or the waters thereof."*

Company authorized to make rules for the protection of the canal, &c.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the president and directors of the said company shall have power to enact rules and regulations for the good government of the said canal, its harbors and basins, and other appurtenances, and for the general convenience of vessels navigating the same; and to authorize and empower their agents and officers to enforce conformity to all such rules and regulations against any vessels violating the same, or the persons in command or direction thereof: Provided such rules and regulations shall in no wise contravene the constitution or laws of this state.

Penalty for injuries to the canal.

SECTION 2. *And be it further enacted,* That if any person commanding or directing a vessel upon the said canal, shall wilfully or negligently obstruct or impede the navigation thereof, or if any person shall wantonly or maliciously injure the locks, bridges, culverts, sluices, banks or other appurtenances of said canal, every person so offending, shall be deemed guilty of misdemeanor, and upon conviction thereof, shall forfeit and pay to the State, a fine not less than fifteen, nor more than fifty dollars.

PASSED AT DOVER, *February* 11, 1829.

CHAPTER CLXXI.

AN ACT *concerning dower, partition and waste.* 1829.

In dower and partition, service of writ, how made.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That in an action of dower, and also in an action of partition, the writ shall be served upon the tenant therein named either personally, or by a copy left at his usual place of abode; but if he cannot be found and have no known place of abode in the county, such copy served upon the person occupying the premises mentioned in the writ, or left at the dwelling house on said premises in presence of some member of the family, or if there be none, posted at the most notorious place on said premises, in presence of two or more persons of the neighborhood, may be allowed by the court to be good service of such writ; the copy shall be certified under the hand of the sheriff or other officer having service of the writ. If a copy be served on a person occupying the premises under rent, it shall be his duty to give notice thereof to his landlord, in the same manner, and he shall incur the same penalty for default, as if it were a declaration of ejectment. There shall be no process of *petit* or *grand cape* in dower, nor of *pone* or *attachment* in partition; but when the writ is served, if the tenant do not appear at the return there shall be judgment by default: Provided, that if the service be not upon the tenant, the court may in their discretion make order for public or other notice of the proceeding and allow time for his appearance until the next term. In dower and in partition when the tenant appears, the parties respectively shall have such rules as to put the cause at issue, so as to be placed upon the trial-list for the next term; and the cause shall not be continued beyond the second term without good ground. In dower no view shall be granted; the demandant shall recover reasonable damages for the detention of her dower, which damages

Tenant to give notice to his landlord—penalty for neglect.

There shall be no process of *petit* or *grand cape*; or *pone* or *attachment*.

No view to be granted in dower.

CHAPTER CLXXI.

1829.

shall be satisfaction of any demand on account of rents and profits; and it shall be no plea that the demandant has received or recovered dower of other tenements, unless her right of dower in the premises mentioned in the writ, be thereby satisfied, or therein comprehended. Upon judgment in dower or partition, the court, instead of awarding a writ for delivering seisin or making partition, may appoint five impartial and judicious freeholders of the county, to lay off the dower and also to assess the damages for the detention, if not previously assessed by a jury, or to make the partition. The said freeholders shall be sworn or affirmed to perform their duty respectively, faithfully and impartially, according [to] the best of their skill and judgment. They may employ a surveyor to assist them, to be sworn or affirmed in like manner. A majority of the freeholders may act, and a return under the hands of them, or a majority of them, being approved by the court shall be conclusive; and the court upon such return, in dower shall award a writ of possession, if applied for, to cause possession of her dower to be delivered to the demandant, and shall render judgment for the damages and costs, and upon such return in partition shall render final judgment.

Court may appoint freeholders to lay off dower, &c.

They must be sworn.

May employ a surveyor.

Return.

Writ of possession.

In dower and in partition the court shall exercise equitable powers in respect to the costs, and apportion the same as they shall deem just according to the circumstances of each case.

Costs.

In partition, several shares may be laid off *in common*, if desired. 6 v, 95, 96

In partition, if two or more parties desire that a share proportioned to their interests may be laid off to them in common, it shall be laid off accordingly. A guardian of a minor may express this desire on his behalf. When a share is laid off to several in common, it shall be presumed to be rightly done, unless objection be duly made. This provision, and the preceding provision respecting costs, shall extend to all cases of partition under the "Act respecting the partition of lands and tenements among joint-tenants and tenants in common,"

These provisions to extend to cases of partition under ch. 85, 5 v 153.

Mode of proceeding in laying off dower.

SECTION 2. *And be it further enacted,* That the orphans' court in laying off dower pursuant to the "Act respecting devises of lands, joint-estates and

dower," shall proceed in the same manner and have the same discretion in respect to the costs, as in laying off the widow's part of the lands, tenements or hereditaments, of an intestate. under ch. 95, 5 v. 174.

SECTION 3. *And be it further enacted,* That if a woman, of the age of twenty-one years or upwards, prior to and in contemplation of marriage, shall, by agreement accept an estate in or a charge upon lands, tenements or hereditaments, to take effect at or before the decease of her intended husband and continue during her life, as a provision for her support in lieu of dower in the lands, tenements and hereditaments of her said intended husband, such estate or charge shall be valid, and shall be a bar to her demand of dower of such lands, tenements or hereditaments: Provided that if the estate or charge so settled shall fail, she shall be entitled to her dower, or if it shall fail in part, the deficiency shall be made up out of the lands, tenements or hereditaments of her husband; except that she shall receive only so much, as together with what shall remain of the estate or charge settled, shall be equal to the value of her dower.

An estate settled on the wife before marriage in lieu of dower, shall bar her claim of dower, when—

If the estate fail, she shall have her dower.

SECTION 4. *And be it further enacted,* That if a wife willingly leave her husband, and go with an adulterer, or if a wife willingly live in adultery in a state of separation from her husband, not occasioned by his fault, in either case, unless her husband be reconciled to her, and suffer her to dwell with him, she shall forfeit her dower and all demands, as his widow, upon his real or personal estate, and any estate, charge or benefit settled upon her, or upon trust for her in lieu of dower.

Dower, how forfeited.

SECTION 5. *And be it further enacted,* That persons holding lands, tenements or hereditaments, as joint-tenants, or tenants in common, may be compelled by writ of partition, to make partition of such lands, tenements or hereditaments. The writ of partition may be according to the following form:

Joint-tenants & tenants in common may be compelled to make partition.

Writ of partition.

—— County, ss. The State of Delaware, to the sheriff of said county.

(L. S.) We command you, that you summon —— —— of —— to appear before our justices

CHAPTER CLXXI. 1829.

at —— at our *(the style of the court)* there to be held, on —— the —— day of —— next, to answer to —— —— of a plea of partition: For that the said —— —— says that the said —— —— and —— —— hold together the following tenements, viz: (describe the tenements) and that partition of the said tenements ought to be made into —— equal parts, to be assigned, to wit:—— of the said parts to the said —— —— to hold to him in severalty, in fee simple *(or other estate as the case may be)* and —— of the said parts to the said —— to hold to him in severalty for the term of his life *(or other estate as the case may be)* (and so on, if there be more parties setting forth each share:) And have you then there this writ, with your return of your doings hereon. Witness —— at —— the —— day of —— in the year of our Lord one thousand eight hundred and ——.

May be varied, and amended.

The writ may be adapted to the case by any requisite variation from said form; and the writ shall be amendable by leave of the court upon proper terms, for the furtherance of justice.

On a judgment *by default*, what shall be enquired of.

Upon a judgment by default, the court shall not be confined to the statement in writ; but shall inquire into the rights, and adjudge the partition to be made according to the same, as they shall appear on such inquiry.

Action for *use and occupation* lies against one joint-tenant, &c. at the suit of another.

A tenant in common, or a joint-tenant, or a coparcener, may maintain against his companion, an action on the case, for use and occupation.

Action of *waste* —when it lies.

SECTION 6. *And be it further enacted*, That if any tenant by the curtesy, tenant in dower, or tenant for life or years, shall commit waste during his estate or term of the houses, woods, or any other thing belonging to the tenements so held, without special license in writing, he shall be subject to an action of waste.

Against assignee.

If either of the said tenants, assign his or her estate, the assignee, if he commit waste, shall be liable to an action of waste in the same manner as the assignor. If, notwithstanding assignment, the tenant remain in possession and commit waste, he shall be liable to an action of waste in the same manner as if no assignment were made. If the husband of a tenant in dow-

Husband of

er or for life, or of an assignee of such tenant, commit waste, he shall continue liable to the action of waste, notwithstanding the decease of his wife.

tenant in dower, &c. liable after the death of his wife;

If one tenant in common, joint tenant or co-parcener, commit waste of the estate held in common, joint-tenancy, or co-parcenary, he shall be liable to an action of waste, at the suit of his companion.

between joint-tenants, &c.

An action of waste shall be maintainable by the heir for waste done in time of his ancestor, as well as in his own time, and as well against the executors or administrators of the tenant, who committed the waste, as against the tenant himself; and such action shall not abate by the death of either party; but the heir shall be admitted to prosecute the same on the death of the plaintiff, and if the defendant die, his executors or administrators may be made parties by means of a writ of scire facias.

by heir for waste done in the time of his ancestor—against exe'rs. &c.

not to abate by the death of either party.

In an action of waste the plaintiff shall recover the place wasted and double the damages.

Judgment in an action of waste.

A person in whose house or chamber fire shall accidentally begin, shall not be answerable for waste; provided that this clause shall not contravene any contract between landlord and tenant.

Accidental fire, not waste.

No action of waste shall be brought after the expiration of three years from the committing of the waste; provided that if the party injured, be at the time of the committing of the waste, under disability of infancy, coverture, or incompetency of mind, this act shall be no bar to such party during the continuance of such disability, nor until the expiration of three years from the removal thereof.

Limitation of the action of waste—*three years.*

Proviso.

During the pendency of an action of ejectment, or of an action of waste to recover the place wasted, the court in which such action is, may award a writ of estrepement to prevent waste being committed on the premises, which are the subject of such action.

Writ of *estrepement* to be awarded, *when.*

A writ of waste shall be served in the same manner as a writ of dower; there shall be no process of *pone* or *attachment*; and if the writ be served and the defendant do not appear at the return, there shall be judgment by default; unless the court shall deem it proper to allow further time for the defendant's appearance.

Writ of waste, how served.

Judgment by default.

Repeal of—§3, ch. 71, 6 v. 95.

SECTION 7. *And be it further enacted,* That the third section of the "act for the better regulation of the division of intestates' lands, into portions or allotments, for their final division in cases of non-acceptance, and to amend the act entitled "an act for the partition of lands and tenements, among joint-tenants and tenants in common," and the following clause in the second section of the act entitled "an act concerning the real estates of intestates" "but in that case all the costs shall be paid by the petitioner," shall be and hereby is repealed, from and after the first day of June next.

Clause of §2, ch. 38, 7 v. 90.

PASSED AT DOVER, *February* 11, 1829.

CHAPTER CLXXII.

AN ACT *for the relief of Elias Naudain.*

PASSED AT DOVER, *February* 11, 1829. PRIVATE ACT.

CHAPTER CLXXIII.

AN ACT *to enable Thomas H. Handy to remove from the State of Delaware, to the State of Maryland, two certain negro slaves, therein mentioned.*

PASSED AT DOVER, *February* 11, 1829. PRIVATE ACT.

CHAPTER CLXXIV.

AN ACT *for the relief of special bail.*

Bail, on paying a judgment,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Dela-*

ware in General Assembly met, That the plaintiff in a judgment, or the person having the interest therein, or his executors or administrators, shall assign the said judgment to the bail to the action, or his executors or administrators, whenever such judgment is satisfied by the bail, or his executors or administrators. Such assignment shall be at the risk of the assignee. The bail shall have privilege to satisfy the judgment against his principal as soon as the same is given. If several persons be bail, one or more satisfying the judgment, shall be entitled to the assignment. In case of such assignment, the assignee may proceed in the name of the plaintiff in the judgment, or his executors or administrators, but for the use and at the costs of the assignee, to execute the judgment against the principal, his executors or administrators or to recover from other bail his proportionable share. Or the assignee may by scire facias make himself party to the judgment and proceed thereon in his own name, as assignee thereof. Also an assignee of a judgment under the supplement to the act entitled "an act for assigning bills and specialties" may proceed upon the judgment either in the name of the plaintiff, his executors or administrators, or may make himself a party by scire facias and proceed in his own name.

shall be entitled to an *assignment*—

at his risk.

He may satisfy a judgment as soon as it is given.

Assignee may proceed in the name of the plff—

or make himself a party.

This provision extended to ch. 140, 4 v. 390.

PASSED AT DOVER, *February* 11, 1829.

CHAPTER CLXXV.

AN ACT *concerning attornment and warranty.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That grants of rents, of revisions and of remainders, are, and shall be good and effectual without attornments of the tenants; but if a tenant without notice of a grant, and in good faith, pay to the grantor rent in arrear, he shall have

Grants of rents &c. good *without attornment:*

but payments by tenant without notice shall discharge him.

the benefit of such payment, by way of discharge from the rent.

Attornment to a stranger, void without the written consent of the landlord.

The attornment of a tenant to a stranger, unless with the written consent of his landlord, or pursuant to a judgment or decree shall be void.

Warranty made by tenant for life, not to affect the title of the reversioner, &c

Collateral warranty, effect of.

SECTION 2. *And be it further enacted,* That a warranty made by a tenant for life, shall not, by descending or coming to a person in remainder or reversion, bar or affect his title, and a collateral warranty, shall not in any case bar or affect a title not derived from the person making such warranty.

PASSED AT DOVER, *February* 11, 1829.

CHAPTER CLXXVI.

AN ACT *to cede to the United States, the jurisdiction over a piece of land and marsh therein mentioned.*

Certain marsh ceded to the United States,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That for the purpose of erecting a light-house, five acres of land and marsh, at any place between the mouth of Duck-creek and Mahans' ditch, adjoining low water mark of the Delaware Bay, are hereby ceded and granted to the United States, upon this condition, that a light-house shall thereon be erected, at the expense of the United States, within ten years from the date of this act, and be continued and kept lighted thereafter; and provided said five acres shall be located at any time within said term of ten years, and a good and sufficient plot thereof be made and recorded, at the expense of the United States, in the office for the recording of deeds in Kent county.

upon condition.

Reservation of jurisdiction.

SECTION 2. *And be it further enacted,* That this State shall, and hereby doth retain concurrent jurisdiction with the United States, over the said tract or piece of land and marsh, so far that process

civil and criminal, issuing under the authority of said state, may be executed in any part of the said tract or piece of land and marsh or in any building thereon to be erected.

CHAPTER CLXXVI. 1829.

PASSED AT DOVER, *February* 11, 1829.

CHAPTER CLXXVII.

AN ACT *supplementary to an act entitled "An act to authorize the Newcastle turnpike company to make a rail road from the town of Newcastle to the place called Clark's corner."*

Ch. 157, ante p. 313.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That so much of section 6, of the act to which this is a supplement, passed at Dover during the present session as is in the words following, to wit: *"to travel upon or use the said rail road for the purpose of transportation of passengers, goods, wares and merchandize, without paying to the said rail road company the sum of one and one half cents per ton per mile, for such merchandize, and one half the toll upon passengers required by this bill,"* be and the same is hereby repealed, and the said words expunged from said section, and the bill printed as if they were not therein contained.

Repeal of a clause in §6, ch. 157, ante 317.

See ante ch. 157, p. 317,

That act to be printed as hereby amended,

PASSED AT DOVER, *February* 11, 1829.

CHAPTER CLXXVIII.

CHAPTER CLXXVIII.

1829. AN ACT *concerning remedies by and against grantees of reversions or remainders in lands, tenements and hereditaments leased.*

Remedies by & against grantees of reversions, &c.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That grantees of reversions and remainders in any lands, tenements or hereditaments let to lease, and their heirs, executors, administrators or assigns, shall have the same remedies by entry or action or otherwise against the lessees, their executors, administrators or assigns, for waste done, or for the non-performance of any condition, covenant or contract contained in the leases as the grantors could have. Also the lessees of any lands, tenements or hereditaments, for life or years, or their executors, administrators or assigns shall have the same remedies by action, and advantages against the grantees of the reversions and remainders in such lands, tenements or hereditaments, or their heirs, executors, administrators or assigns for non-performance of any condition, covenant or contract contained in the leases (except a covenant of warranty of title) as they could have against the grantors or their heirs, executors or administrators.

Rent in arrear before grant, &c. not assignable.

But rent in arrear before a grant or damages for a breach before a grant of a covenant or contract, shall not be assignable by force of this act.

PASSED AT DOVER, *February* 11, 1829.

CHAPTER CLXXIX.

AN ACT *concerning Executions.*

Death or escape of a person ar-

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware*

in General Assembly met, That if a person arrested or imprisoned by virtue of an execution, die in execution or escape, in either case the arrest or imprisonment shall be no satisfaction of the judgment on which the execution was issued and the execution shall be held to be in no part executed by such arrest or imprisonment.

rested on execution, no satisfaction of the judgment.

When a writ of elegit has been executed, if the person holding under said writ whether the original tenant or his executors, administrators or assigns, be evicted by due course of law from the lands, tenements or hereditaments delivered by virtue of the said writ, or from any part thereof before the amount to be levied according to the said writ, is satisfied, the court, out of which the said writ was issued, shall upon application, grant a rule to shew cause why the said writ and return thereupon shall not be vacated, and other execution awarded upon the judgment, or other relief granted according to the circumstances of the case. Upon this rule the said court shall exercise equitable powers and they shall make such order as shall be agreeable to equity: They may direct an account of the rents and profits and in this account they may allow for expenses in defending against the suit, in which the eviction was determined and all proper items.

Tenant by elegit being evicted by due course of law, before his debt is satisfied; his remedy.

If a person arrested or imprisoned by virtue of an execution, be suffered to escape, the sheriff, constable or other officer having the custody of such person at the time of his escape, shall be answerable for the full amount, payable according to the execution; and the person at whose suit the execution was issued or for whose use it is endorsed or his executors or administrators, shall have an action of debt against such sheriff, constable or other officer or his executors or administrators, to recover the said amount: the non-payment of said amount shall be a breach of the condition of the official recognizance or obligation of such sheriff, constable or officer.

Liability of sheriff, &c. for the escape of a person arrested, &c. on execution.

Plaintiff's remedy.

SECTION 2. *And be it declared and enacted*, That a writ of scire facias may be sued upon a judgment in a personal or mixed action as well as upon a judg-

Scire facias, upon what judgments it may be sued—

ment in a real action, and also upon all recognizances to obtain execution of such judgment or recognizances. Such writ may be sued by and against the parties to the judgment or recognizance, and also by and against any other persons entitled or liable to the execution thereof, whether as executors, administrators, heirs, terre-tenants or otherwise.

by and against what parties.

PASSED AT DOVER, *February* 11, 1829.

CHAPTER CLXXX.

AN ACT *to authorize and empower William Holland, of Worcester county in the state of Maryland, to remove from this state to the state of Maryland, certain negro slaves therein named.*

PASSED AT DOVER, *February* 12, 1829.

PRIVATE ACT.

CHAPTER CLXXXI.

AN ACT *to regulate the use of Gill-nets or Gill-seines in the river Delaware, to impose a tax thereon, and to provide for the payment of the same.*

Licenses to be taken out for the use of gill-nets or seines.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That from and after the first day of March next, no person or persons whatsoever shall place or use in the river Delaware, within the limits and jurisdiction of this state, any gill-net or gill-seine for the purpose of taking shad or other fish, without having first applied for and obtained from the clerk of the peace of the county within which said gill-net or gill-seine is to be used, a license for using the same, which license shall be granted for the term of one year, upon the payment

of the tax or duty herein-after mentioned and laid, and shall be renewed annually upon the payment of the like sum. Penalty for neglect.

SECTION 2. *And be it enacted,* That if any person or persons shall, after the said first day of March, place or use in the river Delaware any gill-net or gill-seine, for the purpose aforesaid, without having first obtained a license therefor, such person or persons shall, in addition to the payment of the tax or duty, forfeit and pay the sum of fifty dollars, with full costs of prosecution, to be recovered by indictment in the court of general quarter sessions of the county in which the same may be so placed or used; and such license shall not authorize or entitle the person or persons obtaining it, to use more than one gill-net or gill-seine, which shall be of the dimensions specified therein; and any person or persons who by colour of such license, shall use or employ more than one gill-net or gill-seine, or who shall use or employ a gill-net or gill-seine of larger dimensions than are specified in said license shall, in each case, be deemed to be without license, and shall also, in each case, forfeit and pay a like sum of fifty dollars, to be recovered as herein before directed.

SECTION 3. *And be it further enacted,* That a tax or duty of five dollars shall be imposed on a license for the use of every gill-net or gill-seine in the river Delaware which shall not exceed the length of sixty-five fathoms, each fathom to consist of six feet, and for the use of every gill-net or gill-seine which shall exceed the length of sixty-five fathoms, there shall be paid an additional tax or duty of one dollar for each and every fathom of such excess; and before the granting of such license, the person or persons applying for the same, shall make oath or affirmation before the said clerk of the peace, or before some judge or justice of the peace of the county, in which shall be stated the true length of the gill-net or gill-seine for the use of which said license is to be granted, and also the place of residence of the juror or affirmant, which oath or affirmation shall be filed in the office of the said clerk of the peace. Tax. Oath of person applying for license.

SECTION 4. *And be it further enacted,* That the Secretary of

State to cause licenses to be printed, &c.

secretary of state shall cause to be printed in proper form, a license for the use of gill-nets or gill-seines as aforesaid, which shall be sealed with the seal of his office, signed by the governor, countersigned by the secretary of state, and by him distri-

and distributed to the clerks of the peace—

buted in such proportions as he may deem proper, to the clerks of the peace in the respective counties, for the purposes herein-before mentioned; and the

to be accounted for *quarterly*—

said clerks respectively shall account for and pay over all monies arising from such licenses, quarterly to the secretary of state, who shall pay over the same to the trustee of the school fund, for the use and benefit of that fund; and if any clerk of the

penalty for neglect.

peace shall neglect so to do, for the space of sixty days, after he should have made such quarterly payment, he shall *ipso facto* forfeit his office, and be immediately liable to an action for the recovery of said monies.

PASSED AT DOVER, *February* 12, 1829.

CHAPTER CLXXXII.

AN ACT *against the purchase of the fees of witnesses in certain cases, and of certain public demands before allowance.*

Clerk of the Sup. court, prothonotary, or clerk of the peace, shall not purchase witnesses fees—

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the clerk of the supreme court, the prothonotary of the court of common pleas or the clerk of the peace, shall not purchase or contract to purchase, directly or indirectly, the fees of any witness attending in the court of which he is an officer. Any fees purchased or contracted for, against this provision, shall be forfeited, and the officer purchasing or contracting to purchase the

penalty.

same, directly or indirectly, shall be deemed guilty of a misdemeanor, and on conviction thereof shall pay to the state double the amount of said fees.

SECTION 2. *And be it further enacted,* That no person shall, directly or indirectly, purchase or contract to purchase any demand upon the county before the allowance thereof by the levy-court and court of appeal. If it shall appear to the said court that any demand, presented to them for allowance, has been assigned or contracted for, it shall be their duty to reject the same: such demand shall be forfeited.

Demands on the county, not to be purchased before allowance; penalty.

SECTION 3. *And be it further enacted,* That this act shall commence and be in operation from and after the first day of July next.

PASSED AT DOVER, *February* 12, 1829.

CHAPTER CLXXXIII.

AN ACT *to release certain militia fines imposed upon James Everet, Benjamin Walmsley and David Reed.*

PASSED AT DOVER, *February* 12, 1829.

PRIVATE ACT.

CHAPTER CLXXXIV.

AN ACT *concerning the disposal of imported persons.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That no person imported into this state from a foreign country, shall be bound as a servant or an apprentice, except by deed executed in the presence and with the approbation of a justice of the peace, or a trustee of the poor, whose duty it shall be to inquire into all the circumstances of such person's case, and to protect him or her from all imposition and injustice. Such deed

Imported persons, not to be bound but by deed before a justice of the peace, &c. 5 v. 360.

Deed to be recorded.

shall be recorded in "the office for recording of deeds" in the county wherein the master or mistress resides, in the book kept for the purpose of recording indentures and deeds of apprenticeship and servitude under the "Act concerning apprentices and servants," and unless so recorded within thirty days after the execution it shall be void.

1 v. 100.

Rights and liabilities of the master and the servant.

Every deed executed and recorded as aforesaid shall be valid, and the master and servant or apprentice shall have in relation to each other all the rights and remedies, and be subject to all the regulations and provisions prescribed and contained in the fifth, eighth, ninth, tenth, eleventh, thirteenth, fourteenth, sixteenth and seventeenth sections of the "Act concerning apprentices and servants," which sections are extended and shall be applied to all masters and servants or apprentices under this act.

7 v. 96, 100, 102, &c.

Proviso.

This act shall not contravene any authority to require and compel the importer of persons from a foreign country to remove them from this state, nor the provisions of any law respecting the landing of the persons imported.

Repeal of—ch. 66, a. 1 v. 166.

SECTION 2. *And be it further enacted,* That the "Act imposing a duty on persons convicted of heinous crimes, and to prevent poor and impotent persons being imported into the government of the counties of Newcastle, Kent and Sussex upon Delaware," and the supplement to the said act, passed May 7, 1749, and the act to regulate the manner of taking indentures upon redemptioners imported into this state, and for other purposes, be and hereby are repealed.

ch. 114, a. 1 v. 277.

ch 197, 5 v. 360.

PASSED AT DOVER, *February* 12, 1829.

CHAPTER CLXXXV.

CHAPTER CLXXXV. 1829.

AN ACT *to authorize William Hughlett of Talbot county, in the State of Maryland, to work certain slaves therein named, in the State of Delaware without impairing his right to said slaves.*

PASSED AT DOVER, *February* 12, 1829. } PRIVATE ACT.

CHAPTER CLXXXVI.

AN ACT *for the relief of Ann Howell, late Ann Beeson.*

PASSED AT DOVER, *February* 13, 1829. } PRIVATE ACT.

CHAPTER CLXXXVII.

AN ACT *concerning the auditor of accounts.*

Auditor of accounts, how appointed.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That there shall be in the treasury department an officer to be styled *auditor of accounts,* who shall be appointed by the House of Representatives, with the concurrence of the Senate, and shall hold his office for the term of three years, from the second Tuesday of January in the year in which he shall be appointed: If the office shall become vacant during the recess of the General Assembly, the governor shall have power to fill the vacancy by a temporary appointment, to continue until the second Tuesday of January next after the happening of such vacancy.

2 v. 869—1053—1098. 3 v. 15—73—129. 4 v. 328.

Term of office.

Vacancies to be supplied by the governor—when.

Auditor to settle with certain public officers—

SECTION 2. *And be it further enacted*, That it shall be the duty of the auditor of accounts, annually to settle the accounts of the Secretary of State, the accounts of the State-treasurer, both as State-treasurer and as trustee of the fund for establishing schools in the State of Delaware, the accounts of the county treasurers, the accounts of the treasurers of the poor, the accounts of the sheriffs of fines and forfeitures, and the accounts of such constables as shall have received, or as shall be chargeable with any fines or forfeitures: It shall also be his duty to settle all accounts against the State, or in which the State shall be concerned, that shall be referred to him by the General Assembly for settlement.

and accounts referred to him.

To make report to the legislature annually—

He shall make to the General Assembly every year, within four days after the first Tuesday of January, a report containing as follows; that is to say:

what such report shall contain.

I. A statement of the accounts settled as aforesaid, of the State-treasurer, both as State-treasurer and as trustee as aforesaid, shewing all the items of said accounts, with a summary reducing to general heads, the receipts and payments, and shewing the amount under each head:

II. A statement of the funds belonging to the State and to the fund for establishing schools in the State of Delaware, specifying the particulars and the value thereof:

III. Estimates of the public expenditures and public revenue for the current year:

IV. A statement of every unsettled tax, granted by the General Assembly—the portion of each county thereof—the rate thereof in each county—the collectors and the amount with which each was chargeable and the sum outstanding against each:

V. A schedule of the allowances made by the levy-court and court of appeal of each county, with a summary reducing these allowances to general heads:

VI. An abstract of the amounts of the assessment-lists of the hundreds respectively, of the several counties, the amounts of the several taxes, laid by the levy-court and court of appeal of each county, the

rate of each tax and the portion of each hundred thereof, with the name of the collector:

VII. A summary of the accounts settled of the several county-treasurers, shewing the receipts and payments, commissions and true state of the accounts; stating the allowances for delinquents and the sums outstanding, according to said accounts against the collectors respectively; and if allowance be made for a payment not grounded upon an allowance made by the levy-court and court of appeal, the item shall be distinctly specified.

VIII. A summary of the accounts settled of the several treasurers of the poor, shewing the receipts and payments, commissions and true state of the accounts:

IX. A summary of the accounts settled of the several sheriffs, concerning fines and forfeitures, shewing the true state of the accounts:

X. A like statement of any accounts settled of constables:

XI. A statement of all debts due to and from the State shewing the names of the debtors and creditors, the sums due from and to them respectively, and the nature of the debts:

XII. The name of any person who has failed of any duty enjoined by this act, and a specification of such failure:

XIII. Any information relating to the funds of the State, which he shall consider ought for the public good to be communicated to the General Assembly.

Secretary of State and State-treasurer to settle with the auditor annually in *December*. 3 v. 74. 6 v 616. 4 v. 332.

SECTION 3. *And be it further enacted*, That the Secretary of State and the State-treasurer, shall appear before the auditor of accounts, on some day by him to be appointed, between the first and twentieth days of December, in every year, at his office and render their accounts respectively for settlement, the State-treasurer rendering as well his accounts as trustee as aforesaid, as his accounts as State-treasurer; and the day appointed for the appearance of the Secretary of State, shall be prior to that appointed for the appearance of the State-treasurer; the county-treasurer, the treasurer of the poor, and the

County-treasurers, treasurers.

of the poor, sheriffs and constables, to settle with the auditor—when.
3 v. 15. 3 v. 74. 3 v. 139.

sheriff for each county, and every constable charged upon any abstract in the auditors hands, with a fine or forfeiture, shall appear before the auditor of accounts, on some day by him to be appointed, within four days after the commencement of the court of common pleas, in their county, in every year, at the town where the said court shall according to law be held, and render their accounts respectively for settlement. The auditor shall attend punctually according to his appointments; but if he shall be prevented by sickness or casualty from attending on the day appointed he shall have authority to appoint some other day, and if he cannot appoint such other day within the period above limited for such appointment, he may appoint a day without said limit. The auditor may adjourn from day to day.

Auditor to give the said officers notice of the time appointed for settlement

The said auditor shall give to each of the officers before in this section mentioned, written notice of the day appointed for his appearance as aforesaid, at least six days before the day appointed; but the putting of a letter containing such notice and addressed to the officer, at the town of, or nearest to his residence, into the post office ten days before the day appointed shall be construed to be sufficient notice; and if either of said officers to whom notice shall be given as foresaid, shall wilfully refuse or neglect to observe and fulfil the duty incumbent upon him according to this section, he shall be deemed guilty of a misdemeanor and upon conviction thereof he shall pay to the state a fine of fifty dollars and forfeit his office.

Penalty for neglecting to settle agreeably to such notice.

Such neglect to be certified to the General Assembly and to the Att'y. gen'l.

The auditor shall certify to the attorney general and also to the general assembly any delinquency of either of said officers. The auditor shall have power to add items to any account, to make corrections therein, and to settle the same as to justice shall appertain. No allowance except of commissions, shall be made without a voucher.

2 v. 1099.

Auditor shall have power to compel the attendance of witnesses, &c.

SECTION 4. *And be it further enacted,* That the auditor of accounts shall have power to command and compel persons to appear before him, and give evidence or produce papers, and for that purpose to issue process of subpœna and of attachment and

to commit to prison; he may make an order for the payment of costs, and enforce obedience by attachment and imprisonment.

and to order the payment of costs.

SECTION 5. *And be it further enacted*, That whenever the General Assembly shall grant a tax to be levied in the several counties of this state, the auditor of accounts shall determine the rate on every hundred dollars of the rates of persons, and valuations of real and personal property standing upon the assessment lists respectively, for the time being, of the several hundreds of each county requisite to raise such county's portion of said tax, clear of all charges and also of all allowances for delinquents according to the best estimate that he can make of such allowances; and for the collection of said rate, he shall on or before the third Tuesday of April next after the granting of such tax, issue to the state-treasurer a seperate duplicate transcribed from the copy in his office of every of the said assessment lists (the original being corrected by the subsequent returns so as to form a corrected list for each hundred) with a warrant under his hand and seal of office annexed to each duplicate: Which warrant may be according to the following form:

When a tax is laid he shall fix the rate per cent.—

and shall issue to the State-treasurer duplicate assessment-lists—

and warrant.

Delaware, ss. The State of Delaware to the State-treasurer, Greeting:

Form of warrant.

We command you that you cause to be collected before the first day of November next, from all and every the persons named in the annexed duplicate, for the state-tax for the current year, the rate of —— on every hundred dollars of the amounts of the rates and valuations, wherewith they, according to the said duplicate respectively stand assessed, and the same proportion on a less sum: and in case of refusal or neglect to pay in ten days after demand any sum or sums so to be collected, that you cause the said sum or sums, or the part thereof remaining unpaid, with lawful costs, to be levied of the goods and chattles lands and tenements of the person or persons liable to pay the same, in the same manner and by the same proceedings as prescribed by the act of our General Assembly, entitled "an act concerning the levy-court, clerk of the peace, assessors, collectors

6 v. 496.

CHAPTER CLXXXVII. 1829.

and county-treasurers," passed at Dover, Feb. 4, 1825, for levying the rates therein mentioned: and if goods or chattels, lands or tenements of such person or persons sufficient for said purpose cannot be found, that you cause such person or persons to be arrested and conveyed to the gaol of the county, wherein the hundred to which the duplicate belongs is situate, and deliver to the keeper of said gaol, who is required to keep such person or persons in safe custody, until such sum or sums, with lawful costs, be paid or such person or persons be legally discharged. Hereof fail not at your peril.

(Seal of office.) Given under the hand and the seal of office of the auditor of accounts, at the auditor's office, the —— day of —— in the year of our Lord, one thousand eight hundred and ——

—— ——, Auditor of Accounts.

Docket entry of said warrant.

The auditor shall make a docket of every such warrant, stating its date, the hundred and county to which the annexed duplicate belongs, the amount of the rates and valuations standing on said duplicate, the rate on every hundred dollars, the sum said rate amounts to, and the day of issuing the warrant and duplicate: This docket shall be deemed to be of the nature of a record, and shall be evidence accordingly.

The auditor shall add together the rates and valuations on every duplicate. He shall have power for sufficient cause to amend any duplicate or warrant issued.

State-treasurer may appoint *collectors*: 4 v. 329.

The state Treasurer shall have power to appoint collectors under him to execute said warrants; either a different collector for each warrant or the same person a collector for any number of warrants in the same county. The appointment may be made by endorsement under his hand upon the warrant according to the following form:

Appointment, how made.

I appoint —— of —— county my collector to execute this warrant.

—— —— State-treasurer.

To be certified to the auditor. 4 v. 330.

The state treasurer shall certify to the auditor immediately the collector appointed for each warrant

and the auditor shall enter the collector's name on the docket of the warrant in the margin.

The state-treasurer shall be responsible for the faithful execution of the warrants issued as aforesaid, and for the payment into the treasury of the money collected by virtue thereof: and he shall not deliver a warrant and duplicate to any person as collector, until such person shall with two or more sufficient sureties have become bound to him as state-treasurer, for the state of Delaware, by a joint and several obligation in a penalty double the amount to be collected, or nearly so, with condition according to the following form:

State-treasurer to be responsible for the execution of the warrants.

Collectors to give bond—

The condition of the above written obligation is such, that if the said —— to whom the duplicate issued by the auditor of accounts of the assessment list of ——— hundred in ——— county with the warrant of said auditor to the state-treasurer for the collection of the rate of —— on every hundred dollars of the rates and valuations standing on said duplicate (said rates and valuations amounting in the aggregate to —— and the amount to be collected on said duplicate being ——) for the state tax of the current year, is about to be delivered as collector or his executors or administors shall faithfully and diligently execute the said warrant and pay to the said —— state-treasurer as aforesaid or his successor in office, before the first day of November next, the amount required according to the said warrant and duplicate to be collected, saving sixteen per centum thereof, and afterward shall duly render a full and just account of the whole of said amount, and pay the balance, former payments, commissions and allowances for delinquents being deducted, to the said ——or his successor in office: and if the said —— his executors or administrators shall indemnify and save harmless the said —— his executors and administrators from and against all acts, negligencies and defaults of the said—— his executors or administrators in or touching any the premises, then the said obligation shall be void.

Condition thereof.

4 v. 331, §5. 6 v. 683.

There shall be subjoined to the said obligation a warrant of attorney to confess judgment thereon. If

Warrant of att'y to confess judgment.

the same person be appointed collector under several warrants, the preceding form may be varied from to suit the case, or there may be a distinct obligation for each warrant.

Proceedings in case of the death, &c of a collector.

If a collector die, remove from the county resign or become incapable of executing the warrant, the state-treasurer shall have power to appoint a collector in his place; and he shall certify such appointment to the auditor of accounts; but before such appointment, notice shall be given to the sureties of the former collector; and one of them, if he offer sufficient sureties, shall be appointed. A collector appointed in the place of a former collector, shall become bound with sureties as before prescribed; but his responsibility shall be limited by the amount remaining to be collected; the warrant and duplicate first issued, or if that cannot be obtained, a warrant and duplicate of the same form and date as the first shall be delivered to him. Such subsequent appointment shall not discharge nor impair the liability of the former collector or his sureties under their obligation for any antecedent act, negligence or default.

In such case, the power to execute the warrant shall devolve on the ex'r. &c. subject, &c.

Upon the decease of a collector while his warrant remains in force, the authority to execute the same, shall devolve to his executors or administrators, subject to the power of the State-treasurer to appoint another collector in the place of the deceased collector as aforesaid; and in case of such appointment, it shall be the duty of the executors or administrators of the deceased collector, to surrender the warrant and duplicate, which were in his hands.

Powers of collector, &c in the execution of the warrants.

Every warrant as aforesaid may be executed by the State-treasurer or by the collector by him appointed or by the executors or administrators of such collector in any part of the county wherein the hundred to which the annexed duplicate belongs, is situate, during the period of one year from its date. The State-treasurer and also his collector, and also the executors or administrators of such collector shall, for the execution of every such warrant have all the powers granted by the act herein-before mentioned to collectors appointed pursuant thereto, and

§8, ch. 278, 6 v. 504.

the eighth section of the said act is adopted in every particular for regulating and determining all matters touching the execution of such warrant.

If it shall happen, in consequence of the rate determined by the auditor of accounts, that more money shall be raised, in either county, on account of any tax granted as aforesaid, than such county's portion of said tax according to the act granting the same, the overplus shall be paid by the State-treasurer to the county-treasurer of said county, for the use of said county; and no commissions shall be allowed to the State-treasurer on such overplus.

If more than its portion of tax be raised in any county, the overplus shall be paid to the county-treasurer. 3 v. 129.

SECTION 6. *And be it further enacted*, That it shall be the duty of the clerk of the peace in each county of this State, to transmit to the auditor of accounts before the first Tuesday of April in every year, in which a general rate of persons and valuation of personal or real property, shall be returned, true abstracts certified under his hand and seal of office, of all and singular the aggregate amount of each and every person's rate and valuation, and the name of every such person, on the assestment-lists of the several hundreds in his county, containing said rate and valuation, as the said assessment-lists stand corrected in the levy-court and court of appeal, and in every other year like abstracts certified in like manner from all and every the returns of the assessors of the several hundreds respectively, as said returns stand corrected in said court. The abstracts aforesaid, shall be made out after the appeals, if any shall have been determined: Provided, that the clerk of the peace shall not on account of the pendency of any appeal postpone beginning to make out said abstracts longer than the twenty-first day of March in any year, and he shall transmit said abstracts by the first Tuesday of April in every year, whether such appeals have been determined or not.

The clerk of the peace shall certify to the auditor *abstracts from the assesment-lists*, when. 4 v. 328.

What such abstracts shall contain.

To be made out—*when*.

In case of any transfer, change or alteration entered or made in an assessment-list or return, after an abstract transmitted to the auditor of accounts, it shall be the duty of the clerk of the peace immediately to certify under his hand and seal of office such

Transfers, &c. on the assessment-list, to be certified.

transfer, change or alteration to the said auditor. It shall be the duty of the clerk of the peace in each county, in every year between the fifteenth and twentieth days of September, to transmit to the auditor of accounts, a true copy certified under his hand and seal of office, of the minutes of all the proceedings of the levy-court and court of appeal in his county, commencing on the last Tuesday of the preceding September and ending with the last proceedings of said court. It shall be the duty of the clerk of the peace in each county, upon the written request of the auditor of accounts, immediately to make and transmit to said auditor, certified under the hand and seal of office of said clerk of any assessment-list, return, minute or paper belonging to his custody as clerk of the levy-court and court of appeal.

He shall annually transmit to the auditor, copies of the minutes of the proceedings of the levy-court—

and on request in writing, he shall transmit copies of any paper, &c. in his custody as clerk of the levy-court.

Penalty for the neglect of these duties.

If any clerk of the peace shall refuse or neglect to perform truly and faithfully any duty hereinbefore enjoined upon him, he shall be deemed guilty of a misdemeanor and upon conviction thereof, he shall pay to the State a fine not exceeding two hundred dollars and forfeit his office.

The clerk of the peace shall transmit to the auditor *lists of fines, &c. imposed by the court of quarter sessions, at each term—* 3 v. 873.

SECTION 7. *And be it further enacted*, That it shall be the duty of the clerk of the peace in each county of this State, within thirty days after the end of every term of the court of general quarter sessions of the peace and gaol delivery in his county to transmit to the auditor of accounts, an abstract certified under his hand and seal of office, of every case in said court, in which a fine or forfeiture was imposed during said term, stating the party or parties in each case, the fine or forfeiture, and the sheriff. The said clerk shall also twice a year, to wit: on the first Monday of September and of March transmit to said auditor an abstract certified as aforesaid, of the returns of the disposal of persons as servants, whether in execution of judgments or in obedience to orders of said court, shewing the sum obtained, the fine or restitution money and costs, and the sheriff. Whenever a fine shall be imposed by the supreme court, a court of oyer and terminer and general gaol delivery, or the court of common pleas,

and abstracts of the returns of sales of persons as servants.

The clerks of the supreme court and prothonotaries,

the clerk or prothonotary shall within thirty days after the end of the term, under his hand and seal of office, certify the same with the sheriff chargeable to the auditor of accounts; and in case of the return of the disposal of a person as a servant, by virtue of an order of a court of oyer and terminer and general gaol delivery, the clerk shall within twenty days after said return made, certify the same with a note of the fine or costs, to the auditor of accounts by certificate under his hand and seal of office.

shall transmit a like certificate of fines imposed,

and of the returns of the sale of persons as servants.

It shall be the duty of every justice of the peace for the several counties of this State, to transmit to the auditor of accounts four times a year, to wit: on the first Monday of January, April, July and October in each year, an abstract certified under his hand and seal, of every case before him, in which he shall have imposed any fine or forfeiture before the day of transmitting such abstract, and which he shall not have previously certified to the auditor, stating the party or parties in each case, the fine or forfeiture, the name of the constable chargeable and the place of his residence.

Justices of the peace shall certify, four times a year, to the auditor, a list of fines, &c. imposed by them.

4 v. 467, 596.

Any number of abstracts transmitted at the same time may be contained in one list, and included in one certificate.

If any clerk, prothonotary or justice of the peace, shall refuse or neglect to perform truly and faithfully any duty before in this section enjoined upon him, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, he shall pay to the State a fine not exceeding one hundred dollars; and it shall be the duty of the court in which such conviction shall take place, to cause a copy of the record thereof, to be transmitted to the General Assembly.

Penalty for the neglect of these duties.

In the first abstracts made under this act, no justice of the peace need go back beyond the first day of January, in the year of our Lord one thousand dight hundred and twenty-seven.

SECTION 8. *And be it further enacted,* That any sheriff or any constable, paying any sum to the State-treasurer, shall take duplicate receipts and transmit one to the auditor of accounts.

Sheriffs and constables on paying any sum to the State-treasurer to take duplicate receipts & transmit one to the auditor.

transfer, change or alteration to the said auditor. It shall be the duty of the clerk of the peace in each county, in every year between the fifteenth and twentieth days of September, to transmit to the auditor of accounts, a true copy certified under his hand and seal of office, of the minutes of all the proceedings of the levy-court and court of appeal in his county, commencing on the last Tuesday of the preceding September and ending with the last proceedings of said court. It shall be the duty of the clerk of the peace in each county, upon the written request of the auditor of accounts, immediately to make and transmit to said auditor, certified under the hand and seal of office of said clerk of any assessment-list, return, minute or paper belonging to his custody as clerk of the levy-court and court of appeal.

He shall annually transmit to the auditor, copies of the minutes of the proceedings of the levy-court—

and on request in writing, he shall transmit copies of any paper, &c. in his custody as clerk of the levy-court.

If any clerk of the peace shall refuse or neglect to perform truly and faithfully any duty hereinbefore enjoined upon him, he shall be deemed guilty of a misdemeanor and upon conviction thereof, he shall pay to the State a fine not exceeding two hundred dollars and forfeit his office.

Penalty for the neglect of these duties.

SECTION 7. *And be it further enacted*, That it shall be the duty of the clerk of the peace in each county of this State, within thirty days after the end of every term of the court of general quarter sessions of the peace and gaol delivery in his county to transmit to the auditor of accounts, an abstract certified under his hand and seal of office, of every case in said court, in which a fine or forfeiture was imposed during said term, stating the party or parties in each case, the fine or forfeiture, and the sheriff. The said clerk shall also twice a year, to wit: on the first Monday of September and of March transmit to said auditor an abstract certified as aforesaid, of the returns of the disposal of persons as servants, whether in execution of judgments or in obedience to orders of said court, shewing the sum obtained, the fine or restitution money and costs, and the sheriff. Whenever a fine shall be imposed by the supreme court, a court of oyer and terminer and general gaol delivery, or the court of common pleas,

The clerk of the peace shall transmit to the auditor lists of fines, &c. imposed by the court of quarter sessions, at each term—
3 v. 873.

and abstracts of the returns of sales of persons as servants.

The clerks of the supreme court and prothonotaries,

the clerk or prothonotary shall within thirty days after the end of the term, under his hand and seal of office, certify the same with the sheriff chargeable to the auditor of accounts; and in case of the return of the disposal of a person as a servant, by virtue of an order of a court of oyer and terminer and general gaol delivery, the clerk shall within twenty days after said return made, certify the same with a note of the fine or costs, to the auditor of accounts by certificate under his hand and seal of office.

shall transmit a like certificate of fines imposed,

and of the returns of the sale of persons as servants.

It shall be the duty of every justice of the peace for the several counties of this State, to transmit to the auditor of accounts four times a year, to wit: on the first Monday of January, April, July and October in each year, an abstract certified under his hand and seal, of every case before him, in which he shall have imposed any fine or forfeiture before the day of transmitting such abstract, and which he shall not have previously certified to the auditor, stating the party or parties in each case, the fine or forfeiture, the name of the constable chargeable and the place of his residence.

Justices of the peace shall certify, four times a year, to the auditor, a list of fines, &c. imposed by them.

4 v. 467, 596.

Any number of abstracts transmitted at the same time may be contained in one list, and included in one certificate.

If any clerk, prothonotary or justice of the peace, shall refuse or neglect to perform truly and faithfully any duty before in this section enjoined upon him, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, he shall pay to the State a fine not exceeding one hundred dollars; and it shall be the duty of the court in which such conviction shall take place, to cause a copy of the record thereof, to be transmitted to the General Assembly.

Penalty for the neglect of these duties.

In the first abstracts made under this act, no justice of the peace need go back beyond the first day of January, in the year of our Lord one thousand dight hundred and twenty-seven.

SECTION 8. *And be it further enacted,* That any sheriff or any constable, paying any sum to the State-treasurer, shall take duplicate receipts and transmit one to the auditor of accounts.

Sheriffs and constables on paying any sum to the State-treasurer to take duplicate receipts & transmit one to the auditor.

Secretary of State to transmit to the auditor, copies of certain laws—when. 2 v. 1100.

SECTION 9. *And be it further enacted*, That it shall be the duty of the secretary of state immediately after the end of every session of the General Assembly, to transmit to the auditor of accounts, a certified copy of any act passed during such session, granting a tax for the support of government or concerning any act to be done by him.

Seal of auditor's office. 2 v. 871.

SECTION 10. *And be it further enacted*, That the seal heretofore procured and used as the seal of office of the auditor of accounts of this State shall be the seal of office of the auditor of accounts under this act.

Auditor shall give *bond*.

SECTION 11. *And be it further enacted*, That the auditor of accounts before entering upon the execution of his office, shall with two or more sufficient sureties become bound to the state of Delaware by a joint and several obligation to be with the sureties therein approved by the governor in the penal sum of two thousand dollars, with condition according to the following form:

Condition thereof.

The condition of the above written obligation is such, that if the above bound —— being auditor of accounts for the State of Delaware, shall and do faithfully and diligently execute his office of auditor of accounts, and duly observe and fulfil all the duties of said office; and if the said —— or his executors or administrators, shall truly and without delay deliver to his successor in office, the seal and all the books, accounts, documents, and papers belonging to said office, safe and undefaced, then the said obligation shall be void.

Bond to be recorded by the Secretary of State—and the approval thereof certified to the legislature

The said obligation shall be recorded by the secretary of state in the register, and shall be kept on file in his office. The secretary of state shall give immediate information of the approval of such obligation, to the general assembly in session.

Auditor shall be *sworn* or *affirmed*. Oath.

And the said auditor shall likewise take and subscribe the following oath or affirmation, to wit: I do swear (or affirm) that I will faithfully execute the office of auditor of accounts for the State of Delaware, and will do equal right and justice to all men, to the best of my judgment and abilities, according to law and equity.

Auditor neg-

If any person appointed auditor of accounts, shall

not become bound with sureties as aforesaid, within seven days next ensuing the day of his appointment, the appointment shall be void and another person shall be appointed.

lecting to give bond in *seven days* to forfeit his office.

SECTION 12. *And be it further enacted,* That "the act for the amending and continuing the provisions made in the act entitled an act for the auditing and arranging the accounts of this state, and for the more effectual settlement of the same;" and the act continuing in force said act, and the "act for appointing the auditor of accounts, and for enjoining certain duties on the said officer;" and the "act for extending the powers of the auditor of public accounts to the settlement of the county, road and poor taxes, &c. within the state;" and the "act directing the time of service of the auditor of accounts hereafter to be appointed, and for other purposes;" and the "act to provide for the payment of the surplus of taxes granted for the support of government to the respective counties, and for other purposes;" and the fifth section of the "act respecting the funds of this state;" and the first, second, third fourth, fifth and seventh sections of the "act making provision for the support of government. for the year of our Lord, one thousand, eight hundred and ten; and for the more effectual ordering, assessing, levying and collecting all such taxes as may be granted by the general assembly;" and the "act enjoining certain duties on justices of the peace, trustees of the poor, and constables; and the supplement to the said act; and the eighth section of the supplement to the act entitled an act enjoining certain duties on the secretary of state and other officers therein mentioned, passed at Dover, January 29, 1821; and the "act for expediting the collection of arrearage taxes and other purposes;" and the third section of the "act enjoining certain duties on the secretary of state and other officers therein mentioned," be and hereby are repealed: Provided, that no act nor part of an act, repealed by either of the said acts, shall by this repeal be revived, but the repealing clauses of the said acts are excepted from this repeal, and shall operate for the repeal of acts or sections being the

Repeal of—
ch. 143, b. 2 v. 869.
ch. 251, b. 2 v. 1053
ch. 26, c. 2 v. 1098
ch. 5, 3 v. 15.
ch. 34, 3 v. 73.
ch. 52, 3 v. 128.
3 v. 139, §5,
ch. 57, 3 v. 139. §1, 2, 3, 4, 5 & 7, of ch. 122, 4 v. 328.
ch. 164, 4 v. 467.
ch. 225 4 v. 596.
§8, ch. 41, 6 v. 44.
ch. 247, b. 2 v. 1027.
§3, ch. 106, 3 v. 235.
Proviso.

CHAPTER CLXXXVII. 1829.

subjects thereof, in the same manner as if this act had not been passed; and provided further, that all acts done under the aforesaid acts or either of them, shall stand and operate, and all offences against said acts or either of them, shall be punished, and all penalties incurred under said acts, or either of them, shall be recovered in the same manner and as effectually as if this act had not been passed.

PASSED AT DOVER, *February* 6, 1829.

CHAPTER CLXXXVIII.

AN ACT *to authorize and empower the owners and possessors of certain marsh, cripple and low grounds lying on Mispillion and Fishing creeks in Kent county, to ditch, drain and embank the same.*

PASSED AT DOVER, *February* 9, 1829.

PRIVATE ACT.

CHAPTER CLXXXIX.

AN ACT *concerning Roads and Bridges.*

Public roads, *width of:* 1 v 317. 2 v. 1338, 1280. 3 v. 23.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That all public roads or common highways within this state, except such whereof the width has been or shall be specially prescribed by act of the General Assembly, shall be, in Newcastle county, of the width of forty feet, thirty feet whereof shall be grubbed and cleared; but this provision shall not authorize any person to alter a public road heretofore laid out thirty feet. In Kent and Sussex counties, all public roads and common highways, shall be of the width of thirty

in Newcastle county—

in Kent and Sussex.

feet, twenty feet whereof shall be grubbed and cleared.

And that all public roads or common highways within this state, without exception, shall be maintained in good repair and shall be made and kept passable and safe, over swampy, miry, or marshy ground, by sufficient causeways of the width of at least fifteen feet, and over creeks and deep water, by sufficient bridges of the width of at least twelve feet with a substantial railing or fence on every bridge on each side near the edge thereof, at least three feet and one half high; but this section shall not be construed to require the building of a bridge upon any public road, now open and in use, in a place where a bridge is not now maintained or deemed requisite.

To be kept in repair.

Causeways.

3 v. 23, 305.

Bridges.

SECTION 2. *And be it further enacted,* That the charges of repairing, constructing and maintaining of every public bridge crossing the dividing line between two counties, shall be borne by the said counties in equal portions.

Costs of repairing, &c. bridge between two counties, how borne—

1 v. 318, 319.
2 v. 1005.
2 v. 1095.
3 v. 389—80.

And that the charges of repairing and keeping in good order all public roads or common highways within the several counties of this state, and of repairing, constructing and maintaining bridges on such roads shall be borne as follows, that is to say:

of repairing roads, &c. how *borne*—

In Kent county all such charges shall be borne by the county;—

In Kent county.

2 v. 1334.

In Sussex county all such charges shall be borne by the several hundreds of said county respectively, and raised by a road tax laid by the levy-court and court of appeal of said county, to wit: each hundred shall bear the charges arising from all such roads and bridges within its limits; and if any road be upon the dividing line of two hundreds, or if any bridge cross such line, the charges arising from such road or bridge shall be borne by both hundreds in equal portions.

In Sussex.

2 v. 1278, 1285.
2 v. 1283.

But the charges of repairing and maintaining the bridge over Broadkill creek, upon the road from the Three Runs to Lewis, and the bridge of Broad-creek between the saw mill formerly of George Mitchel and the landing late of Isaac Cooper, and the causeways to said bridges respectively appertaining, and

2 v. 712:
3 v. 4.
4 v. 299.
2 v. 1288.

all other bridges that have heretofore been commonly supported at the expense of Sussex county, shall be borne by said county.

In Newcastle county.
1 v 405.
3 v. 303.

In Newcastle county, all such charges on account of public roads shall be borne by the several hundreds of the said county respectively, and raised by a road tax laid according to the existing law by the commissioners of the roads in each hundred, to wit: Each hundred shall bear the charges of all the public roads within its limits, and if a road be upon the dividing line of two hundreds, the charges on account thereof shall be borne by both hundreds in equal portions.

6 v. 288.

But the charges of repairing, constructing and maintaining all bridges in the public roads in said county, shall be borne by the said county: provided that no bridge shall be constructed, where a bridge has not heretofore been maintained, unless a majority of all the commissioners of the levy-court and court of appeal of said county license the constructing of such bridge, and the court of general quarter sessions of the peace and jail delivery within said county approve said license, which license being so approved shall be recorded in said court. A bridge built contrary to this proviso shall not be a county charge: but without such license a bridge may be constructed and maintained, at the expense of the hundred in which it is; or if it cross the dividing line of two hundreds, at the equal charge of both of them.

Extent of this section.
1 v. 318.

This section shall comprehend all public roads or common highways, as well those hereafter to be laid out and opened as those now open, and all public bridges in such roads; but it shall not extend nor apply to any bridge being the property of any person or corporation. Causeways appertaining to bridges shall be deemed to be part of the bridges to which they appertain, and other causeways shall be deemed to be part of the road in which they are; and the charges on account of such causeways shall be borne accordingly, except that in case of causeways appertaining to the same bridge but being in different counties; each county shall bear the charges of making and maintaining the causeway within

3 v. 389.

its limits; and no hundred shall be held to make or maintain a causeway in another hundred.

Owners of mills, &c. to repair roads—when—

SECTION 3. *Provided;* That whenever the building of any mill, factory or other works, using water power, or the making of any race or artificial water course or dam, has injured or shall injure any public road, it shall be the duty of the owner or owners for the time being, of such mill, factory, or works, race or dam, to repair and forever to keep repaired the part of the road so injured; and it shall be the duty of every owner, and also of every tenant, of any mill, factory or works for the operation, use or benefit whereof there is or shall be any race or artificial water course through any public road or common highway in either county of this state, or a dam over which any such road does pass, or shall pass, or a pond raised so as to make a bridge over a stream in a public road necessary where there would otherwise be no need of one, to make and maintain a safe and substantial bridge over every such race, water course or stream, and a safe and sufficient way over every such dam, with a safe and substantial bridge, over any flood-gates, or water through or round such dam; every such bridge and way shall be at least twelve feet wide with a sufficient fence or railing on every such bridge and way, on each side near the edge thereof, at least three feet and one half high; but the preceding provisions of this section shall not apply to any public road or common high way, which shall be laid out over any dam, race or pond, that shall have been lawfully made, cut or raised, for the use of any mill, factory or works, before the laying out of said road, or to any bridge requisite upon such road; and whenever any public road passes near to any such mill, factory, or other works, then in order to guard against the danger of horses or other beasts going in said road, being frightened by any wheel of such mill, factory, or works, it shall be the duty of every owner, and also of every tenant of such mill, factory, or works, to keep constantly covered and concealed by means of a sufficient blind so placed

3 v 23. 1 v 318. 2 v 1272, 1285, §20.

bridge over race &c.

2 v. 1338. 3 v. 23.

6 v. 562.

Mill wheel to be covered to prevent accidents.

1 v. 511. 2 v. 1283, 1270.

as not in any manner to obstruct said road, every such wheel that would otherwise be exposed to be seen from said road; and it shall be the duty of every owner, and also of every tenant of any lands or premises for the special benefit or improvement whereof, a ditch or drain not authorized by act of the General Assembly, has been or shall be cut through any public road, laid out before the cutting of such ditch or drain, to make and maintain a safe and substantial bridge over such ditch or drain; and if any owner or tenant, of any mill, factory, or other works, race or dam as aforesaid, or of any land or premises as aforesaid, shall neglect to fulfil any duty incumbent upon him or her, according to the form and effect of this section, in any particular, every such owner or tenant shall pay to every person injured through such neglect, double damages on occasion of such injury, with double costs of suit, to be recovered in an action of trespass on the case; and also every such owner if at the time of such neglect in the actual occupation of such mill or other tenements, and every such tenant for every such neglect, shall be deemed guilty of a misdemeanor, and on conviction thereof shall forfeit and pay to the state a fine not less than ten, nor exceeding fifty dollars; and also in case of such neglect it shall be the duty of the overseer of roads, within whose limits the neglect shall be, immediately on receiving information of such neglect, to cause any work or repairs to be done requisite to make any way or bridge so neglected, safe and sufficient, or to cover and conceal any wheel as hereinbefore directed, or to remedy fully the matter complained of; and the overseer causing such work or repairs to be done shall be entitled to demand and receive double the expenses thereof, from the owner or tenant guilty of such neglect; the amount of such double expenses shall be a debt due to such overseer, and shall be recoverable; if not exceeding fifty dollars, before any justice of the peace, for the county wherein the work or repairs were done, proceeding according to to the "act providing for the recovery of small debts," the provisions whereof, are hereby extended to such debt;

Duty of the owner and also of the tenant of such mill to erect a covering to wheel, &c.

1 v 318, §8.
3 v. 23
2 v. 1339.

penalty for neglect.

Overseer of the roads to perform this duty, when:

shall recover double damages.

6 v. 563.

but if such amount exceed fifty dollars, it shall be recoverable in the supreme court or court the of common pleas; it shall be no objection to a suit for such debt, that there are other owners or other tenants, not joined therein. If any overseer of the roads, shall refuse or neglect to perform the duty above enjoined, he shall be deemed guilty of a misdemeanor and upon conviction thereof, he shall forfeit and pay to the State a fine not less than fifteen dollars nor exceeding fifty dollars.

Penalty on overseer for neglect.

A tenant may deduct from his rent the expenses arising from his performance of any duty incumbent upon him according to this section, unless it shall have been otherwise agreed.

Tenant may deduct his expenses herein, from his rent. 2 v. 1284.

SECTION 4. *And be it further enacted,* That there shall be allowed to every overseer of the roads for each day's services, a sum not exceeding one dollar, to be settled according to the number of laborers employed each day, and other circumstances; in Kent and Sussex counties by the levy court and court of appeal, and in Newcastle county by the commissioners of roads in the hundred in which the overseer is appointed.

Fees of overseers of the roads. 6 v. 515. 3 v. 305. 1 v. 406.

SECTION 5. *And be it further enacted,* That the court of general quarter sessions of the peace and jail delivery within each county of this state, shall have jurisdiction to lay out, change or vacate public roads or common highways; but this power to change or vacate shall not extend to any road or highway which has been, or which shall be laid out under any act of the general assembly, specially directing or authorising the laying out of such road or highway. The manner of exercising the jurisdiction shall be as follows:

Jurisdiction of the court of quarter sessions in laying out, changing and vacating public roads. 6 v. 593, 4. 1 v. 392, 3. 6 v. 551. 1 v, 444. 414. 2 v. 1267, 1279.

Whenever five or more freeholders of either county of this state shall prefer to the court of general quarter sessions of the peace and jail delivery within such county, a petition for a new public road in said county, to lead from and to certain points or places or for changing the course of a public road in said county, or for vacating any public road or part of a public road in said county, the said court shall by order thereupon appoint five judicious and im-

Mode of proceeding.

Petition.

Apponitment of freeholders

CHAPTER CLXXXIX. 1829.

partial freeholders of the said county to view the premises and determine concerning the same, and make return under their hands, or the hands of a majority of them to said court, on the first day of the next term after the making or renewing of such order, authorising them to employ if necessary, a skilful and impartial surveyor, to be nominated by them or a majority of them, and directing them as hereinafter prescribed; that is to say; in an order made upon a petition for a new public road the direction shall be, that if the freeholders or a majority of them shall determine, that there is need for a new public road as mentioned in the petition, then they shall lay out such public road as shall be most proper, having respect to the nature of the ground, the shortness of the distance, and all circumstances of public or private convenience or detriment; and shall cause a draught of said road to be made, representing the courses and distances thereof, with notes of the most remarkable places, and of the wood land, clear land and improvements, by or through which the same passes; and shall assess the damages of every the owners or holders of said lands, and improvements on occasion of the said road, taking into consideration all the circumstances of benefit or injury which will accrue to each owner or holder therefrom, and shall make a computation of the cost of opening and making said road and making the bridges and causeways therein setting down the several items of said cost; and if a road be laid out, shall in their return set forth among their proceedings a description of the said road, and their determination, that there is need of the same for public convenience, and shall annex to their return the aforementioned draught: in an order made upon a petition for changing the course of a public road, the direction shall be, that if the freeholders or a majority of them shall determine that the change or changes mentioned in the petition, or any change of like effect ought to be made, then they shall lay out such public road or roads, as shall produce such change or changes in the best manner, having respect to the nature of the ground, the shortness of

directions to—in an order on a petition for a *new road*—

6 v. 19.

in an order on a petition for *changing* a public road—

the distance and all circumstances of public or private convenience or detriment; and shall cause a draught of the said road or roads to be made, representing the courses and distances thereof, with notes of the most remarkable places, and the wood-land, clear land and improvements, through or by which the same pass, and also representing so much of the original road as is effected by the change, that the original road and the road as changed may be compared, and shall assess the damages of every the owners or holders of the said lands or improvements on occasion of the said road or roads, taking into consideration all circumstances of benefit or injury that will accrue to each owner or holder therefrom; and shall make a computation of the costs of opening and making every such road, and of making the bridges and causeways therein, setting down the several items of said costs; and shall determine whether after any road by them laid out shall be opened and made, any part, and what part of the original road shall be vacated, and what person or persons may enclose the same, and if any change be made, shall in their return set forth among their proceedings a description of the road or roads laid out, and of the part of the original road to be vacated, if any, and their determination that the change ought to be made, and shall annex to their return the aforementioned draughts: in an order made upon a petition for vacating a public road or any part thereof, the direction shall be, that if the freeholders or a majority of them determine that said road or any part thereof is unnecessary and ought to be vacated, then they shall further determine what person or persons may inclose the same or any part thereof; and what portion of the costs each of said persons ought to pay, and shall in their return set forth among their proceedings a description of the road to be vacated, and their determination that the same is unnecessary and ought to be vacated, and shall annex to their return, any draught which they may have directed to be made.

in an order on a petition for vacating a public road.

The return upon one order shall not be conclusive, either for laying out, changing or vacating a

Return not to be conclusive,

but the court may order a *review.*

public road; but the court shall have power to make orders of review and thereby appoint other five judicious and impartial freeholders of the same county to review the premises and determine concerning the same and make return under their hands, or the hands of a majority of them to the said court on the first day of the next term after the making or renewing of such order; granting to them all the authority which was conferred by the original order and requiring them to observe the directions of said order in all things and do therein what according to their judgment or the judgment of a majority of them ought to have been done pursuant to said directions, and instructing them that if they or a majority of them approve the proceedings upon the original order, or upon any prior order of review or any part thereof, they may adopt the same as part of their return.

When a review *shall* be granted—

An order of review shall be made upon the application of any person interested in or affected by the laying out, changing or vacating of a road pursuant to an order as aforesaid. If the entire proceedings upon the original order, or all except the computation of costs, be adopted by the freeholders appointed by an order of review or a majority of them, such proceedings shall be confirmed by the court; in

a *second review,* when—

any other case a second order of review shall be made upon application of any person interested or affected as aforesaid. But an application for an order of review, shall not be received after the expiration of six days from the making of the return to the preceding order whether original or of review; and more than two orders of review shall not be granted upon application; but if the court shall, for illegality or other cause, set aside the return to any order, such order shall be vacated, and another order shall be made in the place thereof, and the court

further orders of review—when

for their own information, may make further orders of review:

Return to be *confirmed*—when:

If an order of review be not applied for in due time, the court shall confirm the proceedings upon the original order. If a second order of review, in a case proper for such order, be not applied for in

due time, the court shall confirm the proceedings upon the original order, or the proceedings upon the order of review; and after the return to a second order of review, the court shall confirm the proceedings upon one of the orders unless they shall find it necessary for their information to make a further order of review. If the proceedings upon any order whether original or of review be adopted by the freeholders appointed by any other order, or a majority of them, such proceedings shall be confirmed by the court; in any other case the court shall confirm the proceedings which in their opinion will best fulfil the true intent of the original order and the directions therein.

If due diligence be not used for executing and returning an order of review, the effect shall be the same as if it had not been applied for.

Effect of such confirmation.

The effect of confirmation by the court of proceedings upon an order as aforesaid shall be—*in case any road or roads be laid out by said proceedings*, to establish such road, as a public road or common highway,—*in case damages be assessed by said proceedings*, to settle such damages—*in case any change ought according to such proceedings to be made in a public road*, to establish such change,—*or in case any road or part of a road ought, according to said proceedings to be vacated*, to vacate such road or part of it—according to the form and effect of said proceedings, and the proceedings being confirmed shall be recorded.

Road not to be opened until approved by the levy-court.

6 v. 10, 6 v. 26.

But notwithstanding such confirmation, no public road hereafter to be laid out, shall be opened, and no right to use said road shall exist until the said road is approved by the levy-court and court of appeal of the county, wherein it is laid out:

Nor until the crops growing are taken off.

And if any such road hereafter to be laid out shall pass through an enclosure, which at the time of the confirmation of the proceedings, shall be in actual cultivation, the said road shall not be opened through said inclosure until the expiration of the usual time for taking off the crop, which was growing, sown or planted at the time of said confirmation.

Freeholders and surveyor to be *sworn, &c.*

The freeholders appointed by an order as aforesaid whether original or of review, and the surveyor employed by them, before examining the premises for the purpose of executing the order, shall be sworn or affirmed—that is to say—the freeholders to perform the duties incumbent upon them according to the order, and the surveyor to perform the service for which he is employed, faithfully and impartially according to the best of their skill and judment respectively; which oath or affirmation may be taken before the chancellor, or any judge of this state, or any justice of the peace for either county of this state, or a burgess of the borough of Wilmington; and either of said freeholders named in an order shall have authority to administer said oath or affirmation to any other of said freeholders or to the surveyor employed by them.

by whom.

The acts of a majority of the freeholders shall be as valid as if concurred in by all of them.

Costs and damages of laying out or changing roads, how paid; 1 v. 405. 2 v. 1278 2 v. 1334. 1 v 394. 6 v. 26.

The costs of proceedings for laying out or for changing a public road, and the damages settled on occasion of such road, shall be allowed by the levy-court and court of appeal of the county, wherein the road is, and shall be a charge on said county; but in Newcastle county such damages shall not be allowed until it shall be certified by the commissioners of roads in the hundred, wherein the damages are sustained, that the road has been opened.

of vacating roads, how paid. 6 v. 596. §5.

The costs of proceedings for vacating a public road shall be paid by the petitioners, unless the road shall be vacated, and in that case by the persons entitled to enclose it; they respectively paying the portions determined by the freeholders whose return shall be confirmed; and the determination of the freeholders that any person may enclose the road vacated or any part of it shall have no effect, and such person shall not enclose any part of said road until payment of his or her portion of said costs; but upon such payment the right of such person shall become absolute according to such determination.

The charges for opening and making public roads in either county, and for constructing bridges thereon and for causeways shall be borne in the same

manner as prescribed in respect to the charges for repairing public roads and constructing and maintaining bridges thereon in the same county, according to the second and third sections of this act.

Bridge crossing the line between two counties or hundred, *by whom* to be repaired.

SECTION 6. *And be it further enacted,* That whenever a bridge crosses the dividing line of two hundreds or two counties, the overseer of roads, within whose limits is the road leading to, and immediately connected with, such bridge, shall have within his limits and under his charge the part of said bridge lying in his hundred; unless the said bridge shall have been otherwise assigned according to law. The levy-court and court of appeal shall have power to assign any bridge or part of a bridge, that is maintained at the expense of their county, to the charge of any overseer whom they may appoint.

Penalty on overseer of roads for neglect of his duty. 6 v. 56,

SECTION 7. *And be it further enacted,* That if any overseer of roads in any hundred of Kent or Sussex county, or the commissioners of roads in any hundred of Newcastle county, shall wilfully suffer any public road or common highway or public bridge within their proper limits respectively, to be encroached upon or obstructed, or to be unsafe or in bad condition for want of repairs, or shall refuse or neglect beyond a reasonable time, to open and make any new public road or common highway duly laid out and approved within their proper limits respectively, or to make and construct thereon, such causeways and bridges as may be requisite, or if any overseer of a public bridge, shall wilfully suffer the same to be obstructed, or to be unsafe, or in bad condition for want of repairs, or if any overseer of roads in any hundred in Newcastle county shall refuse or neglect to observe and execute any direction or instruction which the commissioners of roads in such hundred, or a majority of them, shall lawfully deliver or give to him touching the duties of his office; every such overseer or commissioner shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall forfeit and pay to the State a fine not less than fifteen dollars nor exceeding fifty dollars: Provided, that no person shall be guilty of a

3 v. 304, 346.

Proviso.

misdemeanor for refusing or neglecting to construct or maintain a bridge unless public funds for that purpose shall be placed or be within his power.

Penalty for obstructing road, injuring bridges &c. 6 v. 562.

SECTION 8. *And be it further enacted*, That if any person or persons shall encroach upon or obstruct any public road, or shall wilfully obstruct, break or damage any public bridge, or shall commit any nuisance in any public road or common highway; every person so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall forfeit and pay to the State a fine not less than fifteen, nor exceeding fifty dollars; and in case of a continuing nuisance, it shall be a part of the judgment, that the defendant or defendants shall abate the nuisance within a time to be limited in said judgment; and upon failure to observe and fulfil said judgment in this particular, a writ of execution shall be issued, directed to the sheriff, or in case of legal exception to him, to the coroner of the county, commanding him to abate the said nuisance, and there shall be allowed by the court, for executing said writ, to the officer, a sum not exceeding the rate of four dollars a day, besides all expenses incurred; and the defendant or defendants shall pay the costs and expenses allowed; and the court shall have power to compel said payment by attachment for contempt and imprisonment; and further, every defendant refusing or neglecting to abate a nuisance according to the form and effect of a judgment as aforesaid, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall forfeit and pay to the State a fine not less than fifty, nor exceeding two hundred dollars.

Abatement of a nuisance, *by defendant*—

by the *sheriff*, &c.

Fee to sheriff for this duty.

Overseers *their powers*— 6 v. 564.

SECTION 9. *And be it further enacted*, That every overseer of roads in this State, shall have right and power to enter upon any lands adjacent to any public road, within his limits, and cause to be dug or scoured and kept open any ditch that he may deem necessary to drain the water from such road, and also to enter upon any land commodiously situated and cause sand, gravel and stones to be dug and carried away, and timber, and trees standing to be cut down and carried away, for the purpose of ma-

to open ditches;

take sand, gravel, &c. and timber, trees, &c.

king, constructing or repairing any public road or common highway within his limits, or any bridge or causeway on such road or highway as he shall deem expedient; and any owner or holder of such land, or other person who shall molest or hinder any such overseer in the exercise of such right or power, or shall obstruct any ditch dug or opened as aforesaid, shall be deemed guilty of a midemeanor, and upon conviction thereof, shall forfeit and pay to the State a fine not less than fifteen nor exceeding fifty dollars; but the overseer shall first take any timber or trees in the lines of the road within his limits, that may be suitable for his purpose, and in exercising the right and power aforesaid, he shall do as little damage as may be, to the owner or holder of the land; and before taking sand, gravel or stones or cutting down trees, the overseer shall cause the same to be fairly appraised, by two judicious and impartial freeholders of the county, whom he shall appoint, and to whom he shall administer an oath or affirmation, according to the following form: "You do solemnly swear (or affirm) that the appraisement which you shall make, pursuant to your appointment, shall be impartial and just, according to the best of your skill and judgment: So help you God—(or so you solemnly affirm.)

Penalty for opposing them in the discharge of this duty.

Sand, timber, &c. to be *appraised*, by two freeholders;

their oath.

If the freeholders so appointed cannot agree upon an appraisement, they shall choose a third freeholder of the same county, who shall be sworn or affirmed as aforesaid, before the overseer, and the three or any two of them shall make the appraisement, and shall make two certificates, first setting down the materials appraised, and then proceeding according to the following form, viz: —— county and —— hundred, ss. We the subscribers, freeholders of said county, being duly appointed for this purpose, and having been sworn, or affirmed, according to law, do appraise the materials abovementioned to be taken by A. B. an overseer of roads in said hundred, on the lands of C. D. for public use, to the value of —— ——. Witness our hands the —— day of ——, 18—. No certificate of the oath or affirmation more than shewn by the preceding form need be made; and if

Third freeholder, to be chosen—when.

Certificate of appraisement.

CHAPTER CLXXXIX. 1829.

all the freeholders be sworn or be affirmed, the certificate shall conform to the fact by omitting either the word "*sworn*" or the word "*affirmed.*" If trees be appraised the freeholders shall mark the same and endorse the number on the certificate. The overseer shall give at least two days written notice to the owner or guardian if residing in the county, and if not, then to the person in possession of the land, of the time and place of the meeting of the freeholders to make the appraisement. The appraised value, if demanded by the owner or guardian, shall be paid before removal of the materials; but if not so demanded, the overseer shall deliver one of said certificates to the collector, having the collection of the road tax in his hundred, to whom it, (if paid by him) shall be a good voucher and who (if it be not paid) shall deliver it in Newcastle county to the commissioners of the roads in his hundred, and in Kent or Sussex county, to the levy-court and court of appeal; and provision shall be made for payment thereof when demanded; the other certificate the overseer shall keep. Every overseer to whom the levy-court and court of appeal shall assign the charge of a bridge, shall have the same right and power for obtaining materials for constructing or repairing it as is by this section given to an overseer of roads as aforesaid, and shall exercise the said right and power in the same manner. In an action against an overseer, for any thing done pursuant to this section, he may give this act, and the special matter in evidence on the general issue; and his own oath or affirmation shall be received as competent evidence to prove the notice required by this section.

Notice to be given to the owner, &c.

Appraised value *how paid.*

Overseers of *bridges* to have the same powers for obtaining materials.

This section shall not be construed to preclude an overseer from obtaining materials by purchase or agreement.

Materials may be obtained by *purchase*, &c.

SECTION 10. *And be it further enacted,* That the court of general quarter sessions of the peace and gaol delivery within each county of this state shall have jurisdiction to lay out, change or vacate, private roads within such county, and the manner of exercising this jurisdiction shall be the same, as hereinbefore prescribed in respect to the jurisdiction for

Jurisdiction of the court of quarter sessions in laying out, changing or vacating *private roads.*
1 v. 405.
2 v. 1269, 1281.
3 v. 350.

laying, changing or vacating public roads or common highways, except that an order may be made upon the petition of any one person and shall be adapted to the case by varying from the order and directions therein, herein before prescribed in respect to a public road in substituting the terms *"private road"* for the terms "public road," and in omitting the terms *"public convenience"* and the direction for a computation of costs, and in any other particulars necessary to conform it to such variances.

Width of private roads. 3 v. 350.

All private roads shall be of the width of twenty-five feet, whereof eighteen feet at least shall be cleared and grubbed, and causeways and bridges in such roads shall be of the same width as in public roads.

Overseers of *private* roads—when appointed;

Upon the application of persons interested in a private road, an overseer thereof may be appointed in Kent and Sussex counties respectively, by the levy court and court of appeal, and in Newcastle county by the commissioners of the roads in the hundred.

their term of office—their powers.

Such overseer shall hold his office for one year, and shall have right and power to enter upon lands adjacent to such road, and to dig, scour and keep open, any ditch necessary to drain the water from said road.

Penalty for committing nuisances in private roads.

If the owner of said adjacent land, or any other person shall molest such overseer in the exercise of this power, or shall obstruct any such ditch, or if any person or persons shall commit any nuisance in such road, or wilfully damage any bridge therein, every such owner or person shall be deemed guilty of a misdemeanr, and upon conviction thereof shall pay to the state a fine not less than ten nor exceeding fifty dollars, one half of which shall be applied to the repairing or otherwise for the benefit of said road, and shall reimburse to any person, who shall remove such obstruction or nuisance or make the necessary repairs, the full expenses incurred therein, to be recovered with costs of suit, before a justice of the peace, proceeding according to the act providing for the recovery of small debts, all the provisions whereof are extended to such demand.

Costs, &c. of laying out, &c.

The costs of all proceedings for laying out, changing or vacating any private road, and the damages

private roads—how paid.

settled on occasion of such road, shall be paid by the petitioners before any such road shall be confirmed. If a person entitled to damages will not receive the same, or shall be absent, or if there be other sufficient cause, the court may order the damages or any part thereof to be deposited in any bank in this state, in the name of the court, and such deposite shall be payment thereof. The sum so deposited shall be payable upon the order of the court.

In confirming a private road, the court shall in express terms declare it to be a private road and order it to be recorded as a private road.

A private road need not be approved by the levy-court; but the regulation in respect to opening a public road through an inclosure in cultivation shall apply to a private road.

The public shall be at no charge on occasion of a private road; but the charges of opening and repairing every private road and of constructing and maintaining bridges therein, shall be borne by the persons interested, and raised by voluntary contribution.

Width of roads mentioned in §2, ch. 176, a. 1 v. 390.

SECTION 11. *And be it declared and enacted,* That the width of the roads mentioned in the second section of the "act for the better regulation of the King's roads in the counties of Kent and Sussex," or such and so much of them as remain, is and shall be forty feet, whereof thirty feet at least shall be cleared and grubbed.

Repeal of—ch. 131, a. 1 v. 316.

ch. 11, 6 v. 10.

ch 176, a. 1 v. 390, except §2.

ch. 180, a 1 v 402, except §2 and part of §3.

part of ch. 184, a. 1 v. 411.

SECTION 12. *And be it further enacted,* That the "act for erecting public bridges, causeways, and laying out and maintaining highways;" and the supplement to the said act passed at Dover, 2 February 1820, and the "act for the better regulation of the King's roads within the counties of Kent and Sussex," the second section thereof excepted; and the "act for the better regulating of the roads in Newcastle county" the second section and the first clause, ending with the words "*grubbed and cleared*" of the third section thereof excepted, and the "supplementary act for the amendment of said act, passed March 31, 1764, the preamble, and the second section, and the first part, ending with the words "*kings*

road" of the third section thereof excepted; and the further "supplement" passed January 29, 1811; and the "act for the supporting, maintaining and keeping in good repair, the bridge over the Broad-kill creek, in Sussex county, and for other purposes therein mentioned;" and the "act for supporting, maintaining and keeping in good repair, the bridge over Mispillion creek and for other purposes therein mentioned;" and the "act for supporting, maintaining and keeping in good repair, the bridge over the Northwest fork of Nanticoke river;" and the supplement thereto; and the "act for the better regulation of the roads in the county of Kent," the first and second sections thereof excepted; and the supplement to the said act, passed January 20, 1797, the preamble and the first, second, third, fourth, fifth and sixteenth section thereof excepted; and the additional supplement to the said act, passed June 3, 1797; and the "act for the better regulation of the roads in the county of Sussex" the first and second sections thereof excepted; and the supplement to the said act, passed January 23, 1798; and the "act to provide for the erection of a public bridge across Broad creek in the county of Sussex;" the first clause ending with the words "*sixteen feet wide;*" of the third section thereof excepted; and the supplement to the said act; and the ninth section of the "act altering the mode of repairing and supporting the roads and bridges in the several hundreds of the county of Newcastle;" and the "act for the better regulation of private roads in Kent county;" and the act respecting the opening and repair of the public highways, and the erection and maintenance of public bridges in Newcastle county;" and the "act concerning roads and bridges in Newcastle county;" and the clause beginning with the words "*and he shall be allowed;*" and ending with the words "*one dollar,*" of the thirteenth section of the "act concerning the levy court, clerk of the peace, assessors, collectors, and county treasurers;" and the "act concerning offences in not repairing highways and in committing nuisances therein;" and the "act to vest the power of vacating county roads in the court

ch. 148, 4 v. 407.
ch. 64, b. 2 v. 712.
ch. 223, b. 2 v. 1005.
ch. 23, c. 2 v. 1095.
ch. 177, 3 v. 389.
ch 99, c. 2 v. 1263, except §1 & 2.
part of ch. 126, c. 2 v. 1330.
ch. 139, c. 2 v. 1363.
ch. 100, c. 2 v. 1270, except §1 and 2.
ch. 6, 3 v. 20.
part of ch. 2, 3 v. 4.
ch. 105, 4 v. 299.
§9 of ch. 138, 3 v. 305.
ch. 160, 3 v. 350.
ch. 25, 6 v. 26.
ch. 177, 6, v. 288.
clause of §13, ch. 278, 6 v, 515.
ch. 305, 6 v. 560.
ch. 322, 6 v. 593.

of quarter sessions, be and hereby are, except as hereinbefore excepted, repealed.

Proviso. Provided, that no act, section or clause that has heretofore been repealed, shall be revived by this repeal; but that every act, and every section, and clause of an act, which have been repealed by either of the acts hereinbefore mentioned, shall remain repealed.

And provided further, that any order which has been made under either of the acts aforesaid, may be executed and the return to it shall be received in the same manner as if such order had been made under and in conformity to this act, and proceedings so returned, and any proceedings which have been had under either of the acts aforesaid, shall be as effectual and sufficient as the foundation of any further proceeding either of review or of confirmation as if such proceedings had been under and in conformity to this act.

And provided also, that this repeal shall not extend to any matter or offence that has been done or committed before the passing of this act; but that the aforesaid acts and sections which are now in force, shall continue in force in respect to every such matter and offence.

PASSED AT DOVER, *February* 10, 1829.

CHAPTER CXC.

6 v. 708.
7 v. 120.
4 v. 464.

AN ACT *to amend the "Act providing for the punishment of certain crimes and misdemeanors," and the "Act concerning certain crimes and offences committed by slaves and for the security of slaves properly demeaning themselves," and the "Act concerning awards to regulate the summoning and returning juries," &c.*

Manslaughter of the *first* de- SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware*

in General Assembly met, That if any person shall commit the crime of manslaughter, of the first degree, every person so offending shall be deemed guilty of felony, and upon conviction thereof, shall forfeit and pay to the State, a fine not less than four hundred dollars, nor more than four thousand dollars, and shall suffer imprisonment for a term not less than one year nor exceeding four years; and every person so offending a second or other subsequent time," upon conviction of such second or other subsequent offence, shall forfeit and pay to the state, a fine not less than one thousand dollars, nor more than six thousand dollars, and shall suffer imprisonment for a term not less than two years, nor exceeding five years.

gree, how punished. 6 v. 709.

Second offence.

If any person shall commit the crime of manslaughter, of the second degree, every person so offending shall upon conviction thereof, forfeit and pay to the state a fine not less than one hundred dollars, nor more than one thousand dollars, and shall suffer imprisonment for a term not exceeding one year.

Manslaughter of the *second degree.*

The foregoing provisions and the "act providing for the punishment of certain crimes and misdemeanors" shall be construed together, and the construction shall be the same, to all intents and purposes, as if the said provisions had been contained in said act instead of the paragraphs prescribing the punishment of manslaughter of the first degree, and of the second degree.

ch. 362, 6 v. 708.

SECTION 2. *And be it further enacted,* That if any negro or mulatto slave shall commit the crime of manslaughter of the first degree, or shall be an accomplice to said crime, every negro or mulatto slave so offending, shall be deemed guilty of felony and upon conviction thereof, shall be publicly whipped with any number of lashes not less than forty nor more than sixty, on the bare back, shall be set on the pillory for the space of one hour, and shall be exported from this state, and never permitted to return to the same; and if any negro or mulatto slave shall commit the crime of manslaughter of the second degree, every such negro or mulatto slave

Negro or mulatto slave committing, &c manslaughter of the *first* degree, how punished;

of the *second* degree, how punished.

CHAPTER CXC. 1829.

shall upon conviction thereof be publicly whipped with any number of lashes not less than twenty nor more than forty.

ch. 50, 7 v. 120.

The preceding provisions of this section and the "act concerning certain crimes and offences committed by slaves, and for the security of slaves properly demeaning themselves," shall be construed together, and the construction shall be the same to all intents and purposes, as if the said provisions had been contained in the first section of the said act.

Juridiction of the court of oyer and terminer— 6 v. 740.

SECTION 3. *And be it further enacted*, That the courts of oyer and terminer and general jail delivery shall have jurisdiction of every crime punishable with death, and of the crime of manslaughter, both of the first and of the second degree, and of the offence of being an accomplice or accessary to any such crime; whether such crime or offence have been committed by a free person or a slave. The courts of general quarter sessions of the peace and gaol delivery, within the several counties, shall have jurisdiction of all other crimes and misdemeanors, except offences committed by slaves and cognizable before a justice or justices of the peace; and the said courts of general quarter sessions of the peace and goal delivery, shall have cognizance of crimes punishable with death, and of manslaughter, and of offences of accomplices or accessaries to said crimes, so far that indictments for said crimes or offences may be found in said courts, and that said courts may issue process against every person so indicted, and may commit such person or take bail, as may be deemed proper in the case; but said indictments shall be removed into the courts of oyer and terminer and general gaol delivery, for trial or other proceedings thereupon.

of the court of quarter sessions.

Limited jurisdiction of this court in capital cases.

Assignment of *counsel*, by the court. 6 v. 741.

The courts of oyer and terminer and general gaol delivery, shall assign counsel to every person on trial not of ability to retain counsel; and the court of general quarter sessions of the peace and gaol delivery, may exercise like power on trials upon indictments for felony.

Repeal of—

SECTION 4. *And be it further enacted*, That the paragraph beginning with the words "If any

person or persons shall commit the crime of manslaughter of the first degree" and ending with the words "a statute pardon of the felony," and also the paragraph beginning with the words "If any person or persons, shall commit the crime of manslaughter of the second degree," and ending with the words "a statute pardon of the felony," of the first section of the "act providing for the punishment of certain crimes and misdemeanors;" and the clause in these words "excepting the crime of manslaughter" of the sixth section of the said act, and the twelfth section of the said act; and the clause beginning with the word "except" and ending with the words "as upon a conviction of manslaughter of the first degree," of the first section of the "act concerning certain crimes and offences committed by slaves, and for the security of slaves properly demeaning themselves," be and hereby are annulled and repealed, except so far as shall concern any crime which has been committed, or any matter or thing which has been done or transacted before the passing of this act, and any crime, matter or thing committed, done or transacted, before the passing of this act, shall be prosecuted and punished, or have effect and be treated in all respects in the same manner, in the same courts, and by the same proceedings, and with the same punishment, as if this act had not been passed.

part of ch. 362, 6 v. 709.

part of ch. 50, 7 v. 120.

Exception.

And the eighteenth section of the "act providing for the punishment of certain crimes and misdemeanors" shall be and hereby is repealed.

§18, ch. 362, 6 v 745.

SECTION 5. *And be it further enacted,* That the third section of the "act providing for the punishment of certain crimes and misdemeanors" be amended by inserting after the words "shall never be punished nor prosecuted as an accessary pursuant to the foregoing provision" the words—*unless such husband or wife, parent or child, servant or slave, shall break a prison or use force to prevent the arrest, or to aid the escape of an offender,* and the said section shall be read and construed as amended by this section; and in any edition of the laws of this

Amendment of §3, ch. 362, 6 v. 732.

State hereafter to be published, shall be printed as thus amended.

Number of *petit* jurors to be summoned at a court of oyer & terminer.

SECTION 6. *And be it further enacted*, That the number of petit jurors to be summoned to serve at every court of oyer and terminer and general gaol delivery, shall be forty-eight; and that the fourth section of the "act concerning awards; to regulate the summoning and returning juries, and for lessening the expense thereof; to repeal the savings in certain acts of limitation; to confirm the title of lands of the husband conveyed by husband and wife and to direct the examination of such wives; to authorize the court of chancery to order lands to be sold; to fix a limitation of appeals from decrees in equity," be amended by expunging the words "thirty-six" and inserting instead thereof, the words *forty-eight*, and the said section shall be read and construed as amended by this section, and so amended shall be in force, and in any edition of the laws of this State, hereafter to be published, shall be printed as thus amended, and so much of the twentieth or repealing section of the "act providing for the punishment of certain crimes and misdemeanors" as extends to the said fourth section, be and hereby is repealed.

Amendment of §4, ch. 158, 4 v. 446.

6 v. 746.

PASSED AT DOVER, *February* 11, 1829.

CHAPTER CXCI.

AN ACT *to enable Col. John Wilson to locate certain vacant lands, situate in Northwest Fork hundred, in the county of Sussex, and to complete his title to the said lands.*

PASSED AT DOVER, *February* 11, 1829.

PRIVATE ACT.

CHAPTER CXCII.

AN ACT *authorizing Mary Barnaby, guardian of Eliza Ann Penton, to sell and convey a certain lot of land in the town of Newcastle, belonging to the said minor.*

PASSED AT DOVER, *February* 11, 1829. } PRIVATE ACT.

CHAPTER CXCIII.

AN ACT *to enable Zachariah Hatfield to locate certain vacant lands, situate in N. W. Fork hundred in the county of Sussex, and to complete his title to the said lands.*

PASSED AT DOVER, *February* 12, 1829. } PRIVATE ACT.

CHAPTER CXCIV.

AN ACT *concerning bills of exception, cases stated and verdicts.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That upon the trial of every case on a judgment in which there may be a writ of error, either party, to place upon record any point of law arising in the course of the trial and material to the determination thereupon, may propose an exception upon such point of law, and the chief justice of the court, or if he be not present at the trial, the justice present, shall sign a bill if presented, truly stating such exception, with all matters requisite for understanding the same. The bill so signed shall be a part of the record; and the matter of law therein appearing shall be considered on a

Bills of exception, when allowed—

shall be signed;

shall be a part of the record—

CHAPTER CXCIV. 1829.

writ of error. Such exception may be taken to the overruling of a challenge; to the admission or rejection of a witness or of any evidence; to the refusal of a demurrer to evidence; to the charge delivered to the jury, to a refusal to charge the jury upon a point of law duly made, or to the decision upon any point of law arising in the course of the trial, and material to the determination thereupon, which decision will not otherwise appear by the record.

when not allowable.

There shall be no exception to the allowance of a challenge, nor to any direction respecting the manner of conducting the trial.

When the exception must be proposed—

The exception must be proposed when the point is decided; upon its being proposed, either party may insist, or the court may require that the substance of it shall be immediately settled and reduced to writing and signed by the chief justice, or in his absence, by the other justice. The bill of exception must be drawn in form and signed during the term in which the exception is proposed, unless the parties otherwise agree with the assent of the court.

and when signed.

Case stated shall be a part of the record.

SECTION 2. *And be it further enacted,* That a case stated in any action shall be a part of the record; and upon a writ of error it shall be considered by the court of error.

Jury may find a *general* or *special* verdict in any case.

SECTION 3. *And be it declared and enacted,* That a jury may in any case find a general or a special verdict.

What papers the jury may take from the bar.
5 Binney 238.

SECTION 4. *And be it further enacted,* That papers read in evidence to the jury, although not under seal, except depositions, may be carried from the bar by the jury.

PASSED AT DOVER, *February* 12, 1829.

CHAPTER CXCV.

1 v. 544.
2 v 988, 1034

AN ACT *to consolidate and amend the laws for the relief of the poor.*

Number and residence of trus-

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware*

in General Assembly met, That there shall be trustees of the poor for the several counties of this state, and their number and residence shall be as follows: For Newcastle county, there shall be two trustees of the poor in Christiana hundred, and one trustee of the poor in each of the other hundreds in said county: For Kent county, there shall be two trustees of the poor in Dover hundred, two trustees of the poor in Murderkill hundred, two trustees of the poor for Mispillion hundred, and one trustee of the poor in each of the other hundreds in said county: and for Sussex county there shall be one trustee of the poor in each hundred in said county.

tees of the poor;— 3 v. 241. 5 v. 346. 6 v. 317, —361, 647 For Newcastle county— 2 v. 1035. 6 v. 270. Kent— Sussex,

Each trustee of the poor shall hold his office for the term of three years from the date of his appointment; except, that if the office become vacant before the regular expiration of the term thereof, the vacancy shall be filled by an appointment to continue for the residue of said term, by the commissioner or commissioners of the levy-court of the hundred in which such vacancy shall happen.

Term of office. 2 v. 991. 1034.

No person shall be a trustee of the poor in a hundred, unless he reside therein, nor unless he be a freeholder in the county wherein such hundred is. If a person being a trustee of the poor in a hundred shall remove his residence therefrom, his office shall, upon such removal become vacant.

Qualifications.

SECTION 2. *And be it further enacted,* That the trustees of the poor of the several counties now in office, shall continue in office for the respective terms for which they were respectively appointed; that is to say, a trustee appointed to the full term shall continue in office for three years from the date of his appointment; a trustee appointed to fill a vacancy shall continue in office for the residue of the original term; and if there be now a vacancy in the office of trustee of the poor in either county or if the office of any trustee now in office shall become vacant before the regular expiration of the term thereof, such vacancy shall be filled by an appointment to continue during the residue of the original term; so that the rotation of trustees heretofore established shall continue.

Term of the trustees now in office.

Trustees, to be appointed by the levy-court; when.

SECTION 3. *And be it further enacted,* That the levy-court and court of appeal in each county shall have power to appoint the trustees of the poor for such county, and shall every year, in February, appoint trustees to succeed those whose terms of office expire; such appointments may be made at any time during the said month of February; but they shall bear date on the first Tuesday of said month, and the terms thereof shall be computed from said day; the said court at any meeting may fill a vacancy in the office of trustees of the poor for their county.

Trustees to be sworn. 2 v. 990 & 191.

Every person appointed to be a trustee of the poor, shall, before he enters upon the execution of the office, take, before a judge or a justice of the peace for his county, an oath, or affirmation, that he will diligently, faithfully, and impartially, perform the duties of his office.

Penalty for refusing to serve.

If any person appointed to be a trustee of the poor, shall refuse or neglect to take upon himself said office, and serve therein, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay to the state, a fine, not less than thirty, nor exceeding sixty dollars, but the levy court may in their discretion, accept resignations; and a person, having served a full term of office, shall not without his consent, be re-appointed to said office, within three years from the expiration of such term. 2 v. 991.

Trustees of the poor in Newcastle county, incorporated— 2 v. 990. Name.

SECTION 4. *And be it further enacted,* That the trustees of the poor for Newcastle county, and their successors be and hereby are continued and established a corporation by the name of *The trustees of the poor of Newcastle county;* the trustees of the poor of Kent county and their successors be and hereby are continued and established a corporation by the name of *the trustees of the poor of Kent county;* and the trustees of the poor of Sussex county and their successors be and hereby are continued and established a corporation by the name of *the trustees of the poor of Sussex county.* The said corporations shall severally have power and capacity to sue and be sued in courts of law or equity, and to take, by devise, bequest, grant, contract or otherwise, and to hold and transfer lands, tenements, hereditaments,

In Kent county. Name.

In Sussex county— Name.

Corporate powers.

goods, chattles, rights and credits; each may have a common seal; and all the franchises incident to a corporation, and all the property and rights belonging to the aforesaid corporations respectively, are hereby confirmed to them respectively; and it is hereby declared that the said corporations were created by an act of the general assembly of this state entitled "an act for the better relief of the poor" passed the twenty-ninth day of January, in the year of our Lord one thousand seven hundred and ninety one; and they shall be regarded as existing from that date.

ch. 218, b. 2 v. 988.

Provided, that neither of the aforesaid corporations shall hold property exceeding in amount twenty thousand dollars, or exercise any banking powers.

Proviso,

SECTION 5. *And be it further enacted*, That the aforesaid corporations shall severally have the superintendancy of the poor house, and the charge of the poor in their counties respectively, and the regulation of all matters relating to the supporting, employing and keeping the said poor, subject to the law in these particulars, and all the property, which does or shall belong to said corporations, respectively shall be held and appropriated by them respectively, in ease of the public burden, to the use of the establishment according to law for the support or accommodation of the poor in their respective counties.

The said corporations shall have charge of the poor in their respective counties &c.

SECTION 6. *And be it further enacted*, That the trustees of the poor for each county, shall meet at their poor-house four times every year; to wit; in Kent and Sussex counties, on the first Monday of January, April, July and October; and in Newcastle county, on the last Wednesday of the said months, and they shall have power of adjournment. A majority of said trustees shall constitute a board competent to transact business; any number shall be competent to adjourn. They shall keep a register of their transactions. The board of trustees of the poor for each county shall in April every year appoint a chairman, a clerk, and a treasurer, the two

Meetings of the trustees, when held. 2 v. 994. 6 v. 361.

Board to keep a register—and appoint officers.

CHAPTER CXCIV. 1829.

first of whom, must be trustees of the poor. They may at any time remove either of said officers, and fill any vacancy in either of said offices; and if the chairman or clerk be not present at any meeting, the board may appoint a chairman or clerk for the time being.

Treasurer to give *bond*. 3 v. 1036.

The treasurer before entering upon the execution of his office, shall with two or more sufficient sureties become bound to the state of Delaware by a joint and several obligation, to be with the sureties therein approved by the board, in the penal sum of ten thousand dollars, lawful money of the United States of America, with condition according to the following form:

Condition.

"The condition of the above written obligation is such, that if the above bound ——— ———, who is treasurer of "the trustees of the poor of ——— county" shall punctually pay all allowances which shall be made by the board of trustees of the poor for said county, so far as he shall have in hand money for that purpose, and shall render to the said board a just and true account of all the money that shall come to his hands or with which he shall be legally chargeable, as treasurer as aforesaid whenever required, and shall in all things, diligently and faithfully execute his office of treasurer as aforesaid, and perform all the duties thereof, and if the said ——— or his executors or administrators shall faithfully and without delay, pay to his successor in office the balance remaining of all money, which shall come to his hands, or with which he shall be legally chargeable as treasurer as aforesaid, after deducting all just credits, and shall also deliver to his successor in office, all books, muniments and papers to the said office in any wise belonging, safe and undefaced, then the said obligation shall be void."

Warrant of attorney.

And to the said obligation there shall be subjoined a warrant of attorney to confess judgment thereon.

Appointment to be *void* without surety.

If any person appointed to be treasurer as aforesaid shall not become bound with sureties as before prescribed, within such time as the board shall direct, the appointment shall be absolutely void.

Treasurer to

The said treasurer shall annually on the first Tues-

day of February, render his accounts to the levy court and court of appeal of his county, who shall settle the same. No allowance shall be made to him except of commissions, without a voucher specifying all the items embraced by it.

settle with the levy-court, when. 2 v 997. 6 v. 319.

The board of trustees of the poor, for each county shall appoint an overseer of their poor-house, whom they may remove at pleasure, and who, before he takes the place of overseer, shall with two or more sufficient sureties become bound to the corporation by a joint and several obligation to be with the sureties therein approved by the board, in the penal sum of one thousand dollars, lawful money of the United States of America, with condition according to the following form:

Overseer of the poor-house—appointment of—to give bond— 2 v. 993.

"The condition of the above written obligation is such, that if the above bound —— who is overseer of the poor-house in —— county, shall behave himself well, and shall diligently and faithfully perform the duties incumbent upon him, as such overseer, then the said obligation shall be void;" and to the said obligation shall be subjoined a warrant of attorney to confess judgment thereon.

condition. Warrant of attorney.

The overseer shall not receive any person into the poor-house, (except as hereinafter prescribed) without the written order of two trustees of the poor for his county; and no such order shall be given without the concurrence of a trustee residing in the hundred wherein the pauper is resident, unless the office of trustee in the hundred wherein the pauper is resident, is vacant at the time, or unless the pauper have no residence in the county; in either of which cases any two trustees may, in their discretion, give an order.

Overseer not to receive any person into the poor-house without the order of *two* trustees, one of whom must reside in the same hundred with the pauper. 2 v. 996, 6 v. 317.

The overseer shall keep a list of the paupers in the poor-house, the date of admission, by whose order, and the date of discharge. He shall keep an account of all the furniture of the house, and of all materials used and provisions consumed therein, and of the produce of the labor of the paupers, and of all expenses and income of the establishment, and shall lay these accounts before the board at their meetings.

He shall keep a list of paupers, &c. and an account of the furniture provisions, expenses, income &c.

He shall employ the paupers. 2 v. 994.

The overseer shall employ the paupers according to their ability and the regulation of the board of trustees; and he may enforce obedience to lawful commands and restrain disorderly behaviour, by such means as may be ordered by the trustees; Provided, that corporal punishment shall not be inflicted.

He shall not inflict corporal punishment.

Two trustees may *dismiss* a pauper. 2 v. 996. 6 v. 317. 2 v. 996.

Any two trustees of the poor shall have power to dismiss any pauper from the poor house; and the overseer shall strictly observe every order of dismission.

An overseer permitting any person to be in the poor house, who ought not to be there, shall be liable to pay to the corporation double the cost of such person's support.

Salary of overseer— 2 v. 993.

The salary of the overseer shall not exceed the rate of one hundred and fifty dollars a year; it shall be settled by the board of trustees.

Servants.

The board of trustees of the poor for each county shall have power to appoint other necessary officers and servants, and to make to them just compensations.

Rules and regulations—how made. 2 v. 994.

The board of trustees of the poor for each county shall have power to make rules and by-laws for the government of the poor under their charge, and their own officers, and for regulating their own proceedings; provided, such rules and by-laws be not inconsistent with the constitution or laws of the United States or this State.

Trustees may bind a female negro or mulatto, delivered of a bastard child at the poor house; for how long. 6 v. 318.

SECTION 7. *And be it further enacted*, That the board of trustees of the poor for each county shall have power to bind any female negro or mulatto, received into their poor house and delivered of a bastard child there, a servant to any person residing in this state, for such term, not exceeding three years, as shall be necessary to raise a sum sufficient to compensate the corporation for her support. Such binding shall be by indenture between the corporation of the one part, and the master or mistress of the other part, and under the common seal of the corporation, and the hand and seal of the master or mistress, and the master or mistress and servant shall, in relation to each other, have all the rights and remedies, and be subject to all the regulations and

Form of binding.

provisions prescribed and contained in the fifth, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, sixteenth and seventeenth sections of the "act concerning apprentices and servants." ch. 91, 7 v. 96.

No pauper supported in the poor house shall marry. Penalty on overseer for conniving at such marriage—on preacher for solmenizing the marriage.

SECTION 8. *And be it further enacted,* That no pauper supported in the poor house shall marry. Any pauper offending against this provision shall be immediately dismissed from the poor house. If an overseer shall consent to or connive at any such marriage, he shall be removed. If any preacher of the Gospel shall knowingly solemnize a marriage contrary to this section, he shall be deemed guilty of a misdemeanor and on conviction thereof shall pay to the state a fine not exceeding fifty dollars.

Penalty for dealing with a pauper without the consent of the overseer. 2 v. 997.

SECTION 9. *And be it further enacted,* That if any person without the consent of the overseer, shall deal with any pauper, supported in the poor-house, by buying any thing from, or selling any thing to, or having any traffic with such pauper, or furnish to or for any such pauper, any spiritous, fermented or expressed liquor, every such person shall be deemed guilty of misdemeanor, and on conviction thereof, shall pay to the state a fine not exceeding fifty dollars.

Paupers out of the poor house may be relieved—*when—and how*— 2 v. 1035.

SECTION 10. *And be it further enacted,* That when a person through disease or casualty, cannot be safely removed to the poor-house, and is in a state of indigence requiring relief from the public, one trustee of the poor for the county, wherein such person is, may administer to such person's pressing necessities, by orders drawn upon the treasurer of the trustees of the poor for said county, till the meeting of the board of trustees of the poor for said county, who shall provide for such person's relief until he or she can be safely removed to the poor-house; and if a person not in the poor house, shall die, destitute of means to bury him or her, the board of trustees of the poor for the county, may in their discretion make a moderate allowance for the burial expenses of such person; in no other case shall there be a charge upon the public for poor not in the poor house; except that the board of trustees of the poor for Sussex county may make contracts for supporting

allowance for *burial charges in such case*—how obtained. 6 v. 361.

In Sussex, paupers may be

supported out of the poor-house, *when.* 5 v. 346.

paupers, who shall have been at least three months in their poor-house and shall be willing to be supported out of it, when such contracts can be made for two thirds the sum, that, according to an average calculation, it would cost to support such pauper in the poor house; but the number of paupers supported under contract, shall never exceed one third the number supported in the poor house. The said board shall keep a fair and regular account of all such contracts, specifying the dates, the persons with whom made, the names and ages of the paupers, the terms of, and all charges under each contract, and shall on the first Tuesday of February, every year, lay such account before the levy-court and court of appeal of their county.

number limited—

account of such paupers to be kept

and laid before the levy-court

Legal settlement —place of;

SECTION 11. *And be it further enacted,* That the place of a person's birth shall be the place of his or her legal settlement. The place of settlement of the head of the family shall be the place of the legal settlement of his or her children, under the age of twenty-one years. The place of settlement of a husband, shall be the place of the legal settlement of his wife or widow.

how *acquired.* 1 v. 550.

Any person shall gain a legal settlement in a county by being duly placed in a public office, and executing the same in said county for one whole year; or by paying taxes assessed in said county upon him or her for the support of the poor for two years successively; or by taking a lease of any lands or tenements in said county of the yearly value of fifty dollars, and occupying the premises for one whole year, and paying the rent; or by becoming seized of a freehold estate in any lands or tenements in said county, of the value of one hundred dollars, and dwelling upon the same for one whole year, or by serving for one whole year in said county as an apprentice or servant under a lawful binding; and every person imported into this state from a foreign country and bound as a servant or apprentice, according to law, shall gain a legal settlement in the county wherein he or she shall serve the first sixty days, under such binding, and afterwards shall gain a settlement as other persons.

The gaining a legal settlement shall be the relinquishment of any prior settlement. 2 v. 1037.

SECTION 12. *And be it further enacted,* That two trustees of the poor, or one trustee of the poor and one justice of the peace for either of the counties of this state upon their own knowledge, or upon information that a person not having a legal settlement in such county is likely to become a charge upon the trustees of the poor, shall issue process under their hands and seals, directed to any constable for said county, commanding him to bring such person before them; and if the said trustees, or trustee and justice, upon hearing shall be of opinion that there is substantial ground to believe that such person will soon become a charge upon the trustees of the poor, they shall have power to order that the said person, and his or her family (if he or she have a family) be removed to the county or state of his or her legal settlement (naming the said county or state in such order,) and thereupon to issue process under their hands and seals, directed to any constable for said county, commanding him to remove the said person, and his or her family according to said order. But if such person shall offer to the trustees or the trustee and justice sufficient surety to become bound with him or her to the trustees of the poor, for said county, by their corporate name, in the penal sum of three hundred dollars to indemnify the said corporation from all costs for the support or otherwise on occasion of such person for three years, a bond of indemnity of such person, and his or her surety or sureties of that effect shall be taken, and the proceedings for removal shall be discontinued; but another like proceeding may be instituted after the expiration of the limited time, or in case of the failure of the surety, at any time after such failure.

A person not having a legal settlement, and likely to become a charge on the county may be *removed,* how. 1 v. 553.

unless he give security.

If a person not having a legal settlement in a county, be received into the poor house therein, any two of the trustees of the poor for said county may issue process under their hands and seals, directed to any constable for their county, commanding him *to remove such person to the county or state of his or her legal settlement,* (naming the said county

Such person being admitted into the poor house may be removed.

CHAPTER CXCIV. 1829.

or state in such process) *and* (if such settlement be in a county of this state) *to deliver him or her to the overseer of the poor-house of said county:* and it shall be the duty of said overseer to receive said person into said poor-house.

If a poor person not having a legal settlement in either county of this state shall be removed from the poor house in one county to the poor house in another county, by order of trustees of the poor, the trustees of the poor, from whose poor house such person was removed, shall re-admit the said person into their poor house and make compensation for his or her support while in the poor house to which he or she was so removed.

Costs of pauper to be paid by the county where he has a settlement.

If the trustees of the poor of either county, sustain any costs in the support or for the relief of a poor person having a settlement in another county, they shall have right to demand and receive compensation from the trustees of the poor of such other county.

A person removed from a county pursuant to this section, shall not be sent back to said county by an order of trustees of the poor, or a trustee of the poor and justice of the peace.

Court of quarter sessions to have jurisdiction of settlement cases in dispute between two counties.

The court of general quarter sessions of the peace and jail delivery shall have jurisdiction in a summary proceeding, to decide any controversy between the trustees of the poor of different counties, concerning the place of settlement of any poor person, and to order that such person be admitted into the poor house in either county, and to decree that the trustees of the poor for one county pay to the trustees of the poor for another county, any sum of money, which the latter may be entitled to under any provision of this section: Provided, that such decree shall not extend to costs sustained more than six moths before the application to the court.

Proviso.

Liability of parents for the support of their children; and of children for the support of their parents—1 v 546 order of liability.

SECTION 13. *And be it further enacted,* That when any indigent person, through age, disease or other cause, shall be unable to support him or herself, the father or mother, grand-father or grand-mother, children or grand-children, of such person, shall, if able, provide for his or her support; the order of liability shall be; first, the father or mother;

second, the grand-father; third, the grand-mother; fourth, the children; fifth the grand-children; if the relation prior in order shall not be able, the relation subsequent in order shall be able; several relations of the same order shall, if liable, contribute equally; in case of neglect or refusal to provide as aforesaid, the court of general quarter sessions of the peace and gaol delivery within the county, wherein such indigent person, or wherein his or her relations liable, reside, shall have power to order such relation or relations to pay or contribute to such indigent person's support, a certain sum every month, as shall be deemed reasonable; and the said court shall have power to award execution, in like manner and form as upon a judgment in a court of law, to levy any sum, in arrear upon such order; which sum shall be payable to the treasurer of the trustees of the poor of the county, wherein the order is made, for the use of such indigent person; and if before such order is made, the trustees of the poor for either county have sustained any cost in the support or for the relief of such indigent person, the said court shall have power to order the relations, who were liable to provide for such person's support, to make compensation, and to issue execution as aforesaid.

2 v. 1036.

Power of the court of quarter sessions to enforce such liability.

SECTION 14. *And be it further enacted*, That if a husband, without sufficient cause, separate from his wife, or a father or mother, desert his or her children, leaving them without adequate means of support, so that such wife or children shall be received into the poor-house in either county of this state, the board of trustees of the poor for said county shall have power, without notice to such husband, father or mother, to issue a warrant of sequestration under the hand of the chairman for the time being, and the seal of the corporation, directed to the sheriff of said county, commanding him to sequester and seize into his hands, goods and chattles, rights and credits of such husband, father or mother, to the amount which they shall have determined to be requisite for the support of such wife, or the support and bringing

If a husband desert his wife or a parent his children, the trustees of the poor may sequester and seize any property belonging to such husband or parent—

1 v. 558. 2 v. 1037. 6 v. 320.

to what amount.

CHAPTER CXCV. 1829.

up such children, and for want of goods and chattles, rights and credits, to said amount, to sequester and seize lands and tenements of the said husband, father or mother, of the yearly value to be determined by said board and specified in said warrant, with all the rents and profits thereof; and said warrant of sequestration, from the time of the service thereof, shall be a lien upon the goods and chattles, rights and credits, lands and tenements, rents and profits seized, which shall be appropriated to the support of such wife, or the support and bringing up of said children, in preference to all subsequent conveyances, assignments, acquittances, contracts and debts of said husband father and mother; and the board of trustees of the poor for said county, may make orders for the sale of such goods and chattels, and for collecting and receiving such rights and credits and for receiving the rents and profits of such lands and tenements, and for leasing and occupying the same, and with the approbation and authority of the court of general quarter sessions of the peace and gaol delivery within the same county, the said board may sell the said lands and tenements and pass all the title and estate of the said husband, father or mother in and to the same; and they shall apply the proceeds to the support of such wife, or the support and bringing up of such children, either in or out of the poor-house, as they may deem expedient.

Lien of the warrant of sequestration.

Order for sale of goods, &c. so seized, &c.

lands so seized may be sold—how—

proceeds, how applied.

The seizing of rights and credits upon a warrant of sequestration issued by the board of trustees of the poor for either county, shall vest the legal interest in the trustees of the poor of said county in their corporate capacity, and the said corporation may in its own name receive, sue for, and recover the said rights and credits. The seizing of lands and tenements upon such warrant shall vest in the said corporation the right of possession, in virtue whereof said corporation may lease, occupy or manage said lands and tenements, recover the possession in ejectment and maintain actions of trespass for injuries to the same, while in their possession.

Rights and credits seized by the board on warrant of sequestration—how collected.

Trustees right in lands so seized.

The husband, father or mother, whose property shall be so sequestered, may at any time within one

Appeal on a warrant of se-

year after the issuing of the warrant of sequestration, appeal from the board of trustees of the poor, to the court of general quarter sessions of the peace and gaol delivery within the same county; but notwithstanding an appeal the said warrant shall be executed, and the lien thereof shall continue subject to the order of said court on the appeal. Upon the appeal the court shall have power to affirm or quash the proceedings or to direct any alterations, modification or amendment thereof; and in a case, in which it was proper to institute proceedings, the same shall not be quashed for errors or defects therein, but the proper modification or amendment shall be directed. The quashing of proceedings on an appeal shall not invalidate the sale of any goods or chattles, or the receipt of any rights, credits, rents or profits; and perishable goods may be sold by an order made during the pendency of an appeal; but the court may order restitution of the proceeds or make such other order as shall be just and equitable.

questration, may be had to the court of quarter sessions—

proceedings thereon.

If a husband without sufficient cause separate from his wife, or a father or mother desert his or her children, and there be good ground to believe, that such wife or children will become a charge upon the trustees of the poor, or if such wife or children shall be received into the poor-house, and there shall not be property, or rights or credits of such husband, father or mother, liable to be seized on a warrant of sequestration, sufficient for the support of such wife or children, in either case, the court of general quarter sessions of the peace and jail delivery within either county, shall have power, in a summary proceeding, to order such husband, father or mother, to provide for his or her wife or children, and for that purpose to pay to the treasurer of the trustees of the poor, of either county, a certain sum every month, not exceeding in any case, for a wife, sixteen dollars a month, or for a child twelve dollars a month; and the said court may require such husband, father or mother, to become bound with sufficient surety, to the state, by a judgment bond, in a penalty, to be determined by the court, for the payment of such sum or sums according to such order, and may en-

If a husband desert his wife, or a parent his children, who are likely to become a charge on the county, &c.

the court may order such husband or parent to provide for his wife or children, &c.

and to give security.

force compliance with such requirement, by imprisonment, and any justice of the peace, may, upon oath or affirmation, cause such husband, father or mother to be brought before him, and order him or her to give security in recognizance for his or her appearance at the next court of general quarter sessions of the peace and gaol delivery within the county, to be dealt with according to law, and for not departing the court without leave; and may commit him or her in case of neglect or refusal to give such security.

Justice of the peace may require surety of such husband, &c. for his appearance at court.

Persons bringing into the county non resident paupers, or retaining such in their employ may be required to give security for their removal, &c.
1 v. 555.
2 v. 1037.
2 v. 995.
6 v. 647.

SECTION 15. *And be it further enacted*, That any two trustees of the poor, or a trustee of the poor and a justice of the peace for either county of this state, shall have power to order any person who shall bring or cause to be brought into such county or who shall retain in his or her service or employment in such county, any indigent person not having a legal settlement in such county, and likely to become a charge upon the trustees of the poor, to become bound with sufficient surety or sureties to the state, by bond, in the penal sum of three hundred dollars, to remove such indigent person from said county, or to indemnify the trustees of the poor of said county from all cost for the support or otherwise on occasion of such indigent person, and to enforce obedience to such order by imprisonment; and to issue process under their hands and seals, directed to any constable for said county, for causing a person supposed to be liable to such order, to be brought before them, and of commitment.

Liability of corporations for introducing or retaining non-resident paupers.
6 v. 647.

If any indigent person not having a legal settlement in a county, shall be brought into such county by, or shall be retained therein, in the service or employment of a corporation, and shall during such employment or service or within thirty days after the end thereof become a charge upon the trustees of the poor of such county; the said trustees of the poor shall have a right to demand and receive from said corporation full compensation for the costs, for the support or otherwise on occasion of such indigent person, to be recovered, if not exceeding fifty dollars, before any justice of the peace, proceeding

Remedy.

according to the "Act providing for the recovery of small debts" which is extended to this cause of action, and if exceeding that sum, as other demands of the same amount.

Licenses for the landing of passengers or emigrants from a foreign country to this, how obtained.

In either county two trustees of the poor or two members of the levy-court and court of appeal, or a trustee of the poor and a member of said court, or a trustee of the poor and a justice of the peace, or any two of them, jointly, shall have authority to grant a license, for the landing in their county, from any ship or vessel, of any passengers or emigrants from a foreign country, upon payment to the treasurer of the poor of the sum of one dollar for each passenger or person for whom license is granted. This license shall be a sufficient warrant for the landing of the persons named in it, and shall exonerate the owner and master of the ship or vessel, and every person having charge thereof, from all liabilty on the ground of the landing of the persons named in the license, and from all obligation to receive again or remove said persons.

One dollar to be paid for each passenger.

Such license shall exonerate the owner, &c. of the ship from all liability, &c.

Penalty for landing such passengers without license. 2 v. 995. 1 v. 169, 548. 3 v 341.

If the owner, captain or master of a vessel having on board emigrants from a foreign country shall suffer any of said emigrants to be landed in either county in this State without a license as aforesaid, he shall forfeit and pay to the State, the sum of five hundred dollars, to be recovered with costs in an action of debt. It shall be the duty of the officers applied to for such license before granting it to enquire into the condition of the emigrants. The vessel shall be liable for every forfeiture incurred by any emigrant being landed from it; and in a proceeding for such forfeiture, a capias may be issued, upon which the defendant may be held to special bail, or an attachment may be issued, upon which the vessel may be seized and held, but such vessel shall be discharged from the attachment, upon sufficient special bail being given for the defendant, to the sheriff, before the return of the attachment, or after such return to the action.

Duty of the officer on granting license.

Vessel liable for this penalty—proceedings therefor.

Allowance to constable for serving process under this act.

SECTION 16. *And be it further enacted*, That the board of trustees of the poor for each county shall make a reasonable allowance to any constable for

such county for serving process issued pursuant to this act.

Liabilty to the payment of poor rates, no disqualification to a judge, justice of the peace or juror from setting or serving in settlement cases, &c

SECTION 17. *And be it further enacted*, That the fact that a person is an inhabitant or taxable in a county shall not disqualify him from sitting as a judge or justice of the peace, judicially, or serving as a juror or being examined as a witness in a cause or proceeding in which the settlement of a poor person in such county, or the liability of the trustees of the poor of such county, or any person to support such poor person, shall be in question.

This act evidence on the general issue—when.

In any suit, the defence against which depends upon this act, this act with the matter of justification under it, may be given in evidence under the general issue.

Levy-court to lay a *poor tax* annually—

SECTION 18. *And be it further enacted*, That the levy-court and court of appeal in each county shall annually provide for the trustees of the poor of such county, the money requisite to enable them to support the poor, who shall be a charge upon them, and to defray all necessary expenses by means of a poor tax, laid by said court, the clear proceeds of which when collected, shall be payable to the treasurer of the said trustees of the poor.

to be paid to the treasurer of the poor—

and accounted for, how.

The said court may require the trustees of the poor to lay before said court a particular account of all their expenditures, with a statement shewing the number of persons supported in the poor-house and all others, in respect to whom any expence shall have been incurred.

Expenses of the poor-house establishment to be published, *annually*. 6 v. 321.

The board of trustees of the poor shall, in March every year, cause to be published and distributed in each hundred of their county not less than twenty pamphlets containing an account of all their expenditures, stating the items, and specifying the amount of their expenditures for the poor-house establishment with the items, the amount expended for the relief of persons not in the poor-house with the items, and the amount of the allowances for burial expences of persons not in the poor-house, with the items, with a statement concerning the paupers supported in the poor-house, classing them so as to

shew the number of white and coloured persons, and of the males and females, and different ages of each.

No trustee, treasurer or overseer shall furnish any article for the poor house. 6 v. 319.

No trustee of the poor, treasurer or overseer, shall, directly or indirectly, furnish any article for the poor-house; but all purchases shall be made from persons not trustees; and if any of said officers shall offend against this provision, he shall forfeit and pay the sum of fifty dollars to any person who will sue for the same, to be recovered before any justice of the peace, with costs of suit; proceeding according to the act providing for the recovery of small debts, with the right of appeal as therein provided. And no account for any article furnished by a trustee, overseer or treasurer of the poor, shall be allowed.

Forfeiture for violating this provision.

Repeal of—ch. 225, a. 1 v. 544. ch. 218, b 2 v. 988 ch 249. b. 2 v, 1034. ch. 110, 3 v. 241. ch. 193, 6 v. 317. ch 227, 6 v. 361. ch 184, 5 v. 346.

SECTION 19. *And be it further enacted,* That the "Act for the relief of the poor;" and the "Act for the better relief of the poor;" and the supplementary act to the said act passed February 4, 1792; and the additional supplement to said act passed at Dover, February 3, 1802; and the further supplement to the said act, passed at Dover February 6, 1823; and the additional supplement to the said act, passed at Dover, January 30, 1824; and the act entitled "an additional supplement to an act entitled an act for the better relief of the poor of the county of Sussex," shall be and the same hereby are repealed from and after the first day of April next: Provided, that this repeal shall not impugn any thing contained in the fourth section of this act nor dissolve the corporations therein mentioned; and that this repeal shall not extend or be construed to revive any act or part of an act repealed by either of the aforesaid acts, and that the said acts now in force shall in respect to all acts and matters, which have been done or transacted, and for the recovery of all penalties, that have been incurred, continue in force in the same manner as if this act had not been passed.

Proviso.

Repeal of—ch 343, 6 v. 647.

And the "act more effectually to secure the county of Newcastle against any liability for the support and maintenance of non-resident paupers," shall be and hereby is repealed, from and after the

Proviso.

first day of October next, but all bonds and obligations taken in pursuance of said act, shall avail in the same manner as if this act had not been passed.

PASSED AT DOVER, *February* 12, 1829.

CHAPTER CXCVI.

AN ACT *to enable William Laws to locate certain vacant lands situate in N. W. Fork hundred in Sussex county, and to complete his title to the said lands.*

PASSED AT DOVER, *February* 12, 1829.

PRIVATE ACT.

CHAPTER CXCVII.

AN ACT *directing the manner of appointing in this State, Electors of President and Vice-President of the United States.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in general assembly met,* That the electors to be appointed in this state, for the election of a president and vice-president of the United States, shall be chosen by ballot by the citizens of the state having right to vote for representatives in the general assembly. For this purpose an election shall be held on the second Tuesday of November of the year in which such electors are to be appointed in the several counties of this state, at the places in the hundreds respectively at which the general election in the same year was held; but if it be impracticable to hold the election at any such place, the inspector shall appoint some other place, and give notice thereof as prescribed in relation to the general elec-

Electors, how chosen.

Election, when held;

where.

tion. The citizens qualified to vote shall give their votes in the particular hundreds in which they respectively reside, and not elsewhere; and each shall vote for the whole number of electors to be appointed as aforesaid; and if on reading the votes, any ticket shall be found to contain the names of more or fewer persons than the said number of electors, it shall not be counted.

Governor to make proclamation of election.

The governor, in September next preceding every election to be held pursuant to this act, shall by proclamation make known the number of the electors to be chosen, and the day of said election.

Who shall be the inspector.

The person who is inspector of a hundred for the general election next preceding every election to be held pursuant to this act, shall continue in office and be inspector of the same hundred for the election held pursuant to this act.

Sheriff to deliver to the inspectors lists, boxes, forms, &c. when.

The sheriff of each county, on or after the first day, and before the sixth day of November in the year in which an election is to be held pursuant to this act, shall deliver to the inspector of each hundred, in his county such alphabetical list, ballot boxes, and forms and directions as prescribed by the third section, and the last clause of the seventh section of the "act regulating the general election, which alphabetical list shall be the same that was used at the general election in October preceding every election to be held under this act, and which the clerk of the peace, shall forthwith, after receiving the same from the inspectors deliver to the sheriff. And in case any inspector acting at a general election in October, preceding the election to be held under this act, shall fail to deliver into the office of the clerk of the peace of his county, the alphabetical list as required by the eighth section of the act regulating the general election, it shall be the duty of the clerk of the peace immediately to call on the inspector so failing, and to demand said list for the purpose aforesaid, and the said clerk shall be entitled to demand, receive and recover from such inspector the sum of two dollars and mileage, as a compensation for his services.

6 v. 394, 402.

Clerk of the peace shall deliver to the sheriff the lists received from the inspectors—and if he has not received them he shall call upon the inspector and demand said lists—

compensation therefor, to be paid by the inspector,

Shff's duty in case of a vacancy in the office of inspector:

In case of a vacancy in the office of inspector of any hundred, the sheriff shall take care that said list, boxes, forms and directions are at the place of election in such hundred, on the day of holding the same, and delivered to the inspector as soon as chosen.

Such vacancy, how filled.

If the office of inspector of a hundred be vacant by his death, removal from the hundred or otherwise, or if the inspector be not present at the place of election, at nine o'clock in the forenoon of the day of election, the voters present shall proceed to choose an inspector in the same manner as provided by the fourth section of the act herein before mentioned.

Inspector shall take to his assistance two freeholders—he and they shall be sworn, &c. they may appoint clerks who shall be sworn, &c. Election, how conducted, &c.

The inspector immediately before opening the election, shall take to his assistance, two freeholders of the qualified voters present, and oath or affirmation shall be administered to the said inspector and freeholders; and they, or a majority of them shall have power to appoint clerks, who shall be sworn or affirmed, and every election under this act shall be opened, conducted and closed, and the votes read and counted, and a certificate thereof made in the same manner, and according to the same regulations as prescribed in these several particulars in relation to the general election by the act aforesaid. The inspectors of the several hundreds in each county, shall meet on the day next following the day of holding an election pursuant to this act, at twelve o'clock, noon, at the court house of their county, and together with the sheriff, coroner or prothonotary of the county, form a board of canvass as prescribed by the ninth section of the act aforesaid. The said board shall ascertain the names of all the persons voted for at said election in said county, and the number of votes given to each; for which purpose the certificate of said election in each hundred in said county, shall be produced or obtained, and the said board shall have the same powers and proceed in the same manner as prescribed in the said ninth section: and the sheriff, coroner or prothonotary and inspectors present, shall, before the separating of the board, make under their hands, three

6 v. 392.

Inspectors to meet on the day after the election, at the court-house.

Board of canvass.

6 v 402.

Proceedings of the board of canvass.

certificates of said election in their county, certifying the names of all the persons voted for, and the number of votes given to each, in words at length; and the said sheriff, coroner or prothonotary present at said board of canvass, shall in the course of the three days succeeding the day of meeting of the said board, personally or by deputy, deliver one of the said certificates to the governor and one other to the secretary of state; the other shall be delivered to the clerk of the supreme court for the county.

Certificates of election— to be delivered in three days— one to the governor, one to the secretary of State, and one to the clk of the sup. court

The governor shall without delay examine the certificates, and ascertain the electors chosen, and make known the same by proclamation, and cause notice to be transmitted to each elector.

Governor to make proclamation of the result of the election, & notify the electors.

SECTION 2. *And be it further enacted*, That if upon examining the aforesaid certificates, it shall appear to the governor that there has been a failure to choose one or more of the electors to be appointed in this state as aforesaid, he shall immediately issue writs for convening the general assembly at Dover, on the fourth Monday of the same November; and the elector or electors to be appointed in this State for the election of a president and vice-president of the United States, and not chosen in the election held pursuant to the preceding provisions of this act, shall be appointed by ballot by the General Assembly, so convened in joint meeting of the Senate and House of Representatives. In such joint meeting there shall be a distinct balloting for each elector, and a majority of all the votes given shall be necessary to an appointment; but if upon any balloting, two persons only shall be voted for, and each shall receive an equal number of votes, the speaker of the Senate shall give an additional casting vote; if upon twice balloting in succession, more than two persons be voted for, and one of said persons on each balloting receive one half the number of all the votes given, the speaker of the Senate may, on the second balloting give an additional casting vote to the person having one half of the number of all the votes given, or if he decline the speaker of the House of Representatives may, if he think proper, give an additional casting vote to said person having one half of said

In case of failure to elect one or more electors, the governor shall convene the General Assembly— when.

General Assembly to appoint in such case— by ballot— in joint meeting.

Mode of conducting the election.

Speaker of the Senate shall give and additional casting vote, when—

when he *may*.

Speaker of the House, when he may give such additional vote.

No member of the General Assembly to be an elector.

Certificates of the appointment of electors, to be made and signed, and attested, and transmitted, one to the governor, and one to each elector.

votes. In such appointment by the General Assembly, no member of either House shall be capable of the appointment. Certificates of such appointment by the General Assembly, shall be duly made and signed by the speaker of the Senate and the Speaker of the House of Representatives, and attested by the clerks of said Houses respectively, and shall be transmitted by the speaker of the Senate as follows; viz: one to the governor, in order that lists may be made, certified and delivered according to the act of Congress, and one to each of the electors appointed.

Electors, where they shall meet—

and when.

Vacancies, &c. how filled.

SECTION 3. *And be it further enacted,* That the electors chosen or appointed in this state for the election of a president and vice-president of the United States, shall meet and give their votes at Dover, on the day determined by congress for that purpose. In case of the death or inability to attend, of either of the electors, or if either of the electors be not present at the said time and place by twelve o'clock, noon, of the said day, the electors present shall appoint an elector in the place of him so not present.

Their pay.

The electors respectively shall receive for attendance and travel the same compensation as members of the General Assembly, to be paid by the state treasurer on a warrant assigned by the electors, out of any money in the treasury not otherwise appropriated.

Lists of electors, to be made out and delivered by the governor.

SECTION 4. *And be it further enacted,* That the governor shall cause three lists of the names of the electors duly made and certified, to be delivered to the electors according to the act of congress on or before the day of their meeting.

Inspectors to deliver certain papers to the clerk of the peace.

§8, 6 v. 402.

SECTION 5. *And be it further enacted,* That each inspector shall, on the day next following every election held pursuant to the first section of this act, deliver into the office of the clerk of the peace for his county, the several papers mentioned in the eighth section of the act hereinbefore mentioned, which shall be filed in the office of said clerk, and shall be public records.

Certain parts of ch. 257, 6 v. 392, extended to elections held

SECTION 6. *And be it further enacted,* That the fifth, sixth, seventh, eleventh, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nine-

teenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth and twenty-fifth sections, and the last clause of the ninth section of the "act regulating the general election," besides such other provisions of the said act as are herein before adopted, are hereby extended, and shall be applied to every election held pursuant to the first section of this act. under this act.

SECTION 7. *And be it further enacted,* That the same fees shall be allowed for services performed under this act, as are allowed for like services, performed pursuant to the act herein before mentioned. Fees.

SECTION 8. *And be it further enacted,* That the "act directing the manner of appointing electors of president and vice-president of the United States, passed at Dover February 3, 1825, be and hereby is repealed. Repeal of— ch. 272, 6 v. 485.

PASSED AT DOVER, *February* 13, 1829.

CHAPTER CXCVIII.

AN ACT *to amend the act for regulating fences within this government.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the clause of the first section of the "act for regulating fences within this government," beginning with the words "*to be levied*" and continuing to the end of said section be repealed; also that the clause of the second section of said act, beginning with the words "*to be levied,*" and continuing to the end of said section, be repealed; and that the third section of said act, be amended by expunging after the words "*upon proof thereof before,*" the words "*two justices,*" and inserting the words "*one justice*" in place thereof, and by conforming the residue of the section to this amendment, by making the word "*justices*" "*justice,*" and that the clause of said section, Amendment of ch. 70, a. 1 v. 180. ch. 154, 3 v. 342.

CHAPTER CXCVIII. 1829.

beginning with the words "*and that the said costs and charges,*" and continuing to the end of said section be repealed; and said sections shall be read and construed as amended.

3 v. 342.

SECTION 2. *And be it further enacted,* That the first and fourth sections except the last clause, beginning with the words "*and that any one justice*" of the said first section, of the additional supplement to the act herein before mentioned, passed at Dover, January 24, 1804, continue in force, and that all the other parts of the said act and the aforesaid excepted part of said first section, be and hereby are repealed.

Sums awarded by fence viewers, how recovered.

SECTION 3. *And be it further enacted,* That all sums found and awarded by fence viewers and all sums payable on account of costs and charges for repairing any fence pursuant to an order of a justice of the peace made according to the law in such case, if the same do not exceed fifty dollars, may be recovered before a justice of the peace proceeding according to the "act providing for the recovery of small debts."

6 v. 433.

PASSED AT DOVER, *February* 13, 1829.

CHAPTER CXCIX.

AN ACT *providing for the preservation of the public arms and accoutrements in Kent and Sussex counties.*

Armory to be built in Kent and Sussex counties, by the sheriffs thereof.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the sheriff in each of the aforesaid counties, shall cause to be placed on the public ground, on the south or south east side, and within sixty feet of the gaol in their respective counties, a house to be kept as an armory for the preservation therein, of the public arms and accoutrements of the state. And the accounts for the expenditures thereof being allowed by the

Expenses thereof, how paid.

auditor of accounts, he shall thereupon draw an order for the payment thereof, and the state-treasurer shall pay the same out of any money in the treasury not otherwise appropriated; provided, the allowance for each armory shall not exceed two hundred and fifty dollars. Proviso.

SECTION 2. *And be it enacted,* That it shall be the duty of the sheriff to deposit in the armory in their respective counties the public arms and accoutrements now in the court houses of said counties, and the expenses therefor shall be allowed by the levy-court and court of appeal, and paid as other allowances. And it shall be the duty of the sheriff, justices of the peace, constables, and militia officers in said counties to take and seize all public arms and accoutrements, which are in any place, or shall be in possession of any person, without authority, and to deposit the same as aforesaid; and each armory shall be kept by the sheriff, under a good lock and key, who shall preserve and safely keep therein, all the public arms and accoutrements, and from time to time deliver out and receive into such armory such arms and accoutrements when required by any officer, having authority to make orders and requisitions therefor. Sheriff to deposit the arms therein. Expenses thereof, how paid. Duty of certain public officers to seize public arms &c.

SECTION 3. *And be it enacted,* That if any suit is brought against any such officer for any seizure or taking as aforesaid, the burden of proof shall lie on the plaintiff, and the officer shall not pay any costs, but if judgment is rendered for the plaintiff the costs shall be allowed by the levy-court and court of appeal and paid as other allowances. In suits for such seizure, the burden of proof shall lie on plaintiff. Costs.

SECTION 4. *And be it enacted,* That if any person shall sell, buy or give away, or have in possession without authority, any of the public arms and accoutrements, after the first day of August next, he shall be guilty of a misdemeanor, and being convicted therefor on indictment in the court of general quarter sessions of the peace and gaol delivery, shall be fined not less than twenty nor exceeding forty dollars, with the costs of prosecution. Penalty for buying, giving away, &c. public arms.

PASSED AT DOVER, }
February 13, 1829. }

CHAPTER CC.

1829.

CHAPTER CC.

AN ACT *to authorize the owners and possessors of the marsh or low ground commonly called and known by the name of the Culbreath marsh, situate in the forest of Murderkill and Dover hundreds, in Kent county, to cut a ditch or drain through the same.*

PASSED AT DOVER, *February* 13, 1829. } PRIVATE ACT.

CHAPTER CCI.

A SUPPLEMENT *to the act entitled "An act regulating the general election.*

Place of election in Little-creek hundred, changed.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in general assembly met,* That the first section of the act to which this is a supplement be amended by striking out the words *"now occupied by Charles Hamm,"* after the words *"Little-creek hundred at the house"* and inserting these words *"of John Wright, Esq. in the village of Leipsic."*

The section before mentioned shall be read and construed according to the amendment hereinbefore prescribed, and in any edition of the laws of this state hereafter to be published, the act aforesaid shall be printed as amended by this act.

PASSED AT DOVER, *February* 14, 1829. }

CHAPTER CCII.

CHAPTER CCII.
1829.

AN ACT *directing the manner of choosing commissioners to regulate and repair the streets of Milford and for other purposes.*

Inhabitants of Milford to elect commissioners, &c.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That it shall and may be lawful for the inhabitants of the town of Milford, (living within the limits hereinafter described) who are free white male citizens and are house-keepers or possessors of lands or tenements in the said town and of the age of twenty-one years, to assemble at any convenient place in said town on the first Monday of March next, between the hours of three and nine o'clock in the afternoon, and on the same day annually in future, and then and there choose by ballot, five commissioners, one assessor, one inspector of accounts, one treasurer and one constable who shall continue in office for one year, or until others are duly elected.

Time and place of elections.

Term of office.

Commissioners, their powers.

SECTION 2. *And be it further enacted,* That the said commissioners for the time being, shall have full power and authority to cause the streets, lanes and alleys in said town to be repaired, supported, regulated and amended, in any manner they may deem most proper for the convenience and interest of the citizens of said town, and shall cause a fund to be raised by way of tax, upon persons authorized to vote for commissioners by this act, and upon all lands and tenements within the limits of said town, to discharge the expense of repairing the said streets or for any other purpose they may believe will contribute to the safety, convenience and prosperity of said town: Provided always, and be it enacted that the said commissioners, in case no tax shall be assessed and levied for the purposes herein before mentioned shall not be compelled to support or repair the streets in said town, now deemed public highways, and subject to be supported by the county of Kent.

Tax.

Town officers, to be sworn &c.

SECTION 3. *And be it further enacted,* That the said commissioners, assessor, inspector of accounts, treasurer and constable, shall before one of the justices of the peace in said town, be duly qualified by oath or affirmation, to perform the duties of their offices, respectively, to the best of their knowledge respectively, and without favor or partiality, and in two weeks after the first Monday in March next annually, the said assessor shall make a true and impartial assessment on all the persons qualified to vote under the provisions of this act and on all lands and tenements within the limits of said town, for the purpose of raising a general fund for defraying the expenses incurred, for the purposes herein before mentioned, and the said assessor shall forthwith after making the assessment, cause a duplicate thereof to be up in the most public place of the said town, notice whereof he shall give, by at least two advertisements; and if any person shall conceive himself to be aggrieved or overrated, by the said assessor, they may within twenty days after putting up said duplicate, appeal to the board of commissioners for the time being, who shall, or a majority of them, hold a court for that purpose, whose decision thereupon shall be final.

Duty of the assessor.

Duty of the inspector of accounts.

SECTION 4. *And be it further enacted,* That the inspector of accounts so elected, shall examine and ascertain that all accounts presented to him for approval are just, and were necessary to be expended to defray the expenses incurred by said commissioners, which shall be attested by them or a majority of them affixing their names thereto, in which case, and not otherwise, the said inspector shall endorse upon the bill, order or draft "allowed," together with the day of the month and year of the said endorsement, and sign his name thereto, and the said bill, order or draft, thus endorsed, shall be forthwith paid by the treasurer, out of the funds of said town in his hands.

Duty of the treasurer—

SECTION 5. *And be it further enacted,* That after the expiration of twenty days from the putting up of the said duplicate, the treasurer so elected, shall proceed to collect the taxes herein before directed to be assessed, and levied by the said assessor,

and corrected by the said commissioners or a majority of them in case of appeals, and the said treasurer is hereby authorized and empowered, in case of neglect or refusal to pay the said tax, to proceed to collect the same, in the same manner as is by law provided for the collection of county rates and levies, and the said treasurer shall, before he enters on the duties of his office, give his bond with sufficient security to the said commissioners, conditioned for the faithful discharge of the trust reposed in him; and he the said treasurer, shall discharge himself of all monies in his hands, by orders drawn on him by said commissioners or a majority of them and allowed by the inspector of accounts as aforesaid, and shall annually, in the month of February, settle his accounts with the commissioners for the time being or as often as a majority of them shall notify him for that purpose, and it shall be the duty of the treasurer aforesaid, to pay over to his successor within twenty days after his election, the money remaining in the treasury at the expiration of his office, and in case of his neglect or refusal, the said successor is hereby authorized to sue for any balance that shall be due from his predecessor in office.

his powers—

to give bond.

SECTION 6. *And be it further enacted*, That the constable so elected, shall within the limits and bounds, as the same are mentioned and defined in the seventh limits of the act entitled "an act to restrain swine from running at large within certain bounds" passed at Dover at the January session, 1829, have all the powers, and shall perform and discharge all the duties that belong to and are imposed upon the constables of Kent county, by the existing laws of this state, and shall receive such fees and compensations for his services as are allowed by the existing laws of this state, to the constables of said county for like services, and shall be liable to all such fines, penalties and forfeitures for neglect or breach of his duty as are imposed on the constables of said county in like cases, by the existing laws of this state: Provided always, that it shall not be lawful for said constable to execute any process, civil or criminal within the limits aforesaid, so far as

Constable, his powers,

ante p. 218.

and duties.

His fees.

CHAPTER CCII. 1829.

said limits exclusively appertain to the county of Sussex, unless the writ or warrant of process be issued to him by a justice of the peace residing within said last mentioned limits.

Pound to be provided and kept.

SECTION 7. *And be it further enacted,* That it shall and may be lawful for the commissioners, and they are hereby authorized and empowered to make and provide a suitable pound and to keep the same for the purpose of impounding any swine which may be found running at large within the aforesaid limits and bounds, contrary to the provisions of the aforesaid act of the general assembly, mentioned in the sixth section of this act, and it shall be the duty of the said constable *ex-officio,* to take up and impound in the said pound, all swine which may be found running at large within the said limits, contrary to the provisions of the said act, as mentioned in the aforesaid sixth section of this act, and generally to carry into effect all and every the provisions of said act, and in case any swine shall be taken up and impounded in the said pound by the said constable as aforesaid, and sale of such swine shall be made under the provisions of the said act, the one half of the proceeds of such sale be paid by said constable to the treasurer of the said town, and by him to be accounted for to the commissioners, aforesaid, to be appropriated to the purposes aforesaid, and the other one half of the said proceeds to the treasurer of the trustees of the poor of Kent county; the said constable first retaining out of said proceeds of such sale, for his own use, all such fees and compensation as are by the said act allowed to constables in such cases.

Swine to be impounded—

and sold.

Temporary place of confinement to be provided.

SECTION 8. *And be it further enacted,* That it shall and may be lawful for the said commissioners, and they are hereby authorized and empowered, to make and provide some safe and suitable place as a temporary place of confinement within the said town, and the said constable of said town shall be the keeper of such place of confinement, and any justice of the peace residing in the limits of the said town as hereinafter described, shall be and he his hereby invested with full authority, in all lawful cases of commitment, to

commit to the said place of confinement, any person guilty of a breach or disturbance of the peace, or any person guilty of any felony, or any person bound over to keep the peace, and who shall not enter into the proper recognizance to keep the peace within the last mentioned limits of the said town as hereinafter described, until such person can be conveniently removed to the common gaol of the county; and it shall be the duty of the said constable, upon any such temporary commitment as aforesaid, as keeper of said temporary place of confinement to receive all and every person so committed as aforesaid, and there keep securely confined until they can be conveniently removed to the common gaol of the county.

Duty of constable in regard to *nuisances.*

SECTION 9. *And be it further enacted,* That it shall be the duty of said constable to notify in writing, any person who shall occasion a nuisance, to remove the same from any street, lane or alley within the limits of the said town, within twenty-four hours from the time of such notification; and if such person so notified, shall neglect or refuse to remove the said nuisance within the time specified, he or they so refusing or neglecting to remove the same, shall forfeit and pay to the treasurer, for the use of said town, the sum of five dollars, to be sued for by said treasurer, and recovered as debts under fifty dollars are by law recoverable; and it further shall be the duty of the constable aforesaid to cause the said nuisance forthwith, after the expiration of the time specified as aforesaid, to be removed; and all expenses incurred in removal thereof shall be paid by the parties offending, to be recovered by the said constable, together with the costs of suit, as other debts under fifty dollars are recoverable, to and for his own use and benefit.

Penalty for continuing a nuisance.

Swine, poultry, &c. trespassing, &c. may be killed.

SECTION 10. *And be it further enacted,* That it shall and may be lawful to and for any person whatsoever, residing within the bounds as hereinafter described, to shoot or kill all poultry that may be found running at large and trespassing on the premises of any person residing within the bounds aforesaid, and to give notice thereof within one hour

thereafter to the owner or leave notice at his dwelling: Provided, the owner be known and not otherwise.

Assessor, &c. to provide place of election.

SECTION 11. *And be it further enacted,* That it shall be the duty of the present assessor, or in the case of his death, resignation or removal, the inspector or treasurer, and those hereafter to be elected, to appoint some suitable and convenient place for the holding of the annual elections in the said town, and he shall give at least ten days notice thereof, by three advertisements, in the most public places in the said town; and the said assessor, inspector or treasurer as the case may be, shall call to his assistance two discreet and judicious freeholders of the said town, who shall, together with the said assessor, inspector or treasurer, be the judges of the elections holden in the said town.

Notice thereof.

Boundaries of Milford.

SECTION 12. *And be it further enacted,* That the plot of the said town containing a description of the boundaries and landmarks of the said town, as laid out and surveyed under the superintendance of the commissioners elected by authority of the act entitled, "An act directing the manner of choosing commissioners to regulate, repair and light the streets in the town of Milford, and for other purposes," passed at Dover, Feb. 5th. 1807, shall be and remain in full force, and in all cases, and in all courts of law within this state, be deemed, taken and allowed as the boundaries and landmarks of the said town as if the aforesaid act was not repealed. And the said town shall be deemed to be bounded as follows, viz: Beginning at a corner late of Joseph Oliver, senior, deceased, and lands late of Peter Caverly, deceased, on Mispillion creek, and thence extending with the line of the aforesaid lands until it intersects the line of the lands late of William Bradley, deceased, and the said Joseph Oliver, senior, deceased, and thence till it intersects the line of John Draper's land, and thence extending therewith to Mispillion creek and then up said creek to the place of beginning.

4 v. 103.

Repeal of— ch. 40, 4 v. 103.

SECTION 13. *And be it further enacted,* That the act entitled, "An act directing the manner of choosing commissioners to regulate, repair and light the

streets in the town of Milford, and for other purposes," passed at Dover, February 5, 1807, and the act entitled a supplement to the act entitled "an act directing the manner of choosing commissioners, to regulate, repair and light the streets of Milford, and for other purposes," passed at Dover, in February, 1808, and the act entitled "A further supplement to an act entitled, "An act directing the manner of choosing commissioners to regulate and repair the streets in the town of Milford, and for other purposes," also to an act entitled "A supplement to the act directing the manner of choosing commissioners and for other purposes," passed at Dover, Feb. 4, 1825, be and the same are hereby repealed, made null and void.

ch. 72, 4 v. 225.

ch. 185, 6 v. 302.

PASSED AT DOVER, *February* 14, 1829.

CHAPTER CCIII.

AN ACT *to authorize the owners and possessors of the marsh and low grounds commonly called and known by the name of Bridge Branch situate in North-West-Fork hundred, Sussex county, to cut a ditch or drain through the same.*

PASSED AT DOVER, *February* 14, 1829.

PRIVATE ACT.

CHAPTER CCIV.

AN ACT *directing a new edition of the laws.*

New edition of the laws to be published.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That an edition of the laws of this state shall be published under the superintendance of Willard Hall.

Arrangement and contents.

In this edition, the laws shall be arranged under proper titles, disposed in alphabetical order. The Declaration of Independence and the Constitution of the United States shall be included. All acts and clauses not in force shall be omitted, unless the publication is rendered necessary by connexion with the other matter. All private acts shall be omitted.

Acts incorporating colleges, academies and schools, banks, turnpikes, and other companies, may be omitted; but of these acts, which have been printed among the laws, a statement shall be made of such matters as shall be deemed of public concern, and clauses imposing penalties shall be published.

If there be in different acts a clause substantially the same, proper to bepublish ed, it need not be published in relation to each act, but it may be connected with each act by a statement.

Acts relating to particular counties or places, if of a permanent nature, and the same have thereofore been printed, shall be published, but a summary of these acts may be published instead of publishing the same in the words thereof. These acts may be published in an appendix in the same volume with the other laws or in a separate volume.

There shall be an alphabetical index to the edition. The said edition shall be in octavo: and two thousand copies shall be printed.

Number of copies.

Willard Hall appointed to procure the printing, &c. to be done

Orders for payment, how drawn.

SECTION 2. *And be it further enacted,* That Willard Hall be appointed to procure the aforesaid copies to be printed and bound; and to make all necessary contracts in respect to the paper, printing and binding; with authority to draw orders upon the state treasurer for the payment of any sums that shall be payable according to such contracts. Each order shall specify every item, for which the sum contained in it is payable. Every person with whom a contract is made, shall give security to the state for the faithful performance of it. The contract for printing shall be executed at Wilmington.

Trustee of the school fund to transfer $3,000 to the credit of the State-treasurer.

SECTION 3. *And be it further enacted,* That the "trustee of the fund for establishing schools in the state of Delaware," shall transfer and place in the treasury of this state, to the credit of the state trea-

surer, the sum of three thousand dollars of the money belonging to the said fund; which sum is hereby appropriated to defray the expense of the aforesaid edition. And the state treasurer shall apply the same to the payment of orders drawn according to the preceding section.

This sum, a loan.

The sum aforesaid shall be a loan to the state, and the faith of the state is pledged for the repayment thereof to the fund aforesaid with interest; and all monies arising from sales of the copies aforesaid remaining clear, after deducting commissions, shall be applied to said repayment until the same is completed.

PASSED AT DOVER, *February* 14, 1829.

CHAPTER CCV.

2 v. 972, 1127.

AN ACT *regulating marriage.*

Prohibited degrees.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That no man or woman shall intermarry within the degrees hereafter named, that is to say:

No man shall marry his—grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, son's wife, sister, son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, mother, step-mother, Wife's mother, daughter, wife's daughter, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter.

No woman shall marry her—grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, step-father, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, husband's son's son, husband's daughter's son, brother's son, sister's son.

Marriages between a white person and a negro or mulatto, unlawful.

Marriage shall be unlawful between a white person and a *negro or mulatto.*

Marriages, how solemnized.

SECTION 2. *And be it further enacted,* That every preacher of the gospel, ordained or appointed according to the rules of the church to which he belongs, shall have authority to solemnize marriages. Also marriages may be solemnized or contracted between persons of any religious society according to the forms and usage of such society.

License.

But a preacher of the Gospel shall not solemnize a marriage without a license signed by the governor and countersigned by the secretary of state, and sealed with the seal of his office, unless the banns of such marriage, have been published at some church or stationary place of religious worship, belonging to the district wherein the woman resides, or to the congregation of which she is a member, or to the next adjacent congregation of the same society, on two several sabbaths immediately after divine service, and no objection has been made to such marriage. If there be no regular preaching of the Gospel, within the district in which the woman resides, or in the congregation of which she is a member, the banns may be published in a church or stationary place of religious worship, belonging to the next district, or to the next congregation of the denomination to which she belongs, in which there is preaching of the Gospel.

Publication of banns.

Consent of parents, &c when necessary.

SECTION 3. *And be it further enacted,* That a marriage, if the male be under the age of twenty-one years, or the female be under the age of eighteen years, shall not be solemnized without the consent of the father, or if there be no father, the guardian, or if there be no guardian, the mother of the party under such age.

Consent of master necessary.

A marriage, if either of the parties be a servant shall not be solemnized without the written consent of the master or mistress.

Penalty on servants for contracting marriage—

If a servant contract marriage during his or her term of sevitude, without consent as aforesaid, the term of his or her servitude, shall be extended six months after the regular expiration thereof, and all

the rights and powers of the master or mistress, shall continue during such extended term.

If a person being free marry with a servant without consent as aforesaid, such person shall forfeit and pay, if a man, thirty dollars, and if a woman, fifteen dollars, to the master or mistress, to be recovered before any justice of the peace, proceeding according to the act providing for the recovery of small debts.

On free person for marrying with a servant.

SECTION 4. *And be it further enacted,* That every preacher of the gospel who shall solemnize a marriage, and every religious society in which a marriage shall be solemnized or contracted, according to their forms and usages, shall enter in a book by him or them provided for that purpose, a true account of such marriage with the date thereof.

Register of marriages to be kept—by whom.

SECTION 5. *And be it further enacted,* That if a marriage, unlawful according to the first section of this act be solemnized, the same shall be absolutely void; and the parties thereto shall each be deemed guilty of a misdemeanor, and on conviction thereof shall forfeit and pay to the state a fine not less than one hundred dollars nor more than five hundred dollars; and if any preacher of the gospel shall knowingly and wilfully solemnize any such marriage, or if any person shall knowingly and wilfully procure, aid or abet the solemnizing or contracting of any such marriage, every preacher or person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof, shall forfeit and pay to the state a fine not less than one hundred nor exceeding five hundred dollars.

Marriage unlawful according to §1, is *void*; penalty on the parties.

Penalty on the preacher.

If a preacher of the gospel solemnize a marriage without a license, contrary to the second section of this act, except after publication of banns, and without objection being made as prescribed in said section, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall forfeit and pay to the state a fine of thirty dollars.

Penalty for solemnizing matrimony contrary to §2.

If a person not authorized according to the second section of this act, shall solemnize or pretend to solemnize a marriage, the said marriage shall be void, and such person shall be deemed guilty of a misdemeanor, and on conviction thereof shall forfeit

Penalty on person who is not authorized, pretending to solemnize matrimony.

and pay to the state a fine not less than one hundred dollars, nor exceeding five hundred dollars.

Penalty for assuming the character of a preacher for this purpose.

If any person not being a preacher of the gospel, ordained or appointed, according to the second section of this act, shall falsely assume the character of such preacher, and solemnize a marriage, he shall be deemed guilty of a misdemeanor, and on conviction thereof, forfeit and pay to the State a fine of one thousand dollars.

Penalty for solemnizing matrimony contrary to §3.

If any preacher of the Gospel, shall knowingly and wilfully solemnize a marriage contrary to the third section of this act, the party aggrieved shall have an action of trespass on the case, against him, and shall recover damages.

Fee for solemnizing matrimony.

SECTION 6. *And be it further enacted,* That the fee for solemnizing a marriage shall be one dollar and fifty cents.

Repeal of—ch. 211, b. 2 v. 972. §6 of ch. 28, c. 2 v. 1127.

SECTION 7. *And be it further enacted,* That the "act to regulate marriages, and the sixth section of the act, to regulate and appropriate certain finances of this State," shall be and hereby are repealed from and after the first day of July next, except so far as shall concern any forfeitures or penalties incurred under the same, and provided that no acts repealed by the said act, shall by this repeal be revived.

SECTION 8. *And be it further enacted,* That this act shall commence in operation and be in force on and after the first day of July next.

PASSED AT DOVER, *February* 16, 1829.

CHAPTER CCVI.

AN ACT *for the appointment of auditor of accounts.*

J. H. Harris appointed auditor.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That John H. Harris,

be and he is hereby appointed auditor of accounts.

SECTION 2. *And be it enacted,* That the auditor appointed by and in pursuance of this act, shall perform the same duties as are prescribed by the "act concerning the auditor of accounts" passed at Dover, February, 1829, and receive the same compensation and in the same manner as is now directed and required by the laws of this state.

ante p. 377.

PASSED AT DOVER, *February* 16, 1829.

CHAPTER CCVII.

AN ACT *for establishing the boundaries of the Town of Dover, and for other purposes therein mentioned.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That on the first Monday of March next after the passing of this act, there shall be an election held at the State House in Dover, in the manner hereinafter prescribed, for the purpose of electing five persons, who shall be resident freeholders in the said town of Dover, to be denominated "*Commissioners of the town of Dover,*" who shall have full power and authority, and they or any three of them, are hereby required and directed, as soon as conveniently may be after their election, taking with them a skilful surveyor to be qualified upon his solemn oath or affirmation, to make an accurate survey of the town of Dover aforesaid, and to ascertain and fix the boundaries and limits of the same; and to regulate the streets, lanes and alleys now open within the said town, and the said surveyor shall under the superintendance and direction of the commissioners aforesaid, make out a careful plot or map of the survey, so to be made as aforesaid; which plot or map shall contain an account of the boundaries of the said town, and the courses, width and names of the several streets, lanes

Election for commissioners, when held.

Commissioners—their powers.

Survey.

Plot.

CHAPTER CCVII. 1829.

and alleys, (the names of said streets, lanes and alleys to be given by the commissioners aforesaid, or a majority of them;) and the said plot or map shall be signed by the said surveyor and commissioners or a majority of them; and the same shall be lodged in the recorder's office, for the county of Kent, there to be recorded; which said plot or map, or the record thereof, shall be deemed, taken and received in all courts of law or equity, or elsewhere, within this state, to be conclusive evidence of the boundaries of the said town of Dover, and of the courses, width and names of the several streets, lanes and alleys, within the same: Provided always, That the said commissioners in ascertaining and fixing the said boundaries of the town of Dover aforesaid, not extend the same in a northern and southern direction more than eighty perches from the centre of the green in said town; and in regulating the streets, lanes and alleys in the said town, they shall confine themselves as nearly as may be, to the now reputed streets, lanes and alleys within the same; and that they be not permitted, and they are hereby forbidden to open any street, lane, or alley, or to interfere with any building formerly erected on the side of any street, lane or alley: Provided nevertheless, That nothing herein contained, shall be construed to hinder or prevent the laying out, opening, or altering any such street, lane, or alley as aforesaid, for the purpose of straitening the same or otherwise, where the person or persons through whose ground the same would run, shall voluntarily agree that the same may be done.

Return.

Proviso.

Stones, &c. to be fixed at the intersection of the streets.

SECTION 2. *And be it enacted*, That the said commissioners shall fix posts or stones in the earth in the centre or middle of the streets, respectively, where they intersect one another, which posts and stones so set and fixed in the earth in the middle of the streets as aforesaid, as well as all such other posts and stones as shall from time to time hereafter be so set or fixed in the earth, by the commissioners hereafter to be elected, shall in all cases and in all courts of law or equity within this state, be deemed, taken and allowed as land marks; and if any person or per-

sons shall, at any time hereafter, wilfully pluck up or remove any of the said posts or stones, every person so offending shall be guilty of a misdemeanor, and upon conviction thereof in the court of general quarter sessions of the peace, in and for Kent county, shall severally forfeit and pay the sum of one hundred dollars, besides the costs of prosecution, to the use of the commissioners and inhabitants of said town of Dover, to be employed in and towards the defraying the expenses of any public improvement, which may be undertaken or executed by virtue of this act by the said commissioners of the town of Dover.

Penalty for removing these stones.

SECTION 3. *And be it further enacted,* That if any owner or owners of any house lot or lots or of part of a house, lot, or lots, within the said town of Dover, shall conceive him, her or themselves aggrieved, by any act or acts of the said commissioners or a majority of them, relative to the boundaries of the said town, the location of the said streets, lanes and alleys, or any other matter or thing which the commissioners aforesaid may do or perform, by virtue of this act, that then it shall and may be lawful for such person, or persons, at any time within thirty days next following the delivery of the said return into the recorder's office, or within thirty days next after the determination of the said commissioners to do or perform any other matter or thing shall be made public, but not after, to appeal therefrom, to the next court of common pleas or to the next supreme court to be holden at Dover, in and for Kent county aforesaid, he, she, or they, first entering into a recognizance before the prothonotary or clerk of the said court, with at least one sufficient surety, in double the value of the property in controversy and sufficient to answer all costs to prosecute the said appeal with effect, and to abide the order of the said court.

Owners of property aggrieved by an act of the commissioners, may appeal therefrom—

to the court of com. pleas or sup. court;

first giving security.

SECTION 4. *And be it enacted,* That in case of an appeal or appeals in manner aforesaid, the person or persons who may conceive, him, her or themselves to be aggreived, shall be the appellant or appellants, and the commissioners for the time being, or a majority of them, shall be the appellee, and the

Proceedings on appeal.

CHAPTER CCVII. 1829.

court of common pleas, or the supreme court, are hereby authorized and empowered to direct such proceedings to be had therein, as will cause a trial to be had by the court and jury, of the matter in controversy between the parties, by a feigned issue, and to give judgment accordingly; and if in any such case, it shall be determined by a jury, that the appellant or appellants is or are aggrieved, the quantity of land claimed, or how and in what particular the appellant or appellants are injured or aggrieved, shall be particularly described by the verdict of the same jury and judgment of the said court; and in all such cases, the court and jury shall have full and ample power and authority to take into consideration all circumstances relative to the parties, and to do justice according to the the very right of the matter and law of the land.

Clerk of the peace to hold the election for commissioners.

SECTION 5. *And be it enacted*, That the clerk of the peace for Kent county aforesaid, be empowered and required on the first Monday in the month of March next, and on the first Monday in the month of March in every succeeding year thereafter to hold an election for five commissioners of the town of Dover, after giving five days previous notice of the time and place of holding said election, that he shall take to his aid two freeholders of the said town to assist him in holding such elections; that at such elections every inhabitant of the said town entitled to vote, at any general or special election in this state; provided they shall have resided in the said town for the space of twelve months next preceding the time of holding such election, and be a taxable therein; and also every free white man and woman of the age of twenty-one years and upwards, who shall have a freehold interest in any real estate within the boundaries of the said town of Dover, and which is the subject of taxation, although not an inhabitant of the said town, shall be entitled to vote at such election. And the five citizens as aforesaid, who shall have the highest number of the votes given in, at any such election, to be held on the first Monday of March in every year after the passing of this act, shall be the commissioners of the town of

Notice.

Qualifications of voters.

Dover, aforesaid, until the first Monday of March in the year thereafter, and until successors shall be elected and duly qualified to enter upon the duties of their office.

Judges of the election to be sworn.

SECTION 6. *And be it further enacted,* That the clerk of the peace aforesaid, shall administer an oath or affirmation to the freeholders, which he shall appoint to aid him in holding such elections which said oath or affirmation may be after the following form: You ——— do solemnly *swear on the holy evangels of Almighty God,* (or, *and truly declare and affirm,* as the case may be) that you will discharge the duties of a judge of this election with fidelity, and that you will not consent to the receiving or rejecting of any vote, through favour, fear, affection, malice or the hope of reward: *So help you God* [*or so you declare and affirm.*] The clerk of the peace shall first administer the oath or affirmation to the freeholders, after which one of the freeholders shall administer it to him; and the said oath or affirmation shall be administered to the freeholders, and the clerk of the peace respectively, before the opening of such election, or the receiving of any vote. The clerk of the peace and the freeholders aforesaid, shall make out a return under their hands and seals respectively, of the election of the said commissioners and shall cause the same to be filed in the office of the prothonotary of the court of common pleas of the State of Delaware, in and for Kent county aforesaid; and an authenticated copy of the said return, under the hand and seal of the prothonotary of the said county, shall be evidence of the matters therein contained, in any court of justice in this State.

Oath.

Election returns.

Assessor to be appointed—

his duties—

SECTION 7. *And be it further enacted,* That the said commissioners of the town of Dover, shall have power and authority, and they are hereby required as soon as conveniently may be after their election on the first Monday of March next, and the first Monday in March in every year thereafter, to appoint some suitable person an assessor to make an assessment, on the lands and tenements and assessable personal es-

CHAPTER CCVII. 1829.

tate, included within the bounds of the town of Dover, to be ascertained by the commissioners aforesaid, and on all those persons residing within the same, that are liable under the existing laws of this State, to be assessed to any county or state rate; which assessment shall be made and returned to the said commissioners, within six weeks next after the appointment of the said assessor; who shall cause three or more copies thereof, to be set up in at least three of the most public places in the said town, giving notice of the time when, and the place where, the said commissioners will hear and decide upon all appeals from the said assessment, and they shall, when the said appeals all shall be settled, put up at least three lists of the rates as finally settled and established by them, in some suitable public places, with the sum each taxable is to pay, against his name. The said commissioners shall be, and they are hereby empowered to determine the sum to be raised on the said town, and shall on the said rates of assessment, respectively apportion the sum, so by them directed to be raised on the said town; and also to cause such additional wells and pumps to be settled, as they shall deem necessary for the security of the said town of Dover against fire; to provide fire ladders and hooks and buckets; to impose a fine of five dollars upon every house-keeper, who shall permit his, her or their chimney to catch on fire, in such a state of weather as would be likely to endanger the said town; to cause gravel, sand or earth, to be carted and thrown on such foot paths or ways of the said town, as require improvement: to lay out the proper pavements and gutters for carrying off the water, at the expense of the proprietors of the ground, in front of which such pavements and gutters are made; to fix upon some eligible situation for, and to erect a market house, which shall not however, cost exceeding the sum of four hundred dollars; and upon application of either party made to them, to enter upon the lands of any person or persons, in order to lay out the foundation and regulate the walls to be built between party and party within the said town, as to the breadth or thickness

return of assessment—

appeals from.

Tax, how laid.

Pumps, wells, &c.

Ladders. &c.

Foot paths.

Pavements.

Market house.

Party walls.

thereof, which foundation shall be laid equally upon the lands of the persons between whom such party walls shall be made; and the first builder shall be reimbursed one moiety of the charge of such party walls, or for so much thereof, as the next builder may have occasion to make use of, before such next builder, shall in any wise use or break into the said wall; and the charge or value thereof, shall be set by the said commissioners or any three of them: provided nevertheless, that nothing in this act, shall be construed to abrogate, annul or alter, any contract that hath heretofore been, or that may hereafter be made, by the owners of adjoining lands in the said town, or to authorize laying out and putting down any pavement of brick, other than in front of the buildings in the said town, or for the purpose of joining pavements where the space between the buildings shall not exceed fifteen yards. The said commissioners or any three of them, shall have full power to regulate all partition fences within the said town; and where the adjoining owners or possessors do improve or inclose their lots, such fences shall be made in the manner generally used; and kept in good order at the equal cost of the parties; and the said commissioners shall be the judges of the costs or charges to be borne by both or either of the said parties; and if either party between whom such partition fence is, or shall be made, on request of the other, shall neglect or refuse to pay his, her or their share, or proportion of the expense of such partition fence, to be ascertained and fixed by the commissioners as aforesaid, and for keeping the same afterwards in repair, that then the party at whose costs the same was so made and repaired, may recover the same before any justice of the peace for the county of Kent aforesaid, or in any court of this State, as debts of a like amount are recovered by the laws of this State, and the said commissioners shall be paid by the party or parties between whom such partition fence or party-wall is, or shall be made, one dollar and no more.

Partition fences.

SECTION 8. *And be it further enacted,* That the said commissioners shall have power and authority,

Collector to be appointed—

CHAPTER CCVII.

1829.

and they are hereby required to appoint annually a collector of the taxes imposed by them, on the persons and property within the bounds of the said town; and the collector by them to be appointed, shall have as full and ample power to collect or enforce payment of the said taxes or rates imposed by the commissioners as aforesaid, as the collectors of county rates and levies, have or may have by the laws of this state; and that the said collector shall be allowed by the commissioners aforesaid, five per centum for the collection of the said rates or taxes, and the said collector shall on the first day of September next, after his appointment, pay over to the town treasurer, who shall be appointed by the said commissioners, at the same time and place that they appoint the said collector, the whole amount of the rates or taxes imposed as aforesaid, on the persons and property within the bounds of the said town as aforesaid, deducting therefrom, only the amount of delinquencies, which shall have been allowed by the said commissioners, and his compensation or per centum for his trouble. The said collector shall take an oath or affirmation before he enters upon the duties of his office, to perform the same with fidelity, which oath or affirmation, shall be administered to him by one of the said commissioners, and he shall also enter into a judgment bond, with sufficient surety, in double the amount of the rates and levies which it shall be his duty to collect, to the said commissioners and their successors, with condition thereto annexed, that the same shall be void if the said collector shall faithfully and diligently discharge the duties of his said office, and pay over to the town treasurer aforesaid, the amount of the rates and taxes as aforesaid, or otherwise, to be and remain in full force and effect; and in case of delinquency by such collector, the said commissioners may enter such bond, and issue execution immediately for the amount of such delinquency.

his powers—

his fees—

his oath—

to give bond.

Treasurer to give bond.

SECTION 9. *And be it further enacted*, That the said commissioners shall take from the person by them appointed as aforesaid town treasurer a judgment bond in the penal sum of two thousand

dollars, with sufficient sureties for the faithful performance of his duties as prescribed by this act; which said bond shall be taken in the name of the "commissioners of the town of Dover." And the said commissioners shall also appoint a clerk of the said town, who shall keep minutes of the proceedings of the said commissioners, in a book to be by him provided for that purpose, which said book of minutes shall be evidence in any court of justice in this state, of the proceedings of the said commissioners; and the said clerk shall keep all books of accounts, and perform all other matters and things, which may appertain to his said office, for which he shall receive a compensation to be fixed by the said commissioners.

Town clerk.

SECTION 10. *And be it further enacted,* That the town treasurer aforesaid, shall not pay out any money that shall come to his hands, except it be upon a written order, signed by at least a majority of the said commissioners, and attested by the clerk of the said town; that he shall settle his accounts once a year before the said commissioners, at such time as they shall appoint for that purpose, and pay over to his successor in office, any balance that may appear to be in his hands, after deducting therefrom two per centum on the amount by him received, and paid out to the orders of the commissioners as aforesaid, for his trouble; and that the said treasurer shall deposite all money by him received by virtue of this act, in the Farmer's Bank of the state of Delaware, and may draw for the same from time to time, to pay the orders of the said commissioners, or the amount of his commissions.

Treasurer shall pay money only upon written orders, &c.

Settlements.

his fees.

he shall deposit the funds of the town in the Farmers' bank.

SECTION 11. *And be it further enacted,* That the commissioners aforesaid, or a majority of them, are authorized, empowered and required, to cause to be put down a pavement in front of the State House, and to repair the roof to prevent its leaking, the walls of the said house by filling up the pudlock holes, and otherwise to repair the same as to them may seem necessary, and to draw on the state treasurer for the amount of the said pavement and repairs, who is hereby authorized and required to

Pavement in front of the State-house &c.

CHAPTER CCVII. 1829.

pay the said order out of any monies in his hands, not otherwise appropriated: Provided, that the sum expended in repairing said walls, do not exceed seventy-five dollars.

Commissioners may cause pavements to be laid before private houses, and recover the expense from the owner—when.

SECTION 12. *And be it further enacted,* That if the proprietor of any house or land before or in front of which the said commissioners shall have laid out pavements and gutters for carrying off water, shall neglect or refuse, for the space of three months to put down such pavement, or to cut and make such gutters, it shall and may be lawful for the said commissioners to cause such pavements and gutters to be made and to recover the costs of the same by distress and sale of any goods, chattles, lands and tenements belonging to such proprietor within the bounds of the said town. And if any pavement already down shall be deemed an insufficient pavement by the said commissioners or a majority of them, they shall have power to direct the owner thereof to make a sufficient one, and upon his neglecting or refusing to do so, for the space of three months, the said commissioners shall cause the same to be done, and recover the expense of the same in the same manner, as is herein prescribed for the recovery of the costs of constructing and making new pavements and gutters for carrying off water when the owner of the house or land in front of which the same is made, hath neglected or refused to do so for the space of three months. The said commissioners shall also have power to abate nuisances within the boundaries of the said town, to ascertain, fix and limit the rent to be paid for the use of the stalls in the market house by them to be constructed, to appoint a clerk of the said market and to make rules and regulations to govern the same, and to inflict penalties for the violation thereof.

May abate nuisances, &c.

Commissioners not to receive any money raised by this act.

SECTION 13. *And be it further enacted,* That the said commissioners shall not, themselves, receive any money to be raised by virtue of this act, and their draughts or orders upon the said treasurer shall always be in favour of those to whom it may be due for services rendered, or for materials furnished, the said town; and that if any commissioner shall

get into his possession any money raised upon the said town against the provisions of this law, or be guilty of any malpractices to the injury of the said town, he shall thereby forfeit his office, and a suit may be instituted and maintained against him in the name of the commissioners of the said town to recover compensation in damages for the injury sustained;—And the said commissioners or any one of them, shall be liable to be indicted and fined, on conviction, for any fraudulent or oppressive act done by them, or any of them, under colour of their said office.

Commissioners incorporated.

SECTION 14. *And be it further enacted*, That the commissioners of the town of Dover, to be elected as herein before prescribed, shall be, and they are hereby created a body politic and corporate, in law, and the said commissioners of the town of Dover, and their successors shall be able and capable to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended in all courts of judicature whatsoever in this state by the corporate name of "The Commissioners of the town of Dover;" and may have and use a common seal, with such device or devices as they shall think proper, with power to alter or change the same as may be deemed expedient; to purchase, take, hold, receive and enjoy any messuages, lands, tenements or hereditaments in fee simple or otherwise; and also goods and chattles, rights and credits, and to alien, grant, demise, sell and dispose of the same in such manner and form as they may deem expedient: Provided nevertheless, that there is hereby reserved to the legislature the power and authority to repeal this act or any part thereof or any other law which may hereafter be enacted respecting the said town of Dover.

Corporate powers.

Fines, &c. under this act appropriated.

SECTION 15. *And be it further enacted*, That all fines and forfeitures which may accrue or be recovered by virtue of this act, shall be for the use of the said town of Dover.

Vacancies in the board of commissioners, how filled.

SECTION 16. *And be it further enacted*, That if the place of any of the said commissioners shall become vacant, by death, resignation or otherwise

CHAPTER CCVII. 1829.

during the term for which such commissioner was chosen, it shall be supplied by the remaining commissioners; who are hereby directed and required to elect by ballot, as soon as conveniently may be thereafter, some suitable person to fill such vacancy.

Ornamental trees, &c.

SECTION 17. *And be it further enacted,* That the said commissioners shall have power and authority to direct the planting of ornamental trees, in such places, and at such distance from each other, as they or a majority of them may deem meet and proper; and also to direct what kind of defences shall be erected around the same. If the said commissioners shall direct the planting of any tree or trees, and the erection of defences for the same in front of any house or land within the bounds of the said town, the costs thereof, shall in all cases be borne and defrayed by the proprietor of such house or lot; and if such proprietor shall neglect or refuse to plant such tree or trees, or to erect such defence or defences, for the space of three months, it shall and may be lawful for the said commissioners to cause such trees to be planted and such defences to be erected, and to recover the costs thereof from such proprietor in the manner prescribed in the twelfth section of this act, for the recovery of the costs of putting down pavements and cutting and constructing gutters to carry off water. In all cases where it shall become necessary under the provisions of this act, for the said commissioners to cause any work or labor to be done and performed, in consequence of the neglect or refusal of any proprietor of any house or ground situate within the limits of the said town, to do the same, it shall and may be lawful for the said commissioners to authorize, by writing under their hands or the hands of a majority of them, the collector of the said town to levy the distress upon and to make sale of the goods and chattles, lands and tenements, of such neglecting or refusing proprietor.

This act not to affect public roads.

SECTION 18. *And be it further enacted,* That nothing herein contained, shall be construed or understood to affect the public roads running through,

in and about the said town, all of which shall remain to be kept up and protected as they heretofore have been, by the existing laws of the state.

CHAPTER CCVII. 1829.

PASSED AT DOVER, *February* 16, 1829.

CHAPTER CCVIII.

AN ACT *concerning the probate of wills and the administration of the personal estate of deceased persons.*

1 v. 89, 426, 286, 411. 2 v. 891, 1070. 4 v. 46, 271. 6 v. 158, 7 v. 100, 78.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That a last will and testament shall be proved before the register of the county, wherein was the place of residence of the testator at the time of his death. The last will and testament of a person having at the time of his death, no place of residence in this state, may be proved before the register of the county, wherein are any goods or chattles, rights or credits, lands or tenements of the deceased. A last will and testament being proved, shall be recorded in the office of the register, and the record, or an office copy thereof shall be sufficient evidence, in respect both to real and personal estate; the original shall be preserved in said office.

Will, where proved;

to be recorded and original retained.

Proof of a last will and testament may be taken without giving notice to any person interested, unless a party shall request notice to be given. Upon such request the register shall, and he in his own discretion in any case may, appoint a time for taking the proof, and thereupon award process of citation, which he may issue into every county, for citing all persons interested, (those voluntarily appearing excepted) to be present, if they think proper, at the taking of such proof; in respect to parties not being within this state, he may order such service or publication of

Proof of will—

notice thereof.

notice of the time and place of taking the proof, as he shall deem reasonable.

Review to whom it shall be granted— Any person interested, who shall not either voluntarily appear or be served with a citation or notice as aforesaid, or who shall at the time of taking the proof be under disability of infancy, coverture, or incompetency of mind, shall, after proof taken, have a right of review, which shall be ordered by the register upon petition, and upon which there shall be the same proceedings as upon a caveat; and the allowance of the will, and the granting letters testamentary thereupon may be affirmed, or such allowance and letters may be revoked, and the instrument rejected. Upon such review, the proof first taken, if the attendance of the witness making it cannot be procured, shall be competent evidence: and if there have been a trial the proceedings shall be evidence. A petition of review shall not be received after the expiration of seven years from the time of taking the proof, except in case of disability as aforesaid, and in that case, such petition shall not be received after the expiration of three years from the removal of the disability.

how granted— and proceedings thereon.

Limitation.

Caveat shall be received, when; A caveat against the allowance of an instrument as a last will and testament, shall be received at any time before proof thereof taken; and upon such caveat the register shall appoint a time for hearing the allegations and proofs of the parties, and shall award process of citation, for the parties interested, and order service or publication of notice as herein before prescribed, upon request of notice to be given; but if when a caveat is received, a time have been appointed, and process issued, it shall not be necessary to make another appointment, or to issue other process; but the hearing may proceed at the time first appointed. The taking of the proof or the hearing may be adjourned, and other process may be awarded and other order may be made.

proceedings thereon;

notice.

Register may order issues of fact to be tried by a jury. The register shall have power to order any issue or issues of fact whereof he may prescribe the form, touching an instrument purporting to be a last will and testament, to be tried by a jury at the bar of the supreme court, or of the court of common pleas.

SECTION 2. *And be it further enacted,* That a last will and testament being allowed, letters testamentary thereupon shall be granted, to the executor or executors thereof, becoming bound with surety or sureties, as herein after required; in case of the refusal or neglect of one or more of the executors, so to become bound with surety or sureties, or in case of the renunciation or incapacity of one or more of the executors, letters testamentary shall be granted to the other executor or executors; and in case of such refusal, neglect, renunciation or incapacity of all the executors, or if no executor be named, administration with the will annexed shall be granted.

Will being allowed, *letters testamentary,* shall be granted to the ex'r. he giving security—

when they may be granted to one of several ex'rs.

Administration *with the will annexed.* when granted.

If letters testamentary be not granted to a person named as executor of a last will and testament, such person shall have no authority nor right as executor of such will and testament; and the effect shall be the same as if the nomination of such person as executor thereof were revoked: if by mistake, he be made a party as such executor, whether as plaintiff or defendant in a suit, the proceeding may be amended by striking out his name. But if a person under the age [of] twenty one years be appointed executor, letters testamentary shall be granted to him on his attaining to that age, and giving bond as required on the grant of such letters; and in the mean time letters testamentary shall be granted to the other executor or executors, or if there be none capable and willing to act, administration during the minority of the infant executor, with the will annexed, shall be granted. In no other case shall letters testamentary be granted, after the grant of administration, with the will annexed, or after the expiration of six months from the grant of letters testamentary, to another executor.

A person named ex'r. shall have no authority if letters be not granted.

Administration *during minority,* when granted.

Letters testamentary may be granted to a married woman.

Letters testamentary may be granted to a married woman

SECTION 3. *And be it further enacted,* That administration of the goods and chattels, rights and credits of a person deceased intestate, shall be granted by the register of the county wherein was the place of residence of the deceased, at the time of his death, or if the deceased, at the time of his death had no place

Administration, where granted;

CHAPTER CCVIII. 1829.

of residence in this State, by the register of the county wherein are any such goods, chattels, rights or credits, or any lands or tenements of the deceased.

to whom.

Administration shall be granted to the persons entitled to the residue of the personal estate of the deceased, or to some one or more of them; or if there be none such capable, and who will administer, then to the creditors of the deceased, or some one or more of them; or if there be no creditor capable, and who will administer, then to any suitable person. But in granting administration with the will annexed, any legatee may be preferred to creditors; and in case of any administration, if the person having the right to administer, be incapable, or if some be incapable, and the rest refuse or neglect to administer, the administration may be granted as the register shall deem most beneficial for them. Administration may be granted to a person entitled, and to others not entitled jointly with him, with his consent.

Administration may be granted to a married woman, or to her husband upon her right.

Adm'n. on the estate of a non-resident, where granted.

If in any case it shall be expedient, that administration be granted within this State, upon the estate of a person, who at the time of his death, had no place of residence in this State, and left a will proved in another State or country, such administration may be granted by the register of either county, to any suitable person.

Adm'n. *d. b. n.* and *c. t. a.* to be granted under the same regulations as original ad'mn.

Administration of goods and chattels, rights and credits, not administered, *(with the will annexed, if there be a will)* shall be granted under the same regulations, as an original administration; and such administration may be granted upon the removal from office, or the decease of a sole executor or administrator, or of all the executors or administrators when there are several. An executor of an executor, shall not represent the first testator, nor have power as such, to administer his estate.

An ex'r. of an ex'r. shall not represent the first testator.

Adm'n. *pendente lite* or *durante*

Administration during the pendency of a litigation, concerning a will, or the right to administer, or

during the absence of an executor, may be granted according to the register's discretion.

absentia, when granted.

SECTION 4. *And be it further enacted*, That letters testamentary or administration, shall not be granted to any person under the age of twenty-one years, or of unsound mind, or convict of a crime disqualifying from taking an oath or affirmation.

Persons disqualified from being adm'rs.

SECTION 5. *And be it further enacted*, That if an executor or administrator through absence or inability, neglect the duties of his office, the register shall have power to remove him from office.

An ex'r. or adm'r may be *removed*, when.

If after administration granted, a will of the deceased, constituting an executor, or disposing of his personal estate or any part of it, be proved, and letters testamentary or administration, with the will annexed, be thereupon granted, the prior administrator shall, by such grant of letters testamentary or administration, with the will annexed, be removed from office; but all lawful acts done by said administrator before the grant of such letters testamentary, or administration, with the will annexed, shall be valid.

Letters granted on the discovery of a will, shall be a removal of a former adm'r.

but his lawful acts shall be valid.

SECTION 6. *And be it further enacted*, That upon granting letters testamentary or administration, each executor or administrator shall, with sufficient surety or sureties, become bound to the state of Delaware, by a joint and several obligation, to be with the security approved by the register, in a penal sum to be determined by the register and to be double the best estimate that can be made of the personal estate of the deceased with condition according to the following form:

Executors and administrators, to give bond, and surety,

penalty.

"The condition of this obligation is such, that if the above named —— —— [*add the name of office* as executor of the last will and testament of —— ——, deceased, *or* administrator of all and singular the goods and chattels, rights and credits of —— ——, deceased, *or otherwise, as the case may be*] shall cause a true and perfect inventory and just appraisement to be made of all and singular the goods and chattles of said deceased, whereof the said —— ——† shall have knowledge, and the same with a true and perfect list of all and singular the

Condition.

CHAPTER CCVIII. 1829.

debts and credits due or belonging to the said deceased, whereof the said —— ——2† shall have knowledge, to be delivered into the register's office for —— county, in the state of Delaware, on or before the —— day of —— next; and shall well and faithfully administer according to law all and singular the goods and chattles, rights and credits of said deceased, which have or shall come to the possession or knowledge of said —— ——3† and shall render a just and true account of such administration on or before the —— day of —— next; and shall distribute and pay all the residue remaining of the said goods and chattles, rights and credits, after all just demands and charges, to which the same goods and chattles, rights and credits in the due course of the administration thereof are subject, are deducted, to the person or persons respectively entitled to receive the same; and furthermore, in case the said —— —— 4† shall be removed from the office of [executor *or* administrator, *or as the case may be*] as aforesaid, or shall before closing all the concerns of the estate of said deceased depart this life, then if the said —— —— 1†† in case of such removal, or the executors or administrators of the said —— —— 2†† in case of such decease shall without delay surrender and deliver to the person or persons entitled to receive the same, all the unadministered goods and chattles, rights and credits, monies, securities, books, and papers belonging to the estate of said deceased, or with which the said —— —— 3†† at the time of such removal or decease shall be chargeable, all just allowances being made; then this obligation shall be void; otherwise it shall remain in force."

Several exr's, &c. may join in one bond;

If letters testamentary or administration be granted to several, all or any number may join in one obligation, or each may execute a separate obligation; but joint executors or administrators, without any other person, shall not be deemed sufficient sureties in any obligation of co-executor or administrator, except such joint executors have renounced; and if several executors or administrators join in the same obligation, the condition shall be conformed to the case by inserting in the foregoing

in such case, the condition how varied.

form, the words *or either of them* in four places viz: immediately after each blank next preceding [the] words "shall have knowledge;" immediately after the blank, next preceding the words "and shall render" and immediately after the blank next preceeding the words "shall be removed":—and also by inserting the words *or either of them respectively*, in three places, viz: immediately after the blank next preceding the words "in case of such removal," and immediately after the blank next preceding the words "in case of such decease," and immediately after the blank next preceding the words "at the time."

Husband and wife shall join in the bond—when.

If letters testamentary or administration be granted to a married woman or to husband and wife, in either case the husband and wife shall join and be principals in the obligation and the same shall bind her, notwithstanding her coverture.

Docket entry of granting letters.

In the entry of the granting of letters testamentary or administration, the register shall state the giving of the obligation, the names of the sureties and the penalty.

Payment, &c. of legacies, shall be within the condition of the bond.

Payment of, and assent to, legacies, as well as payments of debts and demands against the deceased, shall be deemed a part of the administration; and accordingly the clause, "*shall well and truly administer according to law*" in the foregoing condition shall bind to the faithful application of the assets, not only to debts and demands, but also to legacies as the law prescribes.

Liability of the register for granting letters without taking bond.

If letters testamentary, or administration be granted without obligation taken according to this section, the register granting the same and his sureties shall be liable for all the damages thence arising. If it shall in any case appear that the obligation or the security is insufficient, whether it originally was, or has become insufficient, the register in whose office the letters testamentary or the administration were granted, shall order the executor or administrator to give further security by becoming bound with sufficient surety or sureties to the state of Delaware by a joint and several obligation to be with the security approved by the register in a penalty to be deter-

Further security, when required; how entered into.

CHAPTER CCVIII. 1829.

mined by the register, and to be double the best estimate that can be made of the personal estate of the deceased, with condition according to the foregoing form, except that the register may in his discretion, omit the clause concerning the inventory, appraisement and list of debts and credits; and in case of neglect or refusal to fulfil such order, the register shall remove from office, the executor or administrator refusing or neglecting, The taking of another obligation shall not supersede nor affect the obligation before taken.

Ex'r. &c. neglecting to give further security when ordered, shall be removed.

Bonds to be kept in the register's office

The execution of an obligation by the obligors shall be sufficient without any certificate of the register of his approving the same, or the security. The register shall preserve every obligation in his office.

An appeal lies from the register, to the supreme court.

SECTION 7. *And be it declared and further enacted,* That there is an appeal to the supreme court from the register exercising jurisdiction touching the granting or revoking of letters testamentary or administration, the ordering of further security, and the removing from office of an executor or administrator; and the act or sentence of the register in any of these particulars shall not be called in question except before him, or an appeal from him.

In case of death or removal of an ex'r. &c the co ex'r, &c. or succeeding ex'r. &c. shall be entitled to receive all the unadministered goods, &c.

SECTION 8. *And be it further enacted,* That whenever an executor or administrator shall be removed from office, or shall before closing all the concerns of the estate of the deceased, depart this life, the co-executor or administrator, if there be such, or if not, the succeeding executor or administrator shall be entitled to receive all the unadministered goods, chattles, rights, credits, money, securities, books and papers belonging to the estate of the deceased, which shall be in the hands of the executor or administrator removed or deceased at the time of such removal or decease, or for which such removed or deceased executor or administrator shall be answerable, just allowances being made. When in the course of the administration of the estate of a deceased person, part thereof passes from one executor or administrator to another, commissions shall not be twice allowed thereupon; but a reasonable allow-

Commission in such case, how apportioned.

ance for commissions may be apportioned among the different executors or administrators; or the allowance may be made to the executor or administrator, who according to the circumstances ought to receive the same; but an allowance for commissions being made, there shall not be a subsequent allowance for commissions on the same subject matter, except in case of allowances by way of apportionment, until the first allowance is annulled. Any act done by an executor or administrator in the due course of administration and any payment made by an executor or administrator in or toward satisfaction of a legacy or distributive share, shall be available until it shall appear that the same was erroneously done or made; although such executor or administrator shall be removed from office, or shall before closing the concerns of the estate of the deceased, depart this life.

Acts of an ex'r &c. tho' removed, &c. shall be available, until, &c.

SECTION 9. *And be it further enacted*, That every executor and administrator shall take an oath or affirmation according to the following form:

Executors and administrators to be sworn or affirmed.

I —— —— do solemnly swear (or affirm) that I will diligently and faithfully perform all the duties incumbent upon me as (executor *or* administrator *or as the case may be*) of —— —— deceased.

Oath.

Upon issuing letters testamentary or letters of administration, the register shall appoint two appraisers of the goods and chattels of the deceased; if circumstances require it, he may appoint a third appraiser; he may supply any vacancy. The appraisers must be judicious and impartial freeholders of the county; and each shall take an oath or affirmation according to the following form: I —— —— do solemnly swear (or affirm) that I will appraise the goods and chattels of —— —— deceased; at the true value thereof, in money, according to the best of my skill and judgment, and that I will perform my duty as an appraiser of said goods and chattels, faithfully in all things: So help me God (or so I do solemnly affirm.)

Appraisers to be appointed.

Their oath.

Estates held by the deceased, in lands, tenements or hereditaments for the life of another, shall be chattels, and such estates, estates by elegit or for years, the crop [of the] deceased growing or begun, unless

What shall be deemed *assets*, and included in the inventory.

CHAPTER CCVIII. 1829.

on lands devised by him, slaves, terms of servants or apprentices transmissible according to law, bank and other stock, money of deceased, whether in hand or deposited in bank, and all the goods and chattels of the deceased, shall be assets, and shall be included in the inventory, except the clothes of widow and ornaments proper to her station, the clothing of the family and of the deceased and the family stores laid in before the death of the deceased, or such part of such stores, as the appraisers shall deem proper to be used for the support of the family: Provided, that the same do not exceed in cash value, the sum of thirty dollars.

The goods and chattels of the deceased, shall be distinctly entered in the inventory, and each article or set shall be appraised, and the value in money, of the United States, set down against the same; and the appraisers shall subscribe a certificate endorsed or annexed to the inventory, according to the following form: We the subscribers, appointed by the register appraisers of the goods and chattels of —— —— deceased, do on oath (*or* affirmation *or* and affirmation) respectively say, that the goods and chattels in this inventory, have been appraised by us at the sums set down against the same respectively, and that said sums are, according to the best of our skill and judgment, the true value of said goods and chattels in money; dated the —— day of —— 18—. If there be three appraisers, the act of the majority shall be sufficient.

Certificate of the appraisers.

The making a person an ex'r shall not extinguish a demand against him.

The making of a person executor shall not extinguish any demand of the deceased against such person; and in the list of debts and credits every debt and credit due or belonging to the deceased, from the executor or administrator, shall be truly inserted.

There shall be endorsed on, or annexed to, the inventory, and also the list of debts and credits, an affidavit of each executor or administrator verifying the same. The affidavit for the inventory shall be according to the following form:

Affidavit of ex'r

—— County, ss. —— —— maketh solemn oath (or affirmation) and saith, that he hath made diligent

inquiry concerning the goods, chattels and money of —— —— deceased, and that this inventory doth contain all the goods, chattels and money of the said —— —— which have come to the possession or knowledge of this deponent (or affirmant.)

&c. to an inventory—

—— ——.

Subscribed and sworn (or affirmed) the —— day of ——, 18 —, before —— ——.

The affidavit for the list of debts and credits, shall be according to the same form, except that for the words "goods and chattels and money of" the words *debts and credits due or belonging to*, shall be substituted, and for the word "inventory" the word *list* shall be substituted.

affidavit to a list of debts & credits.

The register, the chancellor, or any judge or justice of the peace, shall each, have authority to administer any oath or affirmation, required to be taken according to this section; and appraisers shall have authority to administer, each to the other, the oath or affirmation prescribed for them. The register may direct the manner of certifying oaths or affirmations.

These oaths, how administered.

The register shall have power to order an inventory of goods and chattels, or a list of debts and credits to be suppressed, or to adjudge the same to be imperfect, and to order a further inventory or list to be made and delivered into his office. From the register's decision concerning an inventory of goods and chattels, or list of debts and credits, either party may appeal to the orphans' court, and that court may affirm, modify or reverse the decision, and upon reversal shall make such order as the register ought to have made. But no exception shall upon appeal, be taken to an inventory of goods and chattles, or list of debts and credits, because of any defect in the affidavit or in the certificate, of any oath or affirmation. Upon the hearing before the register the testimony of the witnesses shall be reduced to writing and signed by them respectively and certified as depositions. On the appeal, the original depositions shall be delivered with the inventory or list to the clerk of the orphans' court. The same rule

Register may suppress an inventory or list, and order a further one—

appeal from this order.

Testimony of witnesses before the register, to be reduced to writing.

shall apply when witnesses are examined before the register touching any account.

Inventory and list to be filed in *six months*—

The inventory of the goods and chattels and the list of debts and credits shall be delivered into the register's office at or before the expiration of six calendar months from the granting of administration or letters testamentary; and if any executor or administrator shall not deliver an inventory and list accordingly,

or attachment shall issue.

it shall be the duty of the register, immediately after the expiration of said time, to issue process of attachment, against such executor or administrator and to enforce compliance with his duty in this particular by imprisonment; but an affidavit of the executor or administrator declaring upon oath or affirmation that he has diligently inquired, and that he can obtain no knowledge of any goods or chattles of the deceased, shall be a sufficient excuse for not delivering an inventory, and a like affidavit that he has diligently inquired and can obtain no knowledge of any debts or credits due or belonging to the deceased shall be a sufficient excuse for not delivering a list; such affidavit must be in writing, signed by the executor or administrator, duly certified and filed with the obligation.

One of several ex'rs. &c. refusing to file list, &c. to be removed.

When there are several executors or administrators, if either of them refuse or neglect to join in the inventory of the goods and chattels or the list of the debts and credits, the register shall remove such executor or administrator from office unless he shall cause an inventory or list to be duly made and delivered on his own behalf.

Ex'r. or adm'r. may finish *growing crops.*

When there is a crop growing or begun, the executor or administrator may finish it or dispose of it as he shall deem most beneficial for the estate: and he may require the advice of the appraisers herein, who shall certify the same upon the inventory. If he finish the crop, his account shall comprehend the proceeds and the expenses.

Additional inventory or list, when to be made.

If after the return of an inventory or list, personal estate or credits of the deceased not included therein shall come to the knowledge of the executor or administrator he shall cause an additional inventory and

appraisement or list to be made and delivered into the register's office.

SECTION 10. *And be it further enacted,* That if in any case before the register the attendance of a witness cannot be procured because of his sickness or of his being beyond the reach of process or other matter, the register shall have power to award a commission to take his deposition. Such commission may be issued on interrogatories filed; or the register may make any order which he may deem proper concerning the issuing or executing of such commission. In like manner the register shall have power to award a commission to take the deposition of a very aged or infirm witness, or a witness about to depart from the state to be received if the attendance of the witness can not be procured.

Register may award commissions to take depositions; on interrogatories,

SECTION 11. *And be it further enacted,* That the cause of action in all personal actions except actions for assault and battery, defamation, malicious prosecution or any injury to the person or upon penal statutes, shall upon the decease of the person having the right of action or liable to the action, survive to and against the executors or administrators [of] such deceased person, and accordingly such actions, except as before excepted, may be instituted or prosecuted by or against the executors or administrators, of the persons to or against whom the cause of action accrued saving that the survivorship among the original parties of a cause of action belonging to several persons jointly, shall not be hereby affected, but an obligation or contract made by several persons shall be joint and several, unless it is otherwise expressly stipulated.

Cause of action to survive to and against executors and administrators, when.

An action commenced by or against an executor or administrator shall not be abated by his death or removal from office, but a succeeding executor or administrator may be admitted a party plaintiff or made a party defendant to such action; a writ of error shall be within this provision; the benefit of a judgment for or against an executor or administrator, shall not be lost by his death or removal from office, but proceedings may be had upon such judgment, either at the suit of, or against a succeeding

Action by or against an ex'r. or adm'r. does not abate on his death or removal,

An ex'r. or adm'r. may be made a party pltff *on motion.* *Costs* to and against ex'rs. & adm'rs.

executor or administrator; an executor or administrator may be admitted a party plaintiff to a judgment, on motion, without scire facias; costs shall be awarded to and against executors and administrators in like manner as other parties, but costs awarded against executors or administrators shall not be allowed in the accounts of their administration unless the court in which the action is, shall certify the propriety of such allowance, or there be other sufficient evidence that such costs were properly incurred.

Judgments against ex'rs & adm'rs. when conclusive as to *assets*— when such judgments shall bind the real estate of the deceased— on verdict— on inquisition— on report of referees appointed by the clerk or by the court:

Judgment against an executor or administrator upon the report of referees shall not be conclusive that he has assets, unless it be expressly found by the report that he has assets; the real estate of the deceased shall not be liable to be taken in execution upon, and shall not be bound by a judgment against his executor or administrator, unless such judgment be rendered upon a verdict, or an inquisition, or upon the report of referees, on a rule of reference entered in the following manner, that is to say: upon application of the parties to the clerk or prothonotary in vacation, or to the court in term time, or if the defendant being summoned fail to appear or appearing neglect or refuse so to plead as to put the cause at issue, in order for a trial by jury, upon the application of the plaintiff to the court, there shall be entered a rule of reference of all matters in controversy to three judicious and impartial freeholders of the county, to be appointed by the clerk, prothonotary or court to whom the application is made; judgment to be rendered on their report or the report of the majority of them; a greater number of referees may be appointed if it be requested by the parties; if the rule be entered on the application of the plaintiff only, at least ten days written notice of the meeting of the referees shall be required; such rule of reference may be entered after a judgment by default or upon demurrer as well as before judgment; altho' it be entered after judgment, nevertheless, judgment shall be rendered on the report made pursuant thereto, and such judgment on the report shall be regular notwithstanding the previous judgment.

Notice of meeting of referees.

SECTION 12. *And be it further enacted*, That an executor or administrator shall pay the demands against the estate of the deceased, according to the following order: First—funeral expenses; second, the reasonable bills for nursing and necessaries for the last sickness of deceased; third—wages of servants and labourers employed in household affairs, or in the cultivation of a farm, but no servant or labourer to be allowed this preference for more than one year's wages; Fourth—rent, not exceeding one year's rent; rent growing due may be claimed at the election of the person entitled to it in preference to rent in arrear; fifth—judgments against the deceased, and decrees of a court of equity against the deceased for the payment of money; sixth—recognizances, and obligations of record for the payment of money; seventh—obligations and contracts under seal; eighth—contracts under hand for the payment of money or delivery of goods, wares or merchandize; ninth—other demands.

Order of payment of debts:

1 *Funeral expenses:*
2 *Necessaries, &c. in the last sickness:*
3. *Servants wages:*
4. *Rent:*
5. *Judgments, &c. against the deceased:*
6. *Recognizances:*
7. *Contracts under seal:*
8. *Contracts under hand:*
9. *Other demands.*

If an executor or administrator after the expiration of six months from the granting of letters testamentary or administration, without notice of a demand of a superior order, pay a demand of inferior order, such payment shall be allowed, notwithstanding a demand of *superior order*, of which he had not notice. Such notice need not be by action.

Notice to an adm'r. &c. of claims, when necessary. Bac. abr. 20, Ex'rs. L. 2 434. note & 6 v. 542 Gwillin's note.

An executor or administrator shall be deemed to have notice of judgments, decrees, recognizances and mortgages of record in the county wherein the letters are granted, unless there have been a failure to insert such judgments, decrees, recognizances or mortgages in the alphabet of the docket or record, wherein the same stand: except judgments and recognizances before a justice of the peace: of which, and also of debts of record in another county, an executor or administrator shall not be charged with notice, unless actual notice be given.

Of what claims he shall be deemed to have notice.

SECTION 13. *And be it further enacted*, That the rents and profits of the real estate of the deceased, which shall come to the hands of the executor or administrator, shall be assets for the payment of demands against the deceased; and the executor or ad-

Rents coming to the hands of an ex'r. or adm'r. shall be *assets.*

Ex'r. &c. not chargeable therefor on his bond.

ministrator shall be chargeable therewith accordingly; but this provision shall not extend the condition of the obligation, given by the executor or administrator and his surety, to such rents or profits, nor vest in the executor or administrator any right of possession of the real estate; but it shall apply to cases where the executor or administrator actually receives the rents and profits; and upon a demand of the heir or devisee, for such rents and profits, it shall be a sufficient answer, that the same have been applied to demands against the deceased or that there are such demands, to which the same are applicable.

Rents to be applied to repairs, when.

An executor or administrator in the possession of real estate, shall, with the rents and profits, maintain the premises in tenantable repair.

Ex'rs or adm'rs not to pay debts without *probate*,

SECTION 14. *And be it further enacted*, That before an executor or administrator shall pay any debt demanded as due from the deceased, the person holding such debt, shall make affidavit, declaring upon oath or affirmation, *that nothing has been paid or delivered toward satisfaction of said debt, except what is mentioned, and that the sum demanded is justly and truly due*: in case of a debt due to a corporation, the cashier or treasurer shall make the affidavit: in an affidavit by an executor, administrator, assignee or officer of a corporation, it shall be sufficient to state, *that he has made due inquiry, and that he does verily believe that nothing has been paid* &c. as in the preceding affidavit.

probate.

Probate of an ex'r. adm'r. or officer of a corporation.

Both assignor and assignee shall make probate, when the debt is assigned after the debtor's death.

If a debt be assigned after the debtor's death, affidavit shall be made by the person who held the debt at the death, as well as by the assignee.

Nonsuit for want of a probate.

If affidavit, as required by this section, be not produced in an action against an executor or administrator, or for a debt against the deceased, the court shall on motion, give judgment of nonsuit. If suit be brought for a debt due from a deceased person, without exhibiting to the executor or administrator an affidavit made pursuant to this section, and if such suit be not controverted, the court shall disallow the plaintiff's costs. The question of disallowance shall be decided on a rule to shew cause, which shall not

If suit be brought without exhibiting a probate to the ex'r &c costs shall be disallowed.

This question

be granted unless the exhibiting of an affidavit be denied on oath or affirmation. The chancellor, or any judge, justice of the peace, notary public, or magistrate of a city or borough, in this or any other State or any Territory, shall have authority to take such affidavit. An affidavit taken out of this State, being certified under a seal of office, or any public seal, whether of a court, city, borough or county, shall be received. An affidavit must be signed by the party making it. The taking of a wilful false oath or affirmation, in any such affidavit, shall be perjury.

to be decided, how.

Probate before whom made:

made out of this State, how certified.

Falsely swearing herein, *perjury*.

SECTION 15. *And be it further enacted*, That an executor or an administrator shall render an account of his administration, every year, until the concerns of the deceased's estate shall be closed, and a final account passed. The first account shall be rendered, at or before the expiration of the first year from the date of the letters testamentary or of administration; and the second account, if the first be not final, shall be rendered at or before the expiration of the second year from said date, and so on. Accounts shall be rendered in money of the United States. If an executor or an administrator fail to observe these directions, it shall be the duty of the register to issue process of attachment against him, and enforce compliance by imprisonment: but the register may for sufficient cause extend the time for rendering an account, not exceeding six months: and he may upon the affidavit of an executor or administrator, and on its appearing to him that there are no transactions or matters for an account in any year, dispense with an account; but from his determination dispensing with an account, there shall be an appeal to the orphans' court, for any party interested.

Ex'r. or adm'r. to render an account every year—

in money of the United States:

attachment for neglect:—

Account may be dispensed with, when:

SECTION 16. *And be it further enacted*, That the residue remaining of the personal estate of a person deceased intestate, after all demands and charges to which the same is subject, in the due course of the administration thereof, are deducted, shall be distributed to and among every the children of the

Residue of personal estate, how distributed:

CHAPTER CCVIII. 1829.

intestate, and the lawful issue of such children, who shall have died before the intestate, but if there be no such child or issue, then to and among every the brothers and sisters of the intestate of the whole blood, and the lawful issue of such brothers and sisters who shall have died before the intestate, or if there be none such, to and among the brothers and sisters of the intestate of the half-blood, and the lawful issue of such brothers and sisters, who shall have died before the intestate, and if there be none such, then to the father of the intestate, or if there be no father, to the mother of the intestate, and if there be no mother, then to and among the next of kin to the intestate in equal degree, and the lawful issue of such kin who shall have died before the intestate; Provided, that if the intestate be a married woman at the time of her death, her husband shall be entitled to such residue excluding all others, or if the intestate leave a widow, she shall be entitled absolutely, if there be issue of the intestate, to one third part of such residue, or if there be no such issue but brothers, sisters, or other kin, to one-half part of such residue, or if there be no kin to the intestate, to the whole of such residue.

Manner of distribution.

Distribution among children, brothers, or other kin in equal degree shall be in equal portions, but issue of children, brothers or other kin who shall have died before the intestate, shall take according to stocks by right of representation, and this rule shall hold although the distribution be entirely among such issue.

Kin construction of: 7 v. 78.

The term kin shall have the same signification and the method of computing degrees of consanguinity shall be the same under this act as under the act concerning the real estates of intestates.

Residue undisposed of by will, how distributed.

A testator with respect to any residue of his personal estate remaining after satisfying debts, charges and legacies, and not disposed of by him shall be deemed to be intestate, and such residue shall be distributed according to this section.

Ex'rs. and administrators to have one year for the settle-

An executor or administrator shall have one year from the date of the letters for settling the concerns of the deceased's estate and until the expiration of such

year, he shall not be required to make distribution, and shall not be chargeable with interest upon the assets in his hands; but if any part of the deceased's personal estate, carry interest or be productive, the executor or administrator shall account for the interest or produce.

ment of the estate— not to be charged with interest unless, &c.

When there is a specific bequest of a thing in the possession of the testator at the time of his death, and no time is appointed for the delivery, it may be demanded immediately upon the appraisement; any other legacy, if no time be appointed, shall be payable in one year from the testator's death. But payment or delivery of a legacy may be refused if it be apparent that there are not assets for the purpose; and an executor or administrator, if he know of any demand outstanding against the deceased's estate, shall not be obliged to pay or deliver a legacy, or a distributive share unless the person entitled shall, with sufficient security, become bound to such executor or administrator by a joint and several obligation in a penalty double the sum or value of the legacy or share, with condition to be void, if the person receiving such legacy or share or his executors or administrators, in case of a deficiency of assets of the deceased for the payment of all the just demands and charges against his estate, and all legacies by him duly given without such share or legacy or part thereof, shall refund and pay to the said executor or administrator, or his executors or administrators or assigns the sum or value of said legacy or distributive share with interest or such portion thereof, as justly and lawfully ought to be contributed on occasion of such deficiency. If a legacy be demanded before the expiration of the first year from the testator's death, security may be required although no claim against the estate is known.

Specific legacies, when payable;

other legacies, when:

when payment may be refused.

Refunding bonds, when they may be required:

An action of assumpsit may be maintained against an executor or administrator for a legacy or a distributive share. Assets in the hands of an executor or administrator, to pay a legacy shall create a legal liability and raise a consequent promise to pay it. In case there be not assets to pay the whole legacy a part may be recovered. If the delivery of a

Assumpsit lies against an ex'r. or adm'r for a legacy or distributive share—

CHAPTER CCVIII. 1829.

specific legacy have been refused the value of it may be recovered in this action. There shall be a legal liability to pay a distributive share and a consequent implied promise. The court in which this action is brought may exercise equitable powers in requiring a plaintiff to give security to refund, in respect to the delivery and acceptance of a specific legacy, and in respect to costs. This action shall not lie for a legacy which is either directly, or by implication the subject of a trust.

unless it be a trust.

When a legacy shall be deemed a satisfaction of debt.

A legacy shall not be deemed to be satisfaction of a debt due from the testator to the legatee, unless the intention of the testator, that it shall be so accepted shall appear upon the will expressly, or by manifest implication.

Notice of the granting of letters of administration—order for;

SECTION 17. *And be it further enacted,* That the register on application shall make and register an order directing an executor or administrator by advertisements, to be posted and published as specified in such order, to give notice of the granting of letters testamentary or administration, and the date thereof and to require all persons having demands against the deceased to exhibit the same or abide by the act of assembly in this behalf. The order shall require the advertisements to be posted within forty days from the granting of the letters testamentary or administration in six of the most public places of the county wherein the deceased resided at the time of his death, or more places if deemed expedient and to be inserted within the same period of forty days in one or more newspapers to be mentioned therein, if deemed expedient, and to be continued in the newspaper a certain time to be mentioned in the order and to be not less than three weeks. The register shall have authority to take the deposition of a witness or witnesses, to prove that the directions in such order have been observed. And if an executor or administrator shall observe the directions of such order, and shall after the expiration of one year from the granting of letters testamentary or administration without notice of a demand against the deceased, pay over the estate in his hands to the legatees or to the persons entitled to distributive shares, such pay-

advertisements.

Proof of such notice.

payment over of distributive shares, &c when proper.

ment shall be good, and he may avail himself thereof in bar of any demand of which he had no notice at the time of the payment, by a plea of the same nature and effect as a plea of *"fully administered."* Such notice need not be by action, but it must be in writing.

Suits on contracts for the conveyance of lands not to be brought against ex'rs. &c. until, &c.
1 v 269.
4 v. 75.

SECTION 18. *And be it further enacted,* That before suit shall be brought against an executor or administrator upon a written contract of the deceased under seal or under hand and attested by one or more witnesses for the conveyance of any lands, tenements or hereditaments within this state, the person to whom such contract was made or who is entitled to the benefit thereof either as heir, devisee, assignee or otherwise, shall cause the said contract to be proved in the court of chancery or supreme court, or the court of common pleas in the county where the premises are situate, and to be recorded in the office for recording of deeds in said county and shall thereupon apply to the executor or administrator for the fulfilment of said contract; and the said executor or administrator thereupon if the consideration of the premises have been paid, or upon payment thereof, may exhibit to the court of chancery, the supreme court, or court of common pleas in the said county, a petition representing the case and praying for authority to carry said contract into specific execution by conveying the premises to the person entitled to receive such conveyance; and the court shall have authority to inquire into the case, and to order the executor or administrator to convey the premises according to the prayer of such petition or otherwise, so as to specifically fulfil the said contract according to equity and good conscience. A conveyance made pursuant to such order shall be as effectual as if executed by the deceased in his life time.

Contracts to be proved.

Specific performance, when to be done by ex'r. &c. and how—

order therefor.

If the premises lie partly in two counties the proof may be taken and the order may be made in either county; but the contract must be recorded in each.

If it be obvious that the executor or administrator cannot fulfil the contract specifically, or if it be not a case in which a specific execution ought to be ac-

cepted, proceeding under this section shall not be necessary.

If a suit be brought against the true intent of this section the court may in their discretion enter judgment of nonsuit.

First process in an action against an ex'r. or adm'r shall be a *summons*.

SECTION 19. *And be it further enacted*, That in an action against an executor or administrator, the first process shall be a writ of summons. If the defendant being summoned shall not duly appear, judgment shall be entered against him by default; and upon such judgment the court shall have power, on motion, to order that the clerk or prothonotary ascertain the amount, in which case at least five days written notice shall be given to the executor or administrator, of the time when he will consider the case, and immediately on the amount being ascertained, execution may be issued; or upon such judgment, a rule of reference may be entered as herein before prescribed, or a writ of inquiry, if it be a case proper for such writ, may be awarded.

Proceedings on a judgment by default.

Letters granted in any other State to be received here, when.

SECTION 20. *And be it further enacted*, That letters testamentary, and letters of administration granted in any other State or Territory of the United States, and produced under the seal of the office or court granting the same, shall be received in this State as competent authority to the executor or administrator, therein named, but in such case if the deceased be indebted to any inhabitant of this State, in the sum of twenty dollars, the executor or administrator before he shall recover judgment in any court of this State, shall cause such letters to be recorded in the office of the register of one of the counties of this State, and shall with sufficient surety or sureties, become bound to the State, in a joint and several obligation, to be with the security therein approved by the register, in a penalty double the best estimate, that can be made of the goods and chattels, rights and credits of the deceased, in this State, with condition to be void, if such executor or administrator shall truly account for all and singular the goods and chattels, rights and credits of the deceased, in this State, which shall come to his possession or knowledge, and shall faithfully admi-

If the deceased be indebted here in the sum of $20—letters to be recorded,

and bond to be given:

nister and distribute the same according to law, the court in which there is any action at the suit of such executor or administrator, may in their discretion in any case, stay the proceedings, until the letters are recorded and security is given as aforesaid, and any person in this State, having any goods or chattels, rights or credits belonging to such deceased, may refuse to pay or deliver the same to such executor or administrator, until the letters are recorded and security is given as aforesaid; but delivery or payment without the letters being recorded, or security being given shall be good. A judgment shall not be recovered or set aside as irregular, on the ground that letters have not been recorded nor security given as aforesaid, unless objection to the judgment shall have been expressly made on that ground and over ruled, but the court may stay proceedings on the judgment until the letters are recorded and security is given.

payment to such ex'r. &c. may be refused until the letters are recorded & surety given.

SECTION 21. *And be it further enacted*, That the register shall have power to issue process of citation, subpœna and attachment or capias, and to compel the appearance of witnesses, and obedience to his lawful orders by arrest and imprisonment. He may issue process of citation, subpœna and attachment, or capias into every county. If a person against whom process is issued will not appear, and cannot be arrested, the register shall have power to issue a writ of sequestration, against such person for sequestering the goods and chattels, rents and profits, lands and tenements of such person.

Powers of the register in issuing process, and compelling obedience thereto.

SECTION 22. *And be it further enacted*, That in cases within this act, in which the register is interested, and the cognizance in consequence belongs to the orphans' court, this act shall be applied by the said court, the appeal being to the supreme court.

Orphans' court to apply this act in cases where the register is interested.

SECTION 23. *And be it further enacted*, That the first, second, third and fourth sections of the "Act for the better settling intestates estates," and the fifth and sixth, and seventeenth and eighteenth sections of the "Act for amending the laws relating to testamentary affairs, and for the better sett-

Repeal of— §1, 2 & 4 of ch 119, a. 1 v. 285. §5, 6, 17 & 18, of ch. 186, a. 1 v. 417.

ling intestates estates;" and the "Act directing the priority of payment of debts of persons dying within this government;" and the "Act to empower executors and administrators within this government by leave of the court, to convey lands contracted for with their decedents;" and the supplement to the said act, except so far as confirms the conveyances therein mentioned; and the "Act to compel executors to give security for the faithful discharge of the duty reposed in them by their testators and for other purposes," the fourth section excepted; and the "Act to revive and perpetuate the said act," the fourth section excepted; and the twenty-fourth and twenty-fifth sections of the "Act to regulate certain proceedings in the court of chancery, in the orphans court and in the registers court, and to compel justices of the peace to furnish copies of their records;" and the third section of the supplement to the act entitled "An act concerning written and nuncupative wills;" and the "Act granting relief to persons having claims against the estate of deceased persons," shall be and hereby are repealed from and after the first day of June next; except so far as shall concern the personal estates of persons now deceased, or who shall depart this life before the said first day of June next; and probates of wills, letters testamentary, administrations and matters heretofore taken, granted or transacted, or which shall be taken, granted or transacted before said first day of June next, and all rights and remedies touching any the said personal estates, letters testamentary, administrations or matters: and Provided, that no act or section repealed by the acts aforesaid or either of them, shall by this repeal be revived.

ch. 27, a. 1 v. 81.
ch. 107, a. 1 v. 269.
ch. 29, 4 v. 75.
ch. 146, b. 2 v. 888, except §4
ch. 7. c. 2 v. 1069, except §4.
§2, 4 & 25 of ch. 21, 4 v. 46-7.
§3, of ch. 93, 4 v. 271.
ch. v. p.
Exceptions.
Proviso.

SECTION 24. *And be it further enacted,* That this act shall commence and be in operation on and after the first day of June next.

PASSED AT DOVER, *February* 16, 1829.

CHAPTER CCIX.

AN ACT *to authorize the printing of the act entitled "an act providing for the establishment of free schools."*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the Secretary of State be and he is hereby authorized and requested to cause eight hundred copies of the act entitled "an act providing for the establishment of free schools" to be printed and published on good paper in pamphlet form, with good paper backs or covers, as soon as practicable, and to distribute the same to the prothonotaries in the several counties of this state to each an equal proportion, to be by them distributed to the people at the rate of twelve and an half cents per copy: and the said prothonotaries shall pay over the proceeds of the sales of the said act, agreeably to the existing laws of this state.

800 copies of ch. 99 ante 184, to be printed in pamphlet form;

how distributed,

to be sold.

SECTION 2. *And be it enacted,* That this act shall not be printed or published in the digest of the laws of this state.

PASSED AT DOVER, *February* 16, 1829.

CHAPTER CCX.

AN ACT *for the payment of claims for the tuition of poor children.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the trustee of the fund for establishing schools in this state be and is hereby authorized and required to pay out of any unappropriated money belonging to that fund in his

Trustee of the school fund to pay certain claims;

hands, the following claims for the tuition of poor children, that is to say;—in Newcastle county, to William Palmer two dollars and seventeen cents; to Samuel Clendenin four dollars and ninety-eight cents; to Martha Nichols four dollars and thirty-two cents; to Mary Davis ten dollars and three cents; to Moses Walker ten dollars and sixty cents; to John R. Philips twenty-two dollars; to Joseph Roman, junior, seven dollars and ninety-eight cents; to Jesse Horton seven dollars and eighty-seven cents; to Maria C. Smith, Free Harmony School, Wilmington, for 1827 and 1828 one hundred and sixty dollars; to Andrew Montgomery fourteen dollars and thirty-eight cents; to Isaac Grubb thirty dollars; to Joseph Lobb seven dollars; to James Williamson ten dollars; to Jane A. Barr, for the Female Benevolent Society of Newcastle, for 1827 and 1828, one hundred and sixty dollars; to Thomas N. Speakman sixteen dollars; to Patrick L. Greacie sixteen dollars and fifty cents; to William A. Jackson twenty-eight dollars and forty-one cents; to G. Wakeman eight dollars; to Rachel B. Waugh two dollars and fifty cents; to Moses Lowther seven dollars; to George McCartney two dollars; in Kent county, to Evan H. Pugh nine dollars and twenty-six cents; to Elizabeth Revill thirty-seven dollars and thirty-three cents; to Maria McNatt forty-seven dollars and forty-eight cents; to John M. O'Harnet forty-two dollars and twenty-four cents; to Samuel Priestly thirty-eight dollars and twenty-six cents; to John E. Ward four dollars and seventy-seven cents; to John Hopkins four dollars and two cents; to Abraham Hyers eight dollars and fifty-three cents; to Mary Farson, teacher of the Female Union Society of Smyrna, for 1827 and 1828 ninety-nine dollars and forty-four cents; to James W. Schee twelve dollars; to George McCall five dollars; to Mark Arthurs one dollar; to James B. Ringold four dollars and fifty cents; to George Clemens ten dollars and ninety-three cents; to Daniel Mason for the use of John Cassons nineteen dollars, and to Mary Newcomb five dollars and fifty-two cents: In Sussex county, to Kendall M. Lewis assignee of John Bacon, sixteen dollars; to John Jefferson seventeen

in Newcastle county—

in Kent county;

in Sussex county.

dollars and thirty-seven cents; to George R. Fisher twenty-six dollars and ninety-four cents; to James F. Outen fourteen dollars and ninety-seven cents; to Clifford Shanahan for the use of John Spicer, sixty-six dollars; to William H. Adams nine dollars and seventy-two cents; to William W. Medford twelve dollars and eighty-eight cents; to John Huffington thirty dollars and forty-two cents; to William Bell twenty-four dollars and ninety-six cents; to Wesley Morgan sixteen dollars and eighteen cents; to Pitkin Miner six dollars and fifty cents; to Joseph W. Neal twelve dollars and twenty-nine cents; to John Revill ten dollars and sixty-five cents; to Baily A. West eleven dollars and sixty-two cents.

PASSED AT DOVER, *February* 16, 1829.

CHAPTER CCXI.

AN ACT *for the payment of claims against the State.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the State-treasurer be and he is hereby authorized and directed to pay the following claims, to wit: to Caleb H. Sipple for services in the court of appeals, seven dollars and seventy-five cents; to Joseph L. Harper for bringing rifles from Lewis-Town, ten dollars; to E. Cowgil for expenses in going to Philadelphia in relation to the Chesapeake and Delaware canal stock and stock of the Bank of the United States, fifty-five dollars and fifty cents; to Joseph Scott for printing* 225 copies of the sixth volume of Del. Laws, and expenses of distributing them, ninety-eight dollars and sixty-two cents; to William T. Purnell for services in going to Pennsylvania arsenal, for rifles twenty-five dollars; to Cap. Henry F. Hall for expenses paid William

State-treasurer to pay certain claims to—

C. H. Sipple,

J. L. Harper,

E. Cowgill,

Joseph Scott.

W. T. Purnell,

H. Hall,

[*Binding.]

Rodney for bringing rifles from Pennsylvania arsenal and expenses paid for cleaning them, thirty two dollars and fifty cents; to Charles C. Emory for the apprehension and delivery of Samuel Ogg, a negro fugitive from justice, two hundred dollars; to John M. Clayton late secretary of state for making an index to the 6th vol. Del. Laws and making an index to the laws of 1827 and other services, one hundred and ninety-seven dollars and seventy-five cents; to Vincent Vandiver for services and articles furnished the House at the January session, 1828, fourteen dollars and twenty-five cents; to Ralph Robinson for services as a commissioner on the division line between Kent and Sussex counties, six dollars; to Robert Porter & Son for paper and printing, seventeen dollars and fifty cents; to Josiah F. Clement for printing, six dollars; to Spencer Williams for mileage, postage and expenses, attending the suit against the securities of John Lowber late escheator of Newcastle county and for services in recording the militia fines, and making out a report agreeably to the 22d and 25th sections of the act entitled an "act to establish an uniform militia throughout the state," fifty-seven dollars and twenty cents; to Philip Rasin cryer of the high court of errors and appeals for attendance on said court, fourteen dollars; to A. & H. Wilson for publishing advertisements three dollars; to George S. Ellis for attendance on the house of representatives at the January session 1828 four dollars; to Jacob B. Vandiver for attendance as a member of the General Assembly at the January session 1828, thirty dollars and twenty-five cents; to John Torbert for ditto, thirty dollars; to James Delaplain for do. thirty-one dollars and seventy-five cents; to William T. Reed for do. twenty-seven dollars and seventy-five cents; to Benjamin Whiteley for do. twenty-eight dollars and seventy-five cents; to Daniel Newbold twenty-six dollars and twenty-five cents; to Thomas Deakyne for do. twenty-two dollars; to John Raymond for do. fifteen dollars and fifty cents; to Matthias Day for do. sixteen dollars; to Peter L. Cooper for do. fifteen dollars and twenty-five cents; to Samuel Virden for do. fifteen dollars

C. C. Emory,
J. M. Clayton,
V. Vandever.
R. Robinson,
R. Porter & Son,
J F. Clement,
S. Williams,
P. Rasin.
A. & H. Wilson,
G. S. Ellis,
J. B. Vandever,
J. Torbert,
J. Delaplaine,
W. T. Read,
B. Whitely,
D. Newbold,
T. Deakyne,
J. Raymond,
M. Day,
P. L. Cooper,
S. Virden,

and twenty-five cents; to William W. Morris for do. twelve dollars and fifty cents; to John Boothe for do. twenty-five dollars; to James P. Lofland for do. twenty-two dollars and fifty cents; to Caleb S. Layton for do. twenty six dollars and fifty cents; to John Tennant for do. twenty-eight dollars and seventy-five cents; to Kendall M. Lewis for do. thirty dollars and fifty cents; to Lawrence Riley for do. twenty-four dollars and twenty-five cents; to Miles Tindall for do. twenty-eight dollars and twenty-five cents; to John Wiltbank twenty-seven dollars and seventy-five cents.

W. W. Morris, J. Booth, J. P. Lofland, C. S. Layton, J. Tennant, K. M. Lewis, L. Riley, M. Tindall, J. Wiltbank.

SECTION 2. *And be it enacted,* That the State-treasurer be and he is hereby authorized to pay to the secretary of state, the sum of two hundred and twenty-five dollars, to be applied by him to the payment of the contingent expenses of his office an account of which shall be submitted to the General Assembly at the next January session.

Appropriation for the use of the Secretary's office, to be accounted for.

PASSED AT DOVER, *February* 16, 1829.

CHAPTER CCXII.

AN ACT *for the payment of a certain claim therein mentioned.*

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the State-treasurer shall pay to Joseph G. Oliver, administrator of Dr. John Brinckloe, deceased, the sum of twenty-six dollars, that being his allowance as speaker of the senate at the January session, 1828.

State-treasurer to pay a certain claim to J. G. Oliver, adm'r. of J. Brinckloe.

PASSED AT DOVER, *February* 16, 1828. [9.]

CHAPTER CCXIII. 1829.

Resolutions.

CHAPTER CCXIII.

RESOLUTION *appointing directors in the Farmers' Bank of the State of Delaware.*

Directors of the Farmers' Bank,

RESOLVED *by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the following persons be, and they are hereby appointed, directors of the Farmers' Bank of the State of Delaware on the part of this State, agreeably to an act of the General Assembly in such case made and provided: For the principal bank, Cornelius P. Comegys, Joseph Smithers and Elias Naudain; for the branch at Wilmington, Joseph C. Gilpin, John J. Milligan and Samuel S. Grubb; for the branch at Newcastle, John Moody, Samuel Meteer and Thomas Stockton; for the branch at Georgetown, John Tennant, David Hazzard and Matthew Rench.

at Dover,

Wilmington,

Newcastle,

Georgetown.

ADOPTED AT DOVER, *January* 9, 1829.

CHAPTER CCXIV.

State-treasurer authorized to borrow $10,000.

RESOLVED *by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the State-treasurer be, and he is hereby authorized and required, to borrow the sum of ten thousand dollars, on the best terms or lowest rate of interest that he can obtain it, to be applied and used toward the payment of the salaries of the chancellor and judges, and for the support of government for the year one thousand, eight hundred and twenty-nine; and that the faith of the state be, and the same is hereby pledged, for the repayment of said

how to be applid.

Faith of the State pledg-

sum of money, with an interest, not exceeding six per centum per annum, within five years from the date of the loan; and that the treasurer shall receive for his services, one-fourth of one per cent out of the money so obtained.

ed for the repayment thereof.

ADOPTED AT DOVER, *February* 14, 1829.

CHAPTER CCXV.

RESOLVED *by the House of Representatives of the State of Delaware with the concurrence of the Senate,* That Ezekiel Cowgill be, and he is hereby appointed, State's Treasurer.

Ezekiel Cowgill appointed State-treasurer.

ADOPTED AT DOVER, *February* 16, 1829.

CHAPTER CCXVI.

RESOLVED *by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the Honorable John M. Clayton, Cornelius P. Comegys and Peter Robinson, esquires, be, and they are hereby respectfully requested, to carry into effect the joint resolutions of the General Assembly, adopted at Dover, February 6, 1822, and which were contained in the following words, to wit:

Committee appointed to carry into effect ch. 149, 6 v. 243; in relation to a portrait of Col. James Gibson.

"*Resolved unanimously,* by the Senate and House of Representatives of the State of Delaware in General Assembly met, That Thomas Clayton, Peter Robinson and Charles Thomas, esquires, be, and they are hereby appointed a committee to express to Mrs. Gibson, widow of Col. James Gibson, deceased, formerly of the United States army, who gloriously fell in defence of his country at the memorable sortie at fort Erie, on the 17th September, 1814, the high esteem entertained for the private character, the bravery and patriotism of the deceased, and the

CHAPTER CCXVI. 1829.

regret felt for his loss by the Legislature of his native state."

"*Resolved,* That the said committee request Mrs. Gibson, to permit a copy of the portrait of Col. Gibson, to be taken by an artist for the purpose of adorning the chamber of the Senate."

"*Resolved,* That the sum of one hundred and twenty dollars be, and the same is hereby, appropriated to defray the expense thereof, to be paid to the draft of said committee, out of any money in the treasury not otherwise appropriated."

ADOPTED AT DOVER, *February* 16, 1829.

CHAPTER CCXVII.

Resolutions for encouraging the growth of white mulberry trees,

RESOLVED *by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That all lands within the limits of this state which now are, or futurely shall be, actually employed and occupied in the growth of white mulberry trees, with a view to the raising of silk, shall be exempt from taxation for the space of ten years from the time of planting of such trees.

Resolved further, That to each and every individual who shall plant and bring to perfection within the limits of the state, two hundred such mulberry trees, within the space of five years from the first day of May next, there shall be given by the state, a silver medal of the value of five dollars.

ADOPTED AT DOVER, *February* 16, 1829.

SECRETARY'S OFFICE,

DOVER, *May* 17, 1829.

In obedience to the directions of an act of the General Assembly of the State of Delaware, entitled "An act concerning the keeping of the papers, belonging to the Executive department and the acts of the General Assembly, and the printing and disposal of the laws and journals," I have collated with, and corrected by, the original rolls, and caused to be published, this edition of the laws of the said State, passed during the last session of the General Assembly, which commenced on Tuesday the sixth day of January, and closed on Monday the sixteenth day of February, in the year of our Lord one thousand eight hundred and twenty-nine.

SAMUEL M. HARRINGTON,

Secretary of the State of Delaware.

ERRATA.

Page 238,	line 4	for "But" read *Bail.*
249	29	for "respectfully" read *respectively.*
273	29	for "deem" read *seem.*
276	23	for "or" read *and.*
296	30	for "county" read *country.*
298	19	for "on" read *or.*
308	22	for "officer" read *office.*
347	2	for "reversion" read *reversioner.*
367	34	for "revisions" read *reversions.*
425	4	for "able" read *liable.*
425	5	for "liable" read *able*
448	19	for "thereofore" read *heretofore.*

TABLE OF PRIVATE ACTS.

SEVENTH VOLUME.

	Page
AN ACT to enable Sarah K. Hudson of Sussex county, to bring into this State, from the State of Maryland, a certain negro slave therein mentioned, - -	24
An Act to dissolve the bonds of matrimony between Ann Clark and her husband Abraham Clark, - -	24
An Act to authorize Curtis Brinckle Beswick to remove from the State of Maryland, into this State, a certain male negro slave, - - - - -	24
An Act authorizing Moses Bradford, of New-Castle county, to bring into this State, from the State of Maryland, a certain negro girl therein named, -	25
An Act for the relief of Justus Lowry, - - -	26
An Act authorizing Ann Bail, of New-Castle county, to bring into this State, from the State of Maryland, a certain negro girl named Rachel, and to retain her for a limited time as a slave, - - - -	28
An Act to enable Sarah G. Banning, of New-Castle county, to bring into this State, from the State of Maryland, a certain negro slave therein named, - -	29
An Act dissolving the bonds of matrimony between Elizabeth Jester and her husband Elijah Jester, - -	30
An Act for the relief of Robert Boyce and others therein named, - - - - - -	33

An Act to enable Samuel Hyatt, of New-Castle county, to pass to and from the State of Maryland, a certain slave named Moses, - - - - 40

An Act to authorize James Smith to remove certain negro slaves from this State, into the State of Maryland, 71

An Act to authorize and empower Levi Cathel, of Worcester county, in the State of Maryland, to remove from this State, to the State of Maryland, certain negro slaves therein named, - - - - 96

An Act to authorize Miers Burton, Executor of Benjamin Burton, deceased, to sell and convey certain lands of the said Benjamin Burton, of which the said Benjamin died intestate, - - - - - 116

An Act to empower Jonathan Hamilton, Robert Hargadine and Samuel Henderson, guardians to certain minors, to sell and convey certain lands belonging to said minors, - - - - - 116

An Act authorizing John Robertson to bring into this State, a slave, from the State of Maryland, - - 117

An Act authorizing Richard Holding to work his slaves both in the State of Maryland and in the State of Delaware, - - - - - - 130

An Act to dissolve the bonds of matrimony between Mary Countice and her husband John S. Countice, - 130

An Act authorizing Mary E. M'Donough, of the State of Maryland, to remove a certain female slave from the State of Delaware into that State, - - - 147

An Act to authorize Rachel Kierne to remove into this State, from the State of Maryland, a certain negro slave therein mentioned, - - - - - 150

An Act to authorize Joseph Hossinger, of New-Castle county, to bring a certain slave into this State. - 150

An Act to authorise and empower Samuel Pennington, an infant under the age of twenty-one years, to convey to a certain William Bowman, and his heirs, all his

right and interest to and in certain lands therein mentioned, - - - - - - - - - 151

A Supplement to an Act entitled "An act to enable the owners and possessors of the marsh meadows on the north side of Christiana River, called Middleburgh Marsh, to keep the banks, dams and sluices in repair, and to raise a fund to defray the expenses thereof;" passed in the year 1769, - - - - - 155

An Act for the relief of Nathaniel Wolfe, - - - 155

An Act authorizing Manlove Jester, of New-Castle county, in the State of Delaware, to bring into this State, from the State of Maryland, a certain negro girl named Mary, - - - - - - - - 163

An Act for the partition of a certain real estate therein mentioned, - - - - - - - - 163

An Act to enable Benjamin Watson to bring into this State certain negro slaves, and to hold them as such, 164

An Act to divorce Mary R. Marshall and Oliver E. Marshall from the bonds of matrimony, - - - 165

An Act to enable Stephens W. Wolford to bring into this State certain negro slaves, and to hold them as such, 165

An Act to authorize Robert Armstrong to remove from this State to the State of Maryland, certain negroes therein named, and hold them as slaves, - - 165

An Act authorizing Joseph Dutton, of Sussex county, in the State of Delaware, to bring into this State, from the State of Maryland, a certain negro woman named Rachel, and her son, named Daniel, - - - 166

An Act authorizing Ayres Stockly, of Kent county, of the town of Smyrna, and State of Delaware, to bring into this State, from the State of Virginia, two certain negro boys, slaves, - - - - - - - 166

An Act to divorce Happy Maria Millen and James Blake from the bonds of matrimony, - - - - - 172

An Act to authorize John B. Scotten to bring into this State, from the State of Maryland, a certain negro girl. slave, - - - - - - - - 182

An Act to authorize William Duhamel to bring into this State, from the State of Maryland, a certain negro boy, slave, - - - - - - - - 203

An Act to dissolve the bonds of matrimony between Frances L. Cochran and her husband Joseph W. Cochran, 210

An Act for the relief of Elisha D. Collins, of the county of Sussex, - - - - - - - - 210

An Act to enable George M. Wootten to remove from the State of Maryland into the State of Delaware, certain negroes therein mentioned, - - - - 213

An Act to authorize Jeremiah Morris, of Sussex county, to bring into this State, from the State of Maryland, a certain negro man named Isaac, - - - 214

A Supplement to an Act entitled "An act to enable the owners and possessors of the marsh meadows on the north side of Christiana river, called Brandywine Marsh, and of a tract of meadow, marsh and cripple on the south side of said river, called Holland's Creek Marsh, and also a tract of marsh meadow near Newport, called Conrad's Cripple, to keep the banks, dams and sluices in repair, and raise a fund to defray the expenses thereof," - - - - - - - 227

An Act to prohibit and restrain the digging of earth, sand or gravel on certain lands of the heirs of Doctor Richard C. Dale, deceased, for the purpose of repairing the causeway over Appoquinimink Creek, in New-Castle county, - - - - - - - - - 243

An Act to enable William Cooch to bring into this State a certain negro boy therein named, - - - 248

An Act for the relief of Mary Harris, an infant, and devisee of Isaac Short, - - - - - - 253

An Act to enable Lewis M'Lane to remove certain negroes therein named, to and from this State, into and

from the State of Maryland, - - - - - 266

An Act to empower John D. Anderson, administrator of Vincent Emerson, deceased, to sell and convey certain lands therein mentioned, - - - - - 271

An Act authorizing and empowering Anna M'Callmont and Sarah M'Callmont, administratrixes of Doctor James M'Callmont, deceased, to convey, assure and lease to William T. Read and Sally his wife, late Sally L. Thomas, their executors, administrators and assigns, a lot in the town of New-Castle, - - 272

An Act to enable Robert Frame to erect a mill-dam across the main branch of Indian River, called Cow Branch, in Indian River Hundred, in Sussex county, at a place therein mentioned, and to construct a grist mill and saw mill, and other machinery thereon, - - 280

An Act granting to Elias Hopkins and Samuel Fisher a certain piece of land therein mentioned, - - 282

An Act to carry into effect the last will and testament of George Cummins, deceased, - - - - - 283

An Act to enable Samuel W. Woodland, of New-Castle county, in the State of Delaware, to remove, for the purpose of his own employment, from and into said State, certain negro slaves, and return them at his pleasure, without affecting his property therein, - 295

An Act for the relief of Outten Davis, - - - 309

An Act to repeal the Act entitled "An act to authorize the owners and possessors of the swamp and low grounds situated upon a branch leading into Assawaman bay, to cut a ditch or drain through the same," and the Supplement thereto, - - - - - 310

An Act to enable Joseph Brown to bring certain negroes therein named from the State of Maryland into this State, and to remove them from this State to the State of Maryland, - - - - - - - - - 310

An Act to enable Elizabeth Shockley, Sarah Adkins, Lemuel B. Shockley, John C. Davis and William Shock-

ley, heirs at law and devisees of William Shockley, deceased, and Levi Warren deceased, to sell and convey certain lands therein mentioned, - - 310

An Act to enable William Cooch, of New-Castle county, to bring into this State a certain negro slave therein mentioned, - - - - - - - 312

An Act to enable Everest Maury to introduce the production and manufacture of silk in the State of Delaware, 328

An Act to authorize and empower Henry Colesberry, of the town of New-Castle, to make and execute to Peter Bowman, of St. Georges Hundred, New-Castle county, a deed of conveyance of one full, equal and undivided fifth part of a tract of land therein mentioned, 345

An Act to authorize Benjamin Potter to erect a gate across a public road therein mentioned, - - - 345

An Act for the relief of Elias Naudain, - - - 366

An Act to enable Thomas H. Handy to remove from the State of Delaware to the State of Maryland, two certain negro slaves therein mentioned, - - - 366

An Act to authorize and empower William Holland, of Worcester county, in the State of Maryland, to remove from this State to the State of Maryland, certain negro slaves therein named, - - - - 372

An Act to release certain militia fines imposed upon James Everet, Benjamin Walmsley and David Reed, - 375

An Act to authorize William Hughlett, of Talbot county, in the State of Maryland, to work certain slaves therein named, in the State of Delaware, without impairing his right to said slaves, - - - - 377

An Act for the relief of Ann Howell, late Ann Beeson, 377

An Act to authorize and empower the owners and possessors of certain marsh, cripple, and low grounds, lying on Mispillion and Fishing Creeks, in Kent county, to ditch, drain and embank the same, - - - 390

An Act to enable Col. John Wilson to locate certain vacant lands, situate in North West Fork Hundred, in the county of Sussex, and to complete his title to the said lands, - - - - - - - - 412

An Act authorizing Mary Barnaby, guardian of Eliza Ann Penton, to sell and convey a certain lot of land in the town of New-Castle, belonging to the said minor, 413

An Act to enable Zachariah Hatfield to locate certain vacant lands, situate in N. W. Fork Hundred, in the county of Sussex, and to complete his title to the said lands, - - - - - - - - 413

An Act to enable William Laws to locate certain vacant lands situate in N. W. Fork Hundred, in Sussex county, and to complete his title to the said lands, 432

An Act to authorize the owners and possessors of the marsh or low ground, commonly called and known by the name of the Culbreath Marsh, situate in the forest of Murderkill and Dover Hundreds, in Kent county, to cut a ditch or drain through the same, - - 440

An Act to authorize the owners and possessors of the marsh and low grounds commonly called and known by the name of Bridge Branch, situate in North West Fork Hundred, Sussex county, to cut a ditch or drain through the same, - - - - - - 447

INDEX

TO THE

SEVENTH VOLUME

OF THE

LAWS OF DELAWARE,

Comprising the Acts passed by the General Assembly of the said State, during the Sessions of 1827 and 1829. [There were no Acts passed in 1828, in consequence of the failure of the Legislature to organize.]

ABATEMENT OF ACTIONS—
Action shall not abate on the death of a joint party where the cause of such action survives, - - - 264
Action by or against an exr. or admr. does not abate on his death, or removal, - - - - - 477

ACADEMY—
Lottery for—at Georgetown, - - - 131

ACCEPTANCE *of appraised lands of intestates*, 82, 83, 84
Proceedings when the party entitled to accept, refuses, &c. 85
Right of an assignee of a share to accept, - - 86
Infant, &c. to be passed by in the order of preference, 86
Acceptance of part at the appraised value, bars the acceptor's claim to the residue, to the amount of that value, - - - - - 87
But he may in some cases accept the residue, - - 88
(See *Intestate.*)

CTIONS—
Abatement of, (See *Abatement of Actions.*) - - 264, 477
Limitation of, (See *Limitation of Actions.*) - - 267

ADJOURNMENTS—
Of trials against tenants holding over, - - - 67
Of trials for forcible entry and detainer, - - - 67
Of the Court of Chancery in the absence of the Chancellor, - - - - - - - - - 153

ADJUDICATION—
Of apprentices or servants eloping, or being convicted of crime, to serve beyond the time of original binding, - - - - - - - 102
Effect of such adjudication—Record to be made of it, 103
(See *Apprentices.*)
Of an insolvent to serve creditors, - - - - 138
When such adjudication discharges the demand, - 142
Priority of creditors under such adjudication, - - 142

ADJUTANTS—
To exercise company officers twice a year, - - 22
Arrests of, - - - - - - - - - 22
Of horse and artillery, - - - - - - 13

ADJUTANT GENERAL—
To call out and apportion the drafted militia for service, 9
To furnish blank forms for returns, - - - 18
His general duties, - - - - - - 9, 18, 19
[His compensation,] - - - - - - 19

ADMINISTRATION BONDS, (See *Bonds.*) 469, 267, 277, 480

ADMINISTRATION—
Where granted, - - - - - - - - 467
To whom, - - - - - - - - - 468
With the will annexed—when to be granted, - - 467
During minority, cum testamento annexo—when - - 467
De bonis non and *cum testamento annexo*—how granted 468
Pendente lite or *durante absentia*—at the Register's discretion, - - - - - - - - - 468
Notice of the grant of letters—order for—proof of, 484
When letters granted in another State shall be received here, - - - - - - - - - 486
Admr. in such case to give bond—when, - - 486
Payment may be refused to such admr. till bond given, &c. 487

ADMINISTRATORS, (See *Executors & Administrators.*) 465, 332, 272

ADMINISTRATOR DE BONIS NON—
How appointed, - - - - - - - - 468

ADMINISTRATOR DE BONIS NON—
May complete a sale of lands which the former admr. had obtained an order to sell for payment of debts, - - - - - - - - - 274
To give bond before receiving the purchase money, 278

ALIENS—
Having made *declaration*, may take and hold lands, 236
And may alienate and transmit the same, - - 236
These provisions relate back to the 22d January, 1811, 236
Purchases, &c. of resident aliens heretofore made, valid, 237
Alien ancestor is no bar to the descent of lands to a person capable of inheriting, - - - - 237
Personal estate of a resident alien shall be distributed as if he were a citizen, - - - - - 237

AMENDMENT—
Apprentices and servants—of the act concerning, - 172
Awards, &c. of the act concerning, - - - - 412
Crimes and misdemeanors—of the act for the punishment of, - - - - - - - - 408
Fees—of the act for regulating, - - - - 181
Fences—of the act for regulating, - - - - 437
Intestate's real estates—of the act concerning, - - 266
Small debts—of the act providing for the recovery of, 167
Slaves—of the act concerning crimes committed by, &c. 327, 409

ANSWERS—
Of petitioners under the insolvent law, - - - 137

APPEAL—
From the Orphan's Court—limitation of, - - 332
No stay of proceedings without security, - - 332
From an order of bastardy—limitation of, - - 229
Lies from an order of the Orphan's Court in relation to the sale of land for the payment of debts, - - 279
From an order of said court under the act concerning real estates of intestates—to the Supreme Court, 91
From the said court exercising the duties of the register, 487
From the register to the Supreme Court—when - 472
From his decision concerning an inventory of goods or list of debts, &c.—to the Orphan's Court, - - 475
From the assessment of damages by commissioners of the Mispillion Navigation Company, - - 56
From assessment of property in Dover—to the commissioners of said town, - - - - - 458

APPEALS IN EQUITY—
From interlocutory decrees—limitation of, - - 210
From final decrees—limitation of, - - - - 211
Clerk to note the time of filing causes of appeal, &c. 211
Chancellor may order originals to be sent up on appeal, 211
These provisions extend to the Court of Com. Pleas in equity, - - - - - - - 211

APPEARANCE—
For one discharged under the insolvent act may be entered in an action against him, - - - - - 145
One of several joint creditors under the insolvent law, sufficient, - - - - - - - 145

APPOQUINIMINK HUNDRED—
Swine prohibited from running at large in parts of, 216, 219
(See *Swine.*)

APPORTIONMENT OF RENT—
Between the lessor of premises sold on execution, and the purchaser, - - - - - - - 35

APPRAISEMENT—
Of intestates' lands, - - - - - - - 81, 82
Proceeedings where the party entitled to accept at the appraisement, refuses or neglects to accept, - 85
(See *Intestate.*)

APPRENTICES—
Act concerning apprentices and servants, - - 96, 172
By whom minors may be bound, - - - - - 96
Binding illegitimate children, - - - - - 96, 97
Security to indemnify the county not to be affected by binding illegitimate children, - - - - 97
Negro and mulatto children having no parents able to maintain them—how bound, - - - - 97
Constables and trustees of the poor to give information of such negro or mulatto children, - - - 97
Process need not be issued, if the minor will appear without it, - - - - - - - 97
Negro or mulatto children above ten years, not to be bound, if their parents give security, - - 98
Manner and form of binding apprentices and servants, and what shall be set forth in the indenture or deed, - - - - - - 106, 107, 108, 98, 99
Modified and amended, - - - - - - - 172
Indenture to be recorded, - - - - - - 99, 100

APPRENTICES—
Penalty on Justice for not delivering indenture to Recorder in sixty days, - - - - - 99
Indentures—when and how assignable, - - - 100
Apprentices and servants transmissible to executors and administrators, - - - - - - 100
When not assignable or transmissible, - - - 107
Subject to the right of survivorship, - - - 107
Female servants transmitted to the widow, - - 100
Rights and liabilities of assignees of apprentices, &c. 101
Certificate of approval requisite in cases of assignment, 101
Assignment and certificate of approval to be recorded, 101
Justices and trustees binding or approving a binding or assignment, must act together, - - - 101
Minor not to be bound or assigned to a non-resident, except, &c. - - - . . 101, 103, 104
Rights and authority of the master, - - - 102
Master's compensation on retaking a runaway apprentice or servant, - - - . - - 102
Master's compensation on paying judgment and costs in case of conviction of an apprentice or servant, 102
Adjudication of apprentice to serve beyond the term of the original binding, - - - - - 103
Effect of such adjudication, - - - - - 103
Kidnapping colored apprentices and servants within the provisions of the "Act providing for the punishment of certain crimes and misdemeanors," vol. 6, 708, - - - - - - - - 104
Apprehension and commitment of runaway apprentices or servants, - - - - - - 104, 105
Duty of Justice and Sheriff, - - - - - 105
Relief—how obtained on complaint of an apprentice or servant against his master, for cruelty, ill usage, breach of contract, invalidity of the binding, &c. 105
Relief—how obtained by the master, if the apprentice or servant be incapable of service, - - - 106
Record of discharge or annulment of Indenture, - 106
Penalty for employing, harboring, &c. the apprentices of another, or for concealing or assisting a runaway apprentice, - - - - - - 106, 107
Construction of the term "servant," - - - 107
Female apprentice bearing a bastard child, shall serve one year after the expiration of her term, - - 233
And shall forfeit her freedom dues, - - - 233
Imported persons not to be bound but by deed before a Justice of the Peace or a trustee of the poor, - 375
Duty of the Justice or trustee to protect such persons, 375

APPRENTICES—
A negro or mulatto bearing a bastard child at the poor house, may be bound by the trustees, - - 420

APPROPRIATION—
[Of money, for the support of government, 118, 164, 494
For the education of poor children, - - 154, 489
For the payment of claims against the State, - 151, 491
For the use of the Secretary's office, - - - 152, 493
For printing a new edition of the laws, - - - 449
Of the income of the School Fund, towards free schools,] 192

ARMORY—
In Kent and Sussex counties, to be built, - - 438
Expenses thereof, how paid, - - - - - 438
Arms to be deposited therein, - - - - 439

ARMS—of militia, (See *Militia.*) - - 5, 6, 13, 19, 23
Armories to be built for the preservation of, - - 438
Arms to be deposited therein, - - - - 439
Duty of Sheriffs, Justices of the Peace, Constables and Militia Officers to seize public arms, - - 439
In suits for such seizure—costs how paid, - - 439
Penalty for buying, selling or giving away public arms, 437

ARRANGEMENT, *of the Militia,* (See *Militia.*) - - 4, 5

ARRESTS—
Act concerning the treatment of persons under arrest, 92
No person arrested to be carried to a public house without his consent, - - - - - - - - 93
(See *Militia.*)

ARTILLERY—
Number of companies in each brigade, - - - 5
Clothing of, - - - - - - - - - 5
Battalions of—how formed, and when to meet—their officers, &c. - - - - - - - - 9
Their orders on the commissary, - - - - 13
How armed, - - - - - - - - 5

ASSAULT, *by a slave*—
With intent to commit murder or robbery, - 120, 121
Abetting such assaults, &c, - - - - - 121

ASSAULT AND BATTERY—
Powers of Justices of the Peace in complaints of, 257

ASSAULT AND BATTERY—
May be submitted to the decision of the justice, - 259
May be settled between the parties before the justice, 260
Fine before justice not to exceed ten dollars, - - 259
When the justice shall refuse to determine the case, 260
His duty in such case, - - - - - - - 260

ASSAULT AND BATTERY, *by a slave*—
On a white, - - - - - - - - - 125
On a negro, - - - - - - - - - 126

ASSAWAMAN BAY—
The act to drain certain low grounds on a branch of—
repealed, - - - - - - - - 316

ASSESSORS—
Disqualified from holding certain offices, - - 213

ASSIGNMENT—
Of apprentices and servants, - - - 100, 101, 107
Of the property of an *insolvent prisoner*, - - - 138
Effect of such assignment, - - - - - 139
Copy of such assignment to be evidence, - - 140
Of an intestate's lands to a party accepting at the appraisement, - - - - 82, 83, 84, 86, 89, 90
Who shall be entitled to preference in the assignment of an intestate's lands, - - - - 82, 83, 84

ASSUMPSIT, *action of*—
Lies against an exr, or admr. for a legacy, or distributive share, - - - - - - - - 483
Unless it be the subject of a trust, - - - 484

ATTACHMENT—
Against a vessel stationed or prepared in any place, for the exportation of slaves, - - - - 128

ATTACHMENT, *of contempt*—
Bail shall be taken on process of contempt, - - 238

ATTORNEYS AT LAW—
Shall give written directions to the clerks to endorse the real debt in case of judgment confessed for a penalty, - - - - - - - - - 252
In an action on a recognizance or bond to the State, an Attorney may use his own name instead of the Attorney General's, - - - - - - - 73

ATTORNEY GENERAL—
In his absence, a deputy to act for him, - - - 29
To answer appeals from orders of bastardy, - - 229
Coroner to deliver inquisitions, &c. to him—when, 307

ATTORNMENT—
Grant of rents, reversions, &c. good, without attornment, - - - - - - - - 367
Attornment to a stranger, void, without the written consent of the landlord, - - - - 368

AUDITOR OF ACCOUNTS—
How appointed—term of office, - - - - 377
Vacancies to be filled by the Governor—when - 377
To settle with certain public officers, - - - 378
To make report to the Legislature, annually, - - 378
To settle the accounts of the school committees, - 194
To give notice of the time when he will meet them, 194
To notify the districts of the neglect of the school committee to settle with him, - - - - 194
To report the investments of the trustees of the school fund under resolution of 7th Feb. 1827, - - 157
He may direct a proceeding on the State Treasurer's bond, - - - - - - - - 38
To appoint a day for settlement with the Secretary of State and State Treasurer, - - - - 379
And with the county treasurers, treasurers of the poor, sheriffs and constables, - - - - - 379
To give notice of the day so appointed, - - 380
Penalty on said officers for neglecting to settle, - 380
He shall report such neglect to the General Assembly, 380
Shall have power to compel the attendance of witnesses, 380
And to order the payment of costs, - - - - 381
When a tax is laid, he shall fix the rate per cent. - 381
And shall issue assesment lists and warrants, - - 381
Form of warrant, - - - - - - - 381
Docket entry of warrant, - - - - - - 382
Collectors' names to be entered on the docket, - 383
Clerks of the peace to certify to him, abstracts of assessment lists, - - - - - - - 385
And copies of the minutes of the proceedings of the levy-court, - - - - - - - 386
Lists of fines, &c. imposed by the courts, to be certified to him, - - - - - - - - 386
And the returns of sales of persons as servants, - 386
Fines imposed by Justices of the Peace, to be certified to him, - - - - - - - - 387

AUDITOR OF ACCOUNTS—
Sheriffs and constables to transmit to him receipts for payments to the State treasurer, - - - 387
Copies of laws granting a tax, &c. to be transmitted to him, - - - - - - - - - 388
Seal of the auditor's office, - - - - - 388
Auditor to give bond and security, - - - 388
Neglecting to give bond in *seven* days, a forfeiture of office, - - - - - - 389
Bond to be recorded by the Secretary of State, and certified to the legislature, - - - 388
John H. Harris appointed auditor, - - - 452

AUGUSTINE MARSH COMPANY—
Style, - - - - - - - 111
Commissioners—their powers, &c. - - - 109
Meeting of owners—elections—voting—vacancies, 110
Forfeiture for refusing to act as manager, - - 110
Treasurer—his bond—fees, - - - 111, 113, 115
Taxes, laying of—collection of, - - - 112, 113
Managers—powers—duties—compensation, 113, 114, 115
Penalty for injuring banks, &c. - - - 115
Repeal of former act, - - - 116

AVOWRY—
For rent arrear—how made, - - - - 357

B

BAIL—
In civil suits, how taken, - - - - 237
Amount of, how determined, - - - - 238
Special bail to be entered before appearance—when 238
Is entitled to an assignment on paying a judgment, 366
He may satisfy the judgment as soon as it is given, 367
He may proceed in the name of the plaintiff, or make himself a party, - - . - 367
This provision extended to the act for assigning bills and specialties, - - - - - 367
Bail bond, when it shall be assigned, - - - 238
Action on bail bond, when brought—and how, - 239
Liability of sheriff for taking insufficient bail, - - 239
Rule on sheriff to produce the body—when granted, 239
Bail shall be taken on an attachment of contempt—when, - - - - - - 238
Amount thereof, how fixed, - - - - 238

BAIL—
Shall be taken in criminal cases, *not capital*, . . . 239
Amount how fixed—how taken, - - - 239
How returned, - - - - - 240
Justice of the Peace to issue process for arresting persons accused—when, - - - - 240
Accused to be admitted to bail, if the offence be bailable, - - - - - - 240
Justice shall take the voluntary declarations of the accused, - - - - - - 240
And may commit him, or require bail, - - 240
In felony, the justice shall reduce the *examination and the testimony to writing*, - - - - 241
And require the witnesses to enter into recognizance, 241
Recognizance to be taken without surety, unless, &c. 241
In criminal cases, bail, how taken, - - - 241
Persons committed for want of bail, how discharged, 242
Capital offences not bailable, unless, &c. - - 242
Certain crimes not bailable, - - - - 304
Accused not to be discharged for insufficiency of commitment, - - - - - - 242
The court or judge may hear the case, and re-commit, &c. - - - - - - 242
Costs of such proceeding—how paid, - - 242
Recognizances, &c.—where returned, - - 243
Bail may be taken by the coroner, - - - 306

BAIL BOND—
To be assigned to a plaintiff on request, . - 238
Liability of sheriff for taking insufficient bail, - - 239
Action on bail bond—how brought—and when, - 239

BANK OF SMYRNA, AND FARMER'S BANK—
May discount and collect negotiable notes drawn in any form, - - - - - - - 117

BANK of *Wilmington and Brandywine*—
Capital paid in, estimated, - - - - 203
Authorized to make up the original capital by subscription, - - - - - - 203

BASTARDY—
Proceedings in cases of, - - - - 227
The father may be required to give bond and security, 227
Justice to order him to pay the lying-in expenses, - 228
And a monthly allowance to the mother, &c. - - 228
This order shall have the effect of a judgment, - 228

BASTARDY—
If he neglect to give bond, he may be committed, 228
Appeal from an order of the justice—how taken, - 229
Security to be given on the appeal, - - - 229
Proceedings where the appellant denies he is the father, 230
Liability of the father to the trustees of the poor, 232
A negro or mulatto delivered of a bastard child at the poor-house, may be bound by the trustees, - - 420
Female apprentice bearing a bastard child shall serve one year after the expiration of her term, - - 233
And shall forfeit her freedom dues, - - - 233

BATTALION—
Colors of each, - - - - - - - 6
Of horse and artillery, - - - - - - - 9
Meeting, - - - - - - - - 9
Days of meeting, - - - - - - - 11
Changes in battalions—how made, - - - - - 4

BATTERY, *by slaves*—(See *Assault.*) - - - - - 125

BAUCUMBRIG—
An act to authorize the cutting a ditch or drain from Baucumbrig to Murderkill creek, - - - 147

BAY OF DELAWARE—
Cession of jurisdiction, &c. therein to the U. S. for the erection of a breakwater, - - - - - - 31, 32
Cession of certain marsh on—for the erection of a light house, - - - - - - - - - 368

BEDDING—
Of insolvent—exempt from execution, - - - 139

BENEFICIAL SOCIETY *of Wilmington*—
Incorporated, - - - - - - - - 133

BILLS OF EXCEPTION—
When they shall be allowed, - - - - - - 413
To be signed by the Chief Justice, &c. - - - 413
To be a part of the record, - - - - - - 413
When not allowable, - - - - - - - 414
The exception must be proposed when the point is decided, - - - - - - - - - 414
When it must be drawn up and signed, - - - 414

BOARD OF CANVASS—
Inspectors of elections for electors of President and Vice President to meet and form a board, - 434
Proceedings of the board, - - - - - - 434
Certificates of election, - - - - - - 435
To whom they shall be transmitted, - - - - 435

BONDS—
Of Collectors of military fines, - - - - - 15
Commissaries of military stores, - - - - - 14
Company officers—for arms, - - - - - - 20
Managers of lottery—for an academy, &c. at Georgetown, - - - - - - - - - - 132
Purchaser of the scheme of said lottery, - - - 132
Managers of lottery—for a masonic hall at Wilmington, 30
Purchaser of the scheme of said lottery, - - 30
State Treasurer, - - - - - - - - 38
Treasurer of the town of Laurel, - - - - 40
Administration and testamentary bonds, - - 469, 267
Refunding bonds, - - - - - - - 483

BONDS AND SPECIALTIES—
An act regulating proceedings on, - - - - 72, 76
When judgment thereon shall be for *damages*, - 73
When judgment shall be for the *penalty*, - - 75
Not extinguished by judgment, if for damages, - 73
Consolidation of actions on, - - - - - - 73
How breaches of the condition may be assigned, and damages enquired of, - - - - - - 73, 74
Preference of creditors in actions on a public bond when the penalty is inadequate to cover all damages, 74, 75
Certified copies of public bonds to be evidence, - - 75, 76

BOUNDARIES—
Of the town of Laurel—how to be established, 42, 43
Testimony respecting bounds of lands—how perpetuated, - - - - - - - - - 225
Application to be made to the Chancellor, by petition, 225
Proceedings—depositions—when evidence, - - 225, 226
Commissioner may appoint a clerk, - - - 226
Both commissioner and clerk to be sworn, - - 226
Costs of these proceedings—how paid, - - - 226

BRANDYWINE AND CHRISTIANA *Manufacturing Co.*—
Incorporated, - - - - - - - - 254

BREACHES—Assignment of, - - - - - - 73, 74

BREAKWATER HARBOUR—
Act ceding the site for—to U. S. - - - - 31

BRIBES—(See *Sheriff.*) - - - - - - 25, 26

BRIDGES—
To be kept in good repair, - - - - - 391
Costs and charges thereof—how borne, - - 391
Over mill race, &c. to be kept up by owner or tenant, 393
Between two counties or hundreds—how kept up, 401
Penalty for injuring public bridges, - - - 402
Timber, &c. for repairing—how obtained, - - 402
Penalty for injuring bridges on private roads, - 404
Overseers of—to have the same powers for obtaining materials as the overseers of roads, - - 404

BRIDGE, SUMMIT, *over the Chesapeake and Delaware Canal*—
Travelling over it—how regulated, - - - 152
Lamps—when to be lighted, - - - - - 153

BRIDGEVILLE—
Swine prohibited from running at large in, 219
(See *Swine.*)

BRIGADES—
Arrangement into, - - - - - - - 4
Number of troops of horse and artillery in each, - 5
Reviews of, - - - - - - - - 18

BRIGADIER—
To direct the uniform of cavalry and volunteers, 5, 6
Returns to, - - - - - - - - - 8
To send list of fines to commissary—and when, 12
His general duties, - - - - - 9, 12, 13, 14
To order the time and place of meeting of cavalry and artillery, - - - - - - - - 9
To review the brigade once a year, - - - 18
To take bond from the commissary, - - - 14

BRIGADE MAJOR— - - - - - - - - 7
His duties, - - - - - - - - - 11, 18
Arrests of, - - - - - - - - - 22

BROBSON, WILLIAM P.—
[His compensation as war agent, - - - - 156
Authorized to pay over $6,130 00 to the State Treasurer,] 156

BURNING, OR SETTING ON FIRE, *by slaves*—
Of any magazine, church, meeting-house, school-house, ship, vessel, mill, warehouse, store, granary, shop, &c. or any wheat, grain, or hay in the stack; or abetting the same—punishment for, - - - 121

BY-LAWS, *of the Mispillion Navigation Company*—
How to be made, - - - - - - - - 54

C

CAMDEN—
Swine prohibited from running at large in, - - 218
(See *Swine.*)

CANTWELL'S BRIDGE—
Place of election for St. George's hundred, - - 117
Hogs not to run at large in, - - - [48, 49, 50,] 218
Penalty on owners of hogs running at large, - - 49, 50
Penalty on Constables for refusing to seize, &c. such hogs, - - - - - - - - 50

CANVASS—(See *Board of Canvass.*)

CAPTAINS—
Their duties, (See *Militia.*) - - - 8, 9, 11, 12, 13

CASE STATED—
A case stated in any action shall be a part of the record, 414

CASHIERING— (See *Militia.*) - - - - 12, 21, 9, 18

CAUSEWAYS—
To be be kept in good repair, &c. (See *Roads.*) 391

CAVALRY—
Troops of—arms of—number in each brigade, 4, 5, 9
To be uniformed as the brigadier shall direct, 5, 6
Squadrons of cavalry, and their officers, - - 9
Captains of—may draw on commissary—and how, 13

CAVEAT—
Against the allowance of a will—when to be received, 466
Proceedings thereon, - - - - - - 466

CERTIFICATES—
Of appointment of collectors of militia fines, to the Levy Court, - - - - - - - - 16
Of field officers, before companies obtain arms, - - 19
Of Captains, on removals of militia men from one district to another, - - - - - - - 9

CERTIORARI—
Not to stay possession of premises recovered in forcible entry or detainer, or in proceedings against a tenant holding over, - - - - - - - 70

CESSION—
To the United States, for breakwater, and piers, and light-house, - - - - - - - 31, 51, 368

CHANCELLOR—
May order original papers, &c. to be sent up on appeal, 211
Authorized to take the acknowledgment of deeds, 295
To administer an oath in any case where proper, 182

CHANCERY—
Proceedings in—to perpetuate testimony respecting the bounds of lands, - - - - - - - 225
Insolvent debtors imprisoned by process from the Court of Chancery, how discharged, &c. - - - 138, 139
Registers of the Court of Chancery, to open and adjourn the court in certain cases, - - - 153, 154

CHESAPEAKE AND DELAWARE CANAL—
Tolls on, may be attached for debt—when, - - 211
Injunctions against the company for overflowing lands, how obtained, - - - - - - - - 340
Company authorized to make rules for the protection of the canal, locks, banks, &c. - - - - 360
Penalty for injuring the banks, &c. of the canal, - 360
Travelling over *Summit Bridge*, regulated, - - 152

CHILDREN—
Liability of—to support their parents, - - - 424
Proceedings against—to enforce this liability, - - 425
Advancement of—by intestate in his life time, . - 80
Descent of lands of intestates among children, - 77
Infant in the mother's womb, to take as a living child, 154

CHILDREN—
Children born after a will made by the parent, and unprovided for, shall have the same share of the estate as if the parent had died intestate, - - 119
(See *Posthumous Children—Will.*)

CHURCH—
Episcopal—in Georgetown, - - - - - - 131
St. Peter's Church—in Wilmington, - - - 32

CLASSING MILITIA— - - - - - - - 8, 10

CLAIMS—
[Against the State, - - - - - - - 151, 491
For the tuition of poor children,] - - - 154, 489

CLERK OF THE PEACE—
To certify to State Treasurer fines, &c. imposed by the court, at each term thereof, - - - - 173
Penalty for neglect, - - - - - - - 173
To return to the trustee of the school fund, the proceedings of the commissioners appointed to fix the school districts, - - - - - - - 185, 7
To publish a description of the school districts, - 186
To give notice of the first annual meeting of school voters, - - - - - - - - 188
Penalty for neglect, - - - - - - - 188
To give notice of other meetings in certain cases, - 190
Compensation for these duties to be fixed by levy court, 197
To pay to the Secretary of State, the State's fee on the appointment of constables, within *sixty days*, - 200
Neglect of this duty—a forfeiture of office, - - - 200
To enter appeals from an order of bastardy, - - 229
To transmit bastardy bonds to the trustees of the poor, 230
To make known to the sheriff, vacancies, &c. in the office of levy court commissioners—when, - - 263
Limitation of actions on his official bond, - - 267
[To distribute licenses for the use of gill nets & seines, 374
To account therefor, quarterly, - - - - - 374
Penalty for neglect,] - - - - - - - 374
Prohibited from purchasing witnesses' fees, - - 374
Penalty therefor, - - - - - - - - 374
To certify to the auditor, abstracts of assessment lists, 385
And transfers, &c. made on said lists, - - - 385
To transmit to him copies of the proceedings of the levy court, - - - - - - - - - 386

CLERK OF THE PEACE—
And copies of any paper, &c. in his office, on request, 386
Penalty for neglect of these duties, - - - 386
To transmit to the auditor, lists of fines, &c. imposed by the Court of Quarter Sessions, at each term, - 386
And abstracts from the returns of sale of persons as servants, - - - - - - - 386
Penalty for neglect of these duties, - - - 387
To deliver to the sheriff the alphabetical lists received from the inspectors of general elections, previously to an election for electors of President and Vice-President, - - - - - - - 433
If any inspector has failed to deliver him his list, he shall demand it of such inspector, - - - 433
Compensation therefor, to be paid by the inspector, - 433

CLERK OF THE HIGH COURT OF ERRORS & APPEALS—
To note the time of filing causes of appeal, &c. - 211
His duty on entering judgments, - - - - 251

CLERK OF THE SUPREME COURT—
His duty in case of a record being remanded from the High Court of Errors and Appeals, - - 250
His duty on entering judgments, - - - - 250
To note the time, - - - - - - - 251
To keep two indexes—direct and reversed, - - 251
To alphabet judgments in twenty-four hours, - - 251
Penalty for neglect, - - - - - - 251
To enter the real debt on the docket, &c. - - 252
Limitation of actions on his official bond, - - 267
His fees on granting a license for the exportation or importation of slaves, - - - - - 283
To collect the fees due the school fund thereon, - 283
To enter on the docket payments received on executions, 312
To satisfy the judgment, when thus paid off, - 312
Penalty for neglect, - - - - - - 312
Prohibited from purchasing witnesses' fees, - - 374
Penalty for so doing, - - - - - - 374
To transmit to the auditor a certificate of fines, &c. imposed by the court at each term, - - - 387
And also returns of the sales of persons as servants, 387
Penalty for neglect of these duties, - - - 387

CLERK OF THE ORPHANS' COURT—
Limitation of actions on his official bond, - - 267
May open and adjourn the court in the chancellor's absence, - - - - - - - 329

CLERK OF THE ORPHANS' COURT—
Shall record all petitions, orders, returns, &c. - 330
And keep an accurate index to his record books, - 330
Recognizances to be recorded in *five days*, and in a separate book, - - - - - - - - 330
Penalty for the neglect of these duties, - - - 331
To notify the register of the appointment of guardians, and of valuation of wards' lands, in twenty days, 335
Not to record the appointment of guardian till security given, - - - - - - - - - 334
To preserve guardian bonds in his office, - - - 334

CLOTHING—
Of *artillery, light-infantry*, grenadiers, or cavalry, 5
Wearing apparel of insolvent debtors, exempted from execution, - - - - - - - - 139

COAL COMPANY—(See *Delaware Coal Company.*)

COGNIZANCE—(See *Avowry.*)

COLLATERALS—
Distribution of intestates' real estate among, - - 78

COLLECTORS *of Public Taxes*—
Disqualified from holding certain offices, - - 213
Limitation of actions on their official bonds, - - 267

——————— *of State Taxes*—
How appointed—to give bond, - - - - 382, 383
Proceedings in case of the death of a collector, - 384
Power of collection devolves on his executor, &c. subject, &c. - - - - - - - - 384
Powers of—in executing their warrants, - - - 384

COLLECTORS *of Militia Fines*—
Collectors of tax may be appointed, - - - 15
Appointments of—how made—their warrant and duties, 14, 16
Penalty for collecting more than is due, - - 14
Their liability for fines received, - - - - 15, 16
Their bond—penalty for not giving bond—their commissions, - - - - - - - - 16, 17

COLONEL—
Returns to—colonel's book, - - - - - 8
(See *Militia.*)

COLORS—
How furnished—how paid for, - - - - 6, 13
One stand for each battalion—by whom to be borne, 6

COMMERCIAL BANK *of Delaware*—
Charter continued till 1 March, 1830, - - - 41
Debts due to—may be sold at public vendue, - - 42

COMMISSARIES *of Military Stores*—
Their duties—bond—compensation, - 12, 13, 14, 16, 17, 20
To appoint collectors—when—how—warrants of, 14, 15, 16
To settle with the auditor, - - - - - 16
Penalty for not paying over fines, - - - - 17
To pay the collectors, - - - - - - 17
To examine arms returned, &c. - - - - 20

COMMISSIONERS—
To *examine records in Sussex*—their duties, - - 27
Of *gaols*, - - - - - - - - 94
Of the town of *Laurel*, - - - - - 48
Of the *Mispillion Navigation Company*, - - - 52
Of the *St. Augustine Marsh Company*, - - - 109
Of the *Baucumbrig Marsh Company*, - - - 147
Of *Milford*, - - - - - - - 441
Of *Dover*, - - - - - - - 453

COMMISSIONERS *of the Roads in New-Castle County*—
Damages for opening, &c. public roads, not to be allowed until certified by them, - - - - 400
Penalty for neglect of their duty, - - - - 401
To appoint overseers to private roads—when, - - 405

COMMISSIONERS *of the Levy Court*—
(See *Levy Court Commissioners.*)

COMMISSIONS *of Military officers*— - - - - 7
Rank—how determined, - - - - - 7, 8

COMPANY *of Militia*—
Divisions of militia into companies—number in each, 4, 5
Number of artillery companies and troops of horse in each brigade, - - - - - - 5

CONSANGUINITY—
Degrees of—how computed, - - - - 78

CONSTABLES—
No person shall hold the office of constable more than three years in any term of six years, - - 134, 198
Their duty in executing orders for the sale of *strays*, 171
Their fees in such case, - - - - - - 171
To pay over fines, &c. by them collected, - - 172
Penalty for neglect, - - - - - - 173
Their residence, and term of office, - - - 197
Their qualifications, - - - - - - 198
Not to hold the office more than three years in six, - 198
To give bond and security, - - - - - 198
Bond to be acknowledged and approved—how, - 198
To be delivered to the recorder of deeds, and recorded, 199
Failure to give bond in *five* days, vacates the office, 199
General powers and duties of a constable, - - 199
To pay to the clerk of the peace on their appointment, five dollars for the use of the State, - - - 200
Neglecting this duty, a forfeiture of office, - - 200
Number of—in New-Castle county, - - - 200
in Kent county, - - - - - 200
in Sussex county, - - - - - 200
Additional—for a limited time, - - - - 201
To be appointed by the Court of Quarter Sessions, annually, at the first term, - - - - - - 201
Vacancies may be filled by said court, at any term, 201
Or by the Governor, in vacation, - - - - 210
Duty of constables, on selling swine impounded, - 214
Their fees for this service, - - - - - 214
Their authority on process in cases of bastardy, - 232
Their fees in such cases, - - - - - - 233
Limitation of actions on their official bonds, - - 267
To settle with the auditor, annually, for fines, &c. - 380
Penalty for neglect, - - - - - - - 380
To take duplicate receipts for payments to the State Treasurer, and transmit one to the auditor, - - 387
Allowance for serving process under the Act to consolidate and amend the laws for the relief of the poor, 429
Their duty to seize public arms, &c.—when, - - 439
To give information of negro children having no parents able to maintain them, to two justices, or two trustees, - - - - - - - - - 97
Fee for giving such information, - - - - 97
[Penalty for not seizing, &c. hogs at large, in Cantwell's Bridge, when notified thereof,] - - - 50
[An additional one to be appointed—to reside in Seaford,] - - - - - - - - - 59

CONSTRUCTION—
Of the words "kin" and "kindred," (See *Intestate.*) 78
Of the word "servant," (See *Apprentice and Servant.*) 107
Of the words "personal property," in 6th sec. of Act for the punishment of slaves, &c, (See *Slaves.*) - 125
Of certain terms used in Acts of Assembly, denoting gender and number, - - - - - 204

COPIES—
Of certain public recognizances and bonds, to be evidence, - - - - - - - - - 75, 76
Of the assignment of effects of an insolvent prisoner, evidence, - - - - - - - - 140
Of discharges of apprentices, &c. to be recorded, 106
Of adjudication of apprentice, extending the term of binding, - - - - - - - 103
(See *Record.—Bond.*)

CORONER—
Limitation of actions on his official bond, - - 267
Information to be given him of unnatural deaths, - 303
He shall hold inquests—when, - - - - 303
To cause suspected persons to be brought before the inquest, - - - - - - - - - 304
Such persons to be examined, - - - - 304
Their voluntary declarations to be reduced to writing, 304
And the testimony of witnesses, if material, - - 304
Form of inquisition, - - - - - 304
Coroner may summon witnesses, and compel their attendance, - - - - - - 304
To arrest suspected persons—when, - - - 304
Warrant for apprehending a person charged by the inquisition, - - - - - - 305
Accused to be carried before a judge to determine the question of bail, - - - - - 305
Coroner may commit for trial—form of commitment, 305
He may take recognizances of bail—form of, - 306
And recognizances of witnesses—form of, - - 306
Witnesses may be required to give security, and committed on failure, - - - - - 307
When they shall be bound to appear at *quarter sessions*, 307
Coroner to deliver his inquisitions, &c. to the Attorney General—when, - - - - - 307
Penalty on a juror for not attending inquests, - 307
A body may be disinterred—when - - - 307

CORONER—
Penalty for improperly burying a body on which an inquest ought to be held, - - - - - 308
Justices of the Peace to perform the duties of coroner in certain cases, - - - - - - 308
Coroner to execute the office of sheriff—when, - 308

CORPORATIONS—
To take bonds from their officers—when, - - 268
Limitation of actions on such bonds, - - - 268
Suits against—how brought, - - - - 338
Process—how served, - - - - - - 338
Proceedings where the president, &c. reside *out of the State*, - - - - - - 339
Notice of rules, &c.—how served, - - - 339
Stock in any company may be *attached* and *sold*, - 340
Notice of sale.—Notice when the debtor resides out of the county, - - - - - - - - 341
Copy of the attachment to be left with the president, &c. after which assignments shall be void, - - 341
Purchasers' right to stock so sold, - - - - 341
Order of sale not to be issued until final judgment, 342
Cashier or clerk shall give certificates of stock held by debtors, - - - - - - - - 342
Money arising from the sale of stock—how applied, 342
Liability of corporations, for introducing or retaining non-resident paupers, - - - - - - 428

COSTS—
On conviction of slaves before Justices of the Peace, 124, 126
Of proceedings for partition, assignment sale, &c. of intestates' real estates, - - - - - - 90
In forcible entry, &c. and of tenants holding over, 62, 66, 68, 69, 71
Of proceedings to perpetuate testimony respecting boundaries, - - - - - - - - 226
On appeal from Justices of the Peace on civil suits, 168
In cases of trespass, to be paid by the justice—when, 258
In the High Court of Errors and Appeals, on affirmance, 250
Shall be recovered by defendant, on discontinuance 180
On non pros—nolle prosequi—retraxit—nonsuit, - 180
To be given to a party recovering judgment in any civil suit, or upon a writ of error, - - - - - 180
Costs on rules—how determined, - - - - 180
Upon suit in the name of the State, - - - 180
In equity—discretionary, - - - - - 180
Before a judge, &c. out of court, - - - - 180

COSTS—
To and against executors and administrators, - 478
Not to be allowed ex'rs. or adm'rs. unless the court certify, &c. - - - - - - - - 478
To be disallowed for not exhibiting to ex'r. or adm'r. a probate before suit brought—when, - - 478

COUNTER SECURITY—
How obtained by surety to an ex'r. adm'r. or guardian, 331

COUNTY—
Demands against, not to be purchased before allowance, 375
Demands so purchased, forfeited, - - - - 375

COUNTY TREASURERS—
Limitation of actions on their official bonds, - - 267
To settle with the auditor, annually, - - - 379
Penalty for neglect, - - - - - - - 380

COURTS—
High Court of Errors and Appeals to be held at Dover, 182
Other courts—for New-Castle county, at New-Castle, 183
for Kent county, at Dover, - - 183
for Sussex county, at Georgetown, - 183
May be removed in case of malignant sickness, - 183
Records of—to be removed in case of invasion, &c. 183
To be returned as soon as the safety thereof will admit, 183
Supreme Court and Court of Common Pleas empowered to grant licenses for the exportation and importation of slaves, - - - - - - 282
To take the acknowledgment of deeds, - - - 295
To hear appeals from the decisions of the "commissioners of the town of Dover," - - - 455
Issues of fact from the register, to be heard at the bar of, - - - - - - - - - 466
Any court of law or equity may appoint guardians *pro lite*, - - - - - - - - - 336
Courts may grant injunctions against the Chesapeake and Delaware Canal Company, for overflowing lands—when, - - - - - - - - 340
Jurisdiction of Quarter Sessions of crimes of slaves, 122

COURT OF OYER AND TERMINER—
General jurisdiction of, - - - - - - - 410
Shall assign counsel for prisoner—when, - - 410

COURT OF QUARTER SESSIONS—
Jurisdiction of—in cases of crimes committed by slaves, 122
To appoint constables annually, at its first term, 201
May fill vacancies at any term, - - - - 201
To take the acknowledgment of constable's bonds, 198
And approve of the sureties therein, - - - 198
And certify and transmit the same to the recorder, 199
To appoint wood corders, annually, - - - 234
General jurisdiction of this court, - - - 410
Limited jurisdiction in capital cases, - - - 410
May assign counsel in trials for felony, - - 410
Jurisdiction of—in laying out, changing and vacating public roads, - - - - - - - - 395
Mode of proceeding, - - - - - - - 395
Appointment of freeholders, - - - - 395
Review to be granted—when, - - - - 398
Second review—when, - - - - - - 398
Return to be confirmed—when, - - - - 398
Jurisdiction of—in laying out, changing and vacating *private* roads, - - - - - - - 404
To declare such roads *private*, - - - - 406
To have jurisdiction in a summary proceeding, of settlement cases between two counties, - - 424
To be held in New-Castle county—when, - - 261
Shall have power to enforce the liability of parents to support their children, and children their parents, 425
An appeal lies to this court from an order of sequestration, issued by trustees of the poor in certain cases, 427
If a husband desert his wife, or parents their children, this court may order them to make provision for their support, and give security to indemnify the county, - - - - - - - - 427

COURTS MARTIAL—
How appointed—oath of members, - - - 21, 22
Trial before—how conducted, - - - - - 21
Penalty for not serving on, - - - - - - 21

CRANE HOOK MARSH, - - - - - - - 72

CREDITORS—
Must exhibit claims to trustees of insolvent debtor, within one year, - - - - - - - - 140
Priority of—when the penalty of a public recognizance or bond is inadequate to cover all damages, - 74, 75

CRIMES OF SLAVES, (See *Slaves.*) - - - - - 120

CRIMINAL PROSECUTIONS—
How conducted in the absence of the Attorney General, 29

CURTESY, (See *Intestate.*) - - - - - - - 77

D

DAMAGES—
How assessed in an action on a recognizance or bond, 73, 74
When judgment shall be for damages—and when for penalty, - - - - - - - - - - 73, 75
(See *Bond—Forcible Entry* and *Tenant.*)

DAYS OF EXERCISE—
Regiments—Battalions—Companies—Officers, - 11, 22
Notice of, - - - - - - - - - - - 11

DEATH—
Crimes for which slaves shall suffer death, - - 120

DEBT—
Action of—lies for rent arrear, - - - - - 352
Liability of intestates' lands for debt, not affected by proceedings under the Act concerning intestates' real estates, - - - - - - - - - 90, 91
Order of the administration of personal assets in the payment of debts, - - - - - - - 479
Order of payment of proceeds of sales of the real estate sold, under an order of court, for the payment of debts, - - - - - - - - - 276

DEED—
Lands may be alienated by deed, without livery, - 295
Deeds, how acknowledged and proved, - - - 295
Private examination of a married woman, - - 295
Deeds made before 1 May, 1811, by feme covert without private examination, are valid - - - 301
Acknowledgment, proof, private examination, &c. *how certified,* - - - - - - - - - 296
Justices of the Peace taking the acknowledgment of deeds, must act together, - - - - - 301
Their certificate of acknowledgment, &c. - - 301
Deeds *made out of the State,* how acknowledged, &c. 296

DEED—
Acknowledgment, &c. of such deeds—how certified, 296
Deeds to be recorded within *one year* after date, 297
Or it shall not avail against subsequent creditors, &c. 298
But this shall not extend to a lease not exceeding 21 years, - - - - - - - - - 298
Record, or an office copy thereof, evidence, - - 297
Recorder to note the time of receiving a deed, &c. to be recorded, - - - - - - - 299
Recording shall avail only as to lands in the county, 300
Force of the words *grant*, *bargain*, and *sell*, - - 301
Deed of a tenant in tail, bars the estate tail, - - 166
Such deed must be acknowledged or proved, and recorded, - - - - - - - - 167
On a sale of lands by an ex'r. or adm'r. for payment of debts, under an order of the orphans' court—deed, how made, - - - - - - 274
Title of the grantee under such deed, - - - 275
How made, when the officer who sold lands is dead or out of office: or where the purchaser is dead, - 35
Effect of such deeds, - - - - - - - 36
Of apprenticeship or servitude, - - - - 98, 99

DEFEASANCES—
A defeasance to a conveyance of lands must be endorsed on such conveyance, - - - - 299
And proved and recorded in sixty days, - - 299
Or it shall not avail against creditors, &c. - - 299

DELAWARE CITY—
Trustees of the school in Delaware city, incorporated, 343
Justice of the Peace to be appointed to reside near, 48

DELAWARE COAL COMPANY—Incorporated, - - 205

DELAWARE FIRE INSURANCE COMPANY—
To have perpetual succession, - - - - 212
Sec. 13. of the original Act repealed, - - - 212

DEMISE—
How laid in proceeding against tenant holding over after notice, - - - - - - - - 65
Evidence of the demise in such cases, - - - 65

DESCENT—*Of intestates' lands*, - - - - 77

DETAINER, *forcible*—(See *Forcible Entry and Detainer*.) 60, 71

DIRECTIONS—*To freeholders in making partition,* - 81

DIRECTORS—[Of the *Farmers' Bank* on the part of the State—appointed,] - - - - - - 156, 494

DISCHARGE *of insolvent prisoner,* - - - - - 138, 139
Effect of the discharge, - - - - - - 141, 143
(See *Insolvent.*)

DISCIPLINE *for the militia*—rules of, - - - 10, 11, 22

DISTRESS—
Arms of the militia exempt from, - - - - 6
For rent arrear—how taken, - - - - - - 346
Who may distrain, - - - - - - - 346
What may be distrained, - - - - - - 347
Goods may be followed forty days, - - - 347
Proceedings on a distress, - - - - - 348
Goods distrained may be sold—when, - - - 349
Penalty for taking an unreasonable distress, - - 347
A second distress may be made for a balance, - - 349
Penalty for taking a distress when no rent is due, - 350
Fees upon a distress, - - - - - - - 358
(See *Rent.*)

DISTRIBUTION—
Of intestates' real estate, - - - - - - 77, 78

DOVER—
High Court of Errors and Appeals to be held at, - 182
Other courts, for Kent county—to be held at, - - 183
Swine prohibited from running at large in, - - 217
(See *Swine.*)
Commissioners of the town of, to be elected—when, 453
Commissioners incorporated—vacancies, how filled, 463
Their powers and duties, - - - - - - 453
To make a survey and plot of the town, - - - 455
To fix stones or posts in the middle of the streets, - 454
Penalty for removing these stones, &c. - - - 455
Commissioners to lay taxes, - - - - - - 458
To settle pumps, wells, &c.—procure ladders, &c. 458
To improve the foot paths—lay out pavements, &c. 458
To regulate party walls and division fences, - - 459
To lay pavement in front of the State House, - - 461
May lay pavements before private houses, and recover the costs thereof from the owner, - - - 462
May abate nuisances—plant trees, &c. - - - 462–4

DOVER—
Not to receive any money raised by the town, - 462
Penalty for so doing, - - - - - - 462
Appeal from the acts of the commissioners lies to the Supreme Court or Court of Common Pleas, - 455
Proceedings on the appeal, - - - - - 455
Elections to be held by the clerk of the peace, - - - 456
Notice of such election—five days, - - - - 456
Qualifications of voters at such elections, - - 456
Judges of the election to be sworn, - - - 457
Assessor to be appointed—his duties, - - - 457
To return his assessment—when, - - - - 458
Appeals from—to be decided by the commissioners, 458
Collector to be appointed—his powers, and fees, 460
To give bond. To be sworn, - - - - 460
Treasurer to be appointed. To give bond, - - 460
To settle his accounts yearly—vouchers therefor, - 461
To deposit his funds in the Farmers' Bank, - - 461
Town Clerk to be appointed. His duty, - - 461

DOWER— - - - - - - - - - 77
Shall not be appraised, but shall be assigned to the widow, 81
May be alone assigned, - - - - - - 90
Writ of—how served, - - - - - - 361
Tenant to give notice of such writ to his landlord, 361
No process of *petit* or *grand cape* allowed in, - - 361
No view to be granted in, - - - - - 361
Court may appoint freeholders to lay off dower, - 362
The freeholders must be sworn, - - - - 862
Mode of proceeding in laying off dower, - - 362
How barred—how forfeited, - - - - - 301, 363
The husband of tenant in dower liable for waste, after the death of his wife, - - - - - - 364

DRAFTS, *of Militia*—
For actual service, - - - - - - - 9, 10

DRINK—
Penalty on candidates for the sheriff's office, treating,&c. 25, 26
On keepers of public houses suffering drinking at unseasonable hours, - - - - - - - 50

DRUMMERS—Drum-major, - - - - - - 6

DUCK-CREEK—
Swine prohibited from running at large in old Duck Creek, 216
in part of Duck-creek hundred, 216

E

EAR—
Slave, maliciously and by lying in wait, slitting, &c. the ear, - - - - - - - - 121

EASE AND FAVOUR—(See *Prisoners.*) - - - 93

EJECTMENT, *Action of*—
The legal title to lands and tenements may be tried in this action, whenever entry can be made, - 309
When a writ of estrepement will be awarded, - 365

ELECTION, GENERAL—
To be opened in Christiana hundred between 8 and 9 A. M. and kept open till 6 P. M. - - - 224
Place of—in Little Creek hundred—changed, - 440
——— in St. George's hundred—changed, - 117
Treating, &c. by candidate for sheriff's office—how punished, - - - - - - - - - 25

ELECTION FOR ELECTORS OF PRESIDENT AND VICE PRESIDENT—
To be held on the second Tuesday of November, - 432
At the several places appointed for general elections, 432
Proclamation of—to be made by the Governor, - 433
How conducted, - - - - - - - - 434
Certificates of—how made, certified and sent, - - 435
Result of—to be made known by proclamation, - 435
Certain parts of the "Act regulating the general election," extended to, - - - - - - - 436

ELECTORS *of Brandywine Hundred*—
Exempt from toll in certain cases, - - - 25, 60

ELECTORS OF PRESIDENT AND VICE PRESIDENT—
To be chosen by the people, - - - - - - 432
Election to be held on the second Monday of Nov'r. 432
At the places for holding the general elections, - 432
The citizens shall vote in the hundreds where they reside, - - - - - - - - - 433
The Governor shall proclaim the number of electors to be chosen, and the day of election, - - 433
Inspectors at the general election to be inspectors of this, 433
Sheriff to deliver to the inspectors lists, boxes, forms, &c. before the 6th of November, - - - - 433

ELECTORS OF PRESIDENT AND VICE PRESIDENT—
Clerk of the peace to deliver to Sheriff the lists received by him from the inspectors, - - - - 433
He shall demand them, if they have not been delivered, 433
His compensation therefor—to be paid by the inspector, 433
Duty of Sheriff, in case of the death of an inspector, - 434
Mode of conducting the election, (See *Inspector.*) - 434
Proceedings of the board of canvass, (See *Board of Canvass,*) - - - - - - - - - 434
Certificates of election—how made, certified and sent, 435
Result of—to be made known by proclamation, - 435
And the electors to be notified thereof, - - - 435
In case of failure to elect—the General Assembly shall be convened on the fourth Monday of November, 435
General Assembly to appoint electors in such case, - 435
Mode of conducting the election by the Legislature, - 435
Speaker of the Senate *shall* give a casting vote—when, 435
When he *may* give such additional casting vote, - 435
Speaker of the House—when he may give such casting vote, - - - - - - - - - - 435
No member of the General Assembly shall be an elector, 436
Certificates of appointments of—to be made out, - 436
And signed by the Speakers, and attested by the Clerks, 436
And sent—one to the Governor and one to each elector, 436
To meet at Dover, on the day named by Congress, - 436
Their pay, - - - - - - - - - 436
Lists of—to be made out and delivered by the Governor, 436

ELEGIT—
Remedy of tenant by elegit on being evicted before his debt is satisfied, - - - - - - - 371

EMIGRANTS—
Licenses for landing emigrants from a foreign country, to this—how obtained, - - - - - - 429
One dollar to be paid for each, - - - - - 429
Such license exonerates the owner, &c. of the ship from liability to remove them again, - - - - - 429
Penalty for landing passengers without license, - 429
Vessel liable for this penalty, - - - - - 429
Proceedings therefor, - - - - - - - 429

EQUITY—
Limitation of appeals in—from interlocutory decrees, 210
from final decrees, - - 211
Clerk to note the the time of filing causes of appeal, &c. 211
Original papers may be sent up on appeal—when, - 211

ERRORS AND APPEALS—
High Court of—to be held at Dover, - - - 182

ESCAPE—
Of a person arrested on execution, no satisfaction of the judgment, - - - - - - - 370
Liability of the sheriff for escape—plaintiff's remedy, 371

ESTATES TAIL—
May be barred by deed, - - - - - 166
Force of such deed, - - - - - - 167
Deed must be acknowledged and recorded, - - 167

ESTREPEMENT—
Writ of—to be awarded—when, - - - - 365

EXCEPTIONS, BILLS OF—
When they shall be allowed—how signed, - - 413
To be a part of the record, - - - - - 413
When not allowable, - - - - - - 414
When exception must be proposed—when drawn up, 414

EXCEPTIONS—
To accounts of executors, administrators, or guardians, limitation of, - - - - - - 269

EXECUTIONS—
Priority of, - - - - - - - - 252
Bind from the date of their delivery to the sheriff, 252
Sheriff shall note the time of receiving them, - - 252
Death or escape of a person arrested on execution is no satisfaction of the judgment, - - - 370
For forcible entry or detainer, - - - - 69
Against tenant holding over, after notice to quit, - 69
Arms of the militia exempt from, - - - - 6
Wearing apparel, bedding, &c. of an insolvent, exempt, 139

EXECUTORS AND ADMINISTRATORS—
Time allowed to settle the estate, - - - - 482
Letters Testamentary, - - - - - - 467
Person not named in letters, no authority, - - 467
Administration, - - - - - - - 468
With the will annexed, - - - - - - 467
During minority—during absence—during litigation, 467, 8, 9
De bonis non (c. t. a.) - - - - - 468
Married woman, - - - - - - 467
Persons incapable, - - - - - 469

EXECUTORS AND ADMINISTRATORS—
Executor or administrator removed, - - 469
Bond, - - - - - - - 469
Husband and wife, - - - - - 471
Legacies within condition, - - - - 471
But not rents, - - - - - 480
Remedy for sureties, - - - - 331
Further security, - - - - - 471
Oath, - - - - - - 473
Money loaned under order of Orphans' Court, - 332
Appraisers' oath—certificate, - - - - 473
Assets—inventory—list of debts, - - - 473-4
Affidavit of executor or administrator to, - - 475
When inventory and list returned, - - - 476
Power to set aside, - - - - - - 475
Debt from executor, - - - - - 474
Growing crop, - - - - - - - 473-6
One of several not joined in the inventory, - - 476
Additional inventory, - - - - 476
Rents and profits, - - - - - 479
Action, survivency, - - - - - - - 477
Process against, - - - - - - - 486
Costs, when not allowed in administration account, - 478
Judgment, for or against—benefit not lost by death, 478, 486
Against—when it binds real estate, - - - - 478
When not conclusive of assets, - - - - 478
Debts—probate, - - - - - - - 480
Order of payment, - - - - - - - 479
Inferior paid without notice of superior, - - - 479
Record—when notice, - - - - - - 479
Suit against—before probate, - - - - - 480
Legacies—
When satisfaction of a debt, - - - - - 484
Refunding bond, - - - - - - - 483
Accounts—interest—when not chargeable—when costs disallowed, - - - - - - - 483, 332
Distribution of residue—when a will—refunding bond, 482, 483
Order of notice of administration or letters testamentary, 484
Action for legacy or distributive share, - - - 483
Payment thereof, after such notice and year, good, tho' outstanding debt, if unknown, - - - - 484
Power to convey lands, &c. contracted, - - - 485
No suit on such contract, till application, &c. - 485
Unless executor or administrator cannot fulfil the contract, - - - - - - 485
Letters in another State, - - - - 486
Bond in this, - - - - - 486

EXECUTORS AND ADMINISTRATORS—
Power to sell lands to pay debts, - - - - - 272-3
Petition, &c.—order—discretion of court—partition no bar, - - - - - - - - 272, 273-9
Sale at auction—deed—application of the money, 274-5
Overplus—directions as to—effect of sale on incumbrances, - - - - - - - - 277
Bond—charges taxed by the court—account—appeal, 278-9
Power to ex'rs. &c. by will—survives. - - 279
If no person be named in will to execute power of sale, it belongs to the executors, - - - - 279

EXERCISE *of the Militia*—
Days of—number of hours—notice of muster, 11, 12

EXPORTING SLAVES—(See *Slaves.*) - - - - 120-130

F

FARMERS' BANK *of the State of Delaware*—
Directors of—appointed on the part of the State, - 156, 494
Authorized to discount negotiable notes drawn in any form, - - - - - - - - 117

FEES—
Of Justices of the Peace, in cases of *strays,* - - 171
in cases of bastardy, - 233
Of constables, on the sale of a stray, - - - 171
in cases of bastardy, - - - 233
for selling swine impounded, - - 214
Of freeholders, for appraising a stray, - - - 171
Of witnesses, in cases of bastardy, - - - 234
On appeal from order in bastardy, - - - 234
To the State, on appointment of constables, - - 200
Of wood corders, - - - - - - 234
Upon a distress for rent, - - - - - 358
Of sheriff for abating a nuisance, - - - 402
For solemnizing matrimony, - - - - 452
In cases of partition of intestate's real estate, - - 90
In cases of forcible entry, &c. and against tenant holding over, - - - - - - - - 71
Fees of witnesses not to be purchased before allowance, 374

FELONY, *by Slaves*—(See *Slaves.*) - - - 120, 121, 122

FEME COVERT—
Her deed valid, if she be privately examined, - 295
Deed executed by—before 1 May, 1811, bars dower without private examination, - - - 301
Private examination of—how taken, and certified, 296
Out of the State—how taken, and certified, - - 296
Feme covert cannot make a letter of attorney, - - 297
Excepted from the operation of acts of limitation, 269

FENCE VIEWERS—
Sums awarded by—how recoverable, - - - 438

FIELD OFFICERS—
How appointed, - - - - - - - - 7
Their certificates in cases of companies procuring arms, 19
To forward lists of delinquencies to the auditor, - 17
To appoint their regimental staffs, - - - 7

FIFERS—Fife major, - - - - - - - 6

FINES AND FORFEITURES—
To belong to the State, - - - - - 172
Officers collecting, &c. to pay over within 90 days, 172
Penalty for neglect, - - - - - - 173
To settle with the auditor, annually, - - - 380
Penalty for neglect, - - - - - - 380
Fines, &c. may be sued for in the name of the State, 173
Clerks of the Peace to certify fines, &c. imposed by the court, - - - - - - - 173
Penalty for neglect, - - - - - - 173
Clerks to make like certificates to the auditor, - 386
Penalty for neglect, - - - - - - 387
Militia fines—accounts of—how appropriated, - 12, 13, 20
Collectors of—lists of, - - - - - 14
Repealed—those imposed in 1828, remitted, - - 345-6
Judgments therefor, released, - - - - 346

FIRING—
Slaves firing magazine, church, barn, &c.—punishment 121
Firing woodlands and marshes, - - - - 28

FORCIBLE ENTRY AND DETAINER—
Act concerning, - - - - - - - - 60
Certiorari not a supersedeas of execution in, - - 70
Charge of Justices to juries, on points of law, - - 68
Cognizable before two Justices, - - - - 61

FORCIBLE ENTRY AND DETAINER—
Costs, - - - - - - - - 62, 68, 69, 71
Entries on the docket—what shall be made, - - 70
Evidence—the possession and the forcible entry or detainer only shall be in question, - - - 63
Competency and credibility of evidence—how decided, 68
Execution by warrant for possession and costs, &c. - 62, 69
Execution for costs on judgment for defendant, 68
What execution shall be issued when goods cannot be found, - - - - - - 69
Execution not superseded by a certiorari, - - 70
Fees of witness and sheriff, - - - 71
Fees of a witness summoned to increase costs, to be paid by the party summoning him, - - 68, 69
Judgment for plaintiff, - - - - 62
Judgment for defendant, - - - - 68
Judgment not to be reversed for formal defects, - 70
Jurors, how summoned, - - - - 61
Jurors—their oath, *and defect of, how supplied,* - 68
Jurors refusing to serve—how punished, - - 70
Jurors to decide on the credibility—not the competency of witnesses, - - - - - 61
Justices to have cognizance of forcible entry and detainer, - - - - - - 61
Justices to charge the jury and decide on the competency of witnesses, - - - - - 68
Limitation—no warrant shall be issued for a forcible entry after one year from the entry, nor for a forcible detainer after two years continued possession, 62
Oath of jurors, - - - - - - 68
Possession of tenant to be landlord's, - - 63
Restitution, when awarded upon reversal of judgment in, - - - - - - 70
Reversal of judgment not to be for formal defects, 70, 71
Sheriff or coroner to attend these trials, - - 70
Summons—date, and return day, and when to be served, 67
Form of summons, - - - - 61, 62
Title not to be enquired into or affected, - - 63
Trial—day of—adjournment—and how conducted 67, 68
Verdict for forcible entry or detainer, - - 62
Verdict for part of the complaint available for that part, 62
Verdict for defendant, - - - - 68
Warrant of summons, - - - - 61, 62
Warrant for possession, costs, &c. - - 62, 69
Witnesses' attendance how compelled, and fees how paid, - - - - - 68, 69, 71

FRAUD—
Charge of fraud against insolvent prisoner, how tried, 136–7
Petitioner to be remanded if guilty of fraud, - - 137

FREEHOLDERS—
Fee for appraising a stray, - - - - 171
Directions to—in an order for laying out, changing or vacating private roads, - - - - 396
To be sworn, - - - - - 400
Appointed by court to perform any duty, may administer oaths to each other, &c. - - - 181
Appointed by Orphans' Court to make partition, - 80, 81
How sworn—return of—acts of a majority, valid, 89, 82

FREE NEGROES AND MULATTOES—
Resolutions relative to their removal from the U. S. 157
(See *Apprentices and Servants.*)

G

GAOLS—
Act concerning, - - - - - - - - 92, 95
Penalty for offences against this Act, - - - 94, 95
Sheriff shall keep the gaol, or be responsible for its safe-keeping, - - - - - - - - 92
Sheriff shall receive no reward for appointing a keeper, nor any rent for the gaol, - - - - 92
Gaol may be used as a work house, - - - 92
Fuel and bedding for prisoners shall be furnished at the expense of the county, - - - - - 92
Board of prisoners, - - - - - - 92, 93
Spiritous liquors not to be disposed of in gaols, - 93
Commissioners of gaols—their oath—times of meeting, quorum—compensation—powers and duties, - 94
Receipts to be given for money paid by or for prisoners, 95
Penalty for not giving such receipts, - - - 95

GENERAL ASSEMBLY—
In case of failure by the people to elect electors of President and Vice President—General Assembly shall be convened on the fourth Monday of Nov'r. 435
In such case, shall appoint electors, - - - 435
Appointment to be made by ballot, - - - 435
In joint meeting of both Houses, - - - - 435
Mode of conducting the election, - - - - 435

GENERAL ASSEMBLY—
Speaker of the Senate *shall* give a casting vote—when, 435
When he *may* give such a vote, - - - - 435
Speaker of the House—when he may give such a vote, 435
No member of—shall be an elector, - - - - 436
Certificates of appointment of electors—how made out, 436
To be signed by the Speakers of both Houses, - - 436
And attested by the Clerks, - - - - - - 436
And sent, one to the Governor, and one to each elector, 326

GEORGETOWN—
Courts for Sussex county to be held at, - - - 183
Swine prohibited from running at large in, (See *Swine.*) 219
Lottery authorized, for building an Academy, &c. in, 131

GIBSON, COL. JAMES, committee appointed to procure his portrait, - - - - - - - - - 495

GILL NETS AND SEINES—
[License for using, in the river Delaware, - - 372
Oath of persons applying—penalty—tax,] - - - 373

GOVERNOR—
To attend to the interchange of laws, - - 135, 245
To approve the State Treasurer's bond, - - - 37
May direct proceedings thereon, - - - - 38
To approve bonds of company officers, - - - 20
To commission officers of the militia, - - - 7
May review the militia at his pleasure, - - - 18
To cause arms to be delivered to the militia—when, 20
To lay the Adjutant General's report before the Legislature, - - - - - - - 19
To appoint Superintendants of Free Schools, - - 196
To fill vacancies in the office of Constable—when, - 201
To draw orders for the payment of printing the laws, 244
And for the journals—when, - - - 246
To fill vacancies in the office of Auditor of accounts, 377
Auditor's official bond to be approved by him, - 388
To make proclamations of elections for electors of President and Vice President—when. - - 433
Certificates of the election to be returned to him, - 435
To make known the result by proclamation, - - 435
To transmit notice to each elector, - - - 435
In case of failure by the people to elect, he shall convene the General Assembly—when, - - - 435
Appointment by the Legislature to be certified to him, 436

GOVERNOR—
To cause three lists to be made out according to the Act of Congress, and delivered to the electors, 436

GRENADIERS, - - - - - - 4, 5

GUARDIANS—
Limitation of actions on their bonds, - - - 267
To be appointed by the Orphans' Court, - - 333
May be removed by said court, - - - 333
Testamentary—when appointed, - - - 333
May be chosen by a minor fourteen years old, - 333
No person to have authority as guardian, without appointment by the court, &c. - - - - 336
To give bond and security, - - - - - 333
Further security may be required—when, - - 334
May be required to give counter security, - - 331
To execute order for valuation of wards' lands—when, 335
To render an account in one year, - - - - 335
And afterwards at the discretion of the register, - 335
Not to expend more than the income of the wards' estate, without the special direction of the court, - 336
Not to dispute the wards' title to property in their hands, - - - - - - 336
Orphans' Court may direct money in their hands to be lent out for a limited time, - - - 332
Duty of—in case such loan cannot be made, - - 332
Any court of law or equity may appoint guardians, *pro lite*, - - - - - - 336
Powers of guardians over the persons and property of their wards, - - - - - 336

GUINEA-TOWN—
Name of—changed to *Williamsville*, - - - 59

H

HARBOUR—*Breakwater*—
Act ceding the site of—to the United States, &c. - 31

HARRIS, JOHN H. appointed Auditor of accounts, - 452

HAY, *in the stack*—
Burning, by slaves—how punished, - - - 121

HOGS—
Penalty for suffering them to run at large in St. George's, 40
in Cantwell's Bridge, 49, 50
Repeal of Supplement to the *Milton* hog law, - - 155
(See *Swine.*)

HORSE, *troops of*—
How armed—number in a brigade—uniform, 4, 5, 6, 9
Captains of—may draw on commissary, and how, 13
Squadrons of, - - - - - - - - 9

HORSES—
Killed in public service—how paid for, - - - 13
Stoned—not to run at large, - - - - 39

HOUSE BREAKING, } —(See *Slaves.*) - - - - 121
HOUSE BURNING— }

HUSBAND—
Deserting his wife, trustess of the poor may sequester his goods, - - - - - - - - - 425
Appeal from such sequestration, - - - - 426
Court may order him to pay a monthly sum to the trustees, and to give security, &c. - - - 427
May be held to bail for his appearance for this purpose, 428

I

ILLEGITIMATE CHILDREN—
How bound, - - - - - - - - 96-7
Binding, not to affect security to indemnify the county, 97

IMPORTED PERSONS—
How bound—deed to be recorded, - - - 375
Rights and liabilities of the master and servant, - 376

INCORPORATION—
Of the Mispillion Navigation Company, - - 52
Baucumbrig Marsh Company, - - - 147, 8
St. Augustine Marsh Company, - - 109, 111
Washington Beneficial Society, - - 133
Commercial Bank of Delaware—extended, - 41
Brandywine and Christiana Manufacturing Co. 254
Commissioners of the town of Dover, - - 463

INCORPORATION—
Delaware Coal Company, - - - - - - 205
Delaware Fire Insurance Company (supplement) - 212
Middletown Academy (supplement) - - - 265
New-Castle and Frenchtown Turnpike and Rail Road Company, - - - - - - 321
New-Castle Turnpike and Rail Road Company, - 314
Pennsylvania, Delaware and Maryland Steam Navigation Company, - - - - - - 283
Pratt's Branch School, - - - - - 208
Trustees of the School in Delaware City, - - 343
Trustees of the Poor of New-Castle County, - - 416
Trustees of the Poor of Kent County, - - - 416
Trustees of the Poor of Sussex County, - - 416
Wilmington and Brandywine Amicable Society, - 326

INDENTURE *of Apprenticeship or Servitude*—
What it shall contain, - - - - - - 98, 99, 172
Manner and form of binding apprentices and servants, 98, 99, 172
Must be recorded—and how, - - - - - 99, 100
When, and how assignable, - - - - 100
Approval of the assignment must be certified, &c. - 101
Two justices or two trustees must execute the indenture together, - - - - - - 101
May be annulled in case the apprentice or servant be incapable of service, - - - - 106
Shall not be assignable or transmissible, unless, &c. - 107
May be executed by one justice and one trustee of the poor, - - - - - - 107
(See *Apprentice.*)

INDEX *to the Sixth volume of the Laws*—to be made, - 159

INFANTS, excepted from the operation of acts of limitation, 268
In ventre sa mere, to take as a living child, - - 119

INFANTRY, - - - - - - - - - 4, 5

INSOLVENT PRISONERS—
Act concerning, - - - - - - - 135
Who may petition to the Supreme Court or Court of Common Pleas, for a discharge from prison, - 135
What shall be stated in the petition, - - - 135
Day for hearing, - - - - - - - 136
Summons for creditors, - - - - - - 136
Service of the summons, - - - - - - 136
Allegation of fraud against the petitioner—how tried, - 136

INSOLVENT PRISONERS—
What interrogatories may be proposed to the petitioner, 136, 137
Answers of petitioner to be reduced to writing, and signed, - - - - - - - - - 137
Petitioner shall be remanded to prison for fraud, - 137
Consent to be adjudged to serve creditors, when required, 137
Court may order petitioner to produce money, deeds, &c. 137
The oath, - - - - - - - - - 137
The assignment, - - - - - - - - 138
When discharged, & when adjudged to serve creditors, 138
Adjudication to serve creditors, - - - - - 138
Proceedings in cases of imprisonment by process from Chancery, - - - - - - 138, 139
Record of proceedings to be kept, - - - - 139
Effect of the assignment, - - - - - 139
What shall be retained by the petitioner exempt from all legal process, but distress for rent and execution in a criminal case, - - - - - - 139
Property of—liable for one year's rent before removal, 139
Duties and powers of the trustees, - - - 140
Copy of the assignment to be evidence, - - 140
Creditors must exhibit their claims to the trustees within a year, - - - - - - - 140
Distribution of the proceeds of petitioner's estate, - 140
Settlement of disputed claims, - - - - - 141
Court may appoint other trustees—compel security to be given, &c. - - - - - - 141
One discharged from prison, not to be after imprisoned for a prior demand—except, &c. - - - 141
Property acquired after the assignment, shall be liable for a demand remaining unsatisfied, - - - 141
When an adjudication to serve a creditor, shall be a discharge of his demand, - - - - - - 142
Priority of creditors entitled to service under an adjudication, - - - - - - - - 142
Liens not to be affected by proceedings under the insolvent Act, - - - - - - - - - 142, 143
Securities and joint debtors not to be released by an adjudication, - - - - - - - 143
When discharged, unless security be given, to indemnify the county, - - - - - - - 143, 144
How discharged, when security has been given, by consent of creditors, - - - - - - 144
Effect of such discharge, - - - - - 145
Appearance for one discharged may be entered in an action against him, - - - - - - - 145

INSOLVENT PRISONERS—
When a proceeding under the insolvent Act shall not operate a discharge from imprisonment, - - 145
Appearance of, or service of summons on one of several joint creditors, sufficient, - - - - - 145
Act to be evidence under the general issue, - - 145
Any one taking an oath under the insolvent Act, and swearing falsely, to be guilty of perjury, - - 145

INSPECTORS—
Of election for electors of President and Vice President who shall be, - - - - - - - - 433
Sheriff to deliver to them lists, boxes, forms, &c.—when, - - - - - - - 433
Vacancy in the office of Inspector—how filled, - 434
To take to their assistance two freeholders, - - 434
And they may appoint clerks, - - - - 434
Freeholders and clerks to be sworn, - - - 434
Inspectors to meet on the day after the election, at the court house, and form a board of canvass, - - 434
Proceedings of the board of canvass, - - - 434
Certificates of election, how made out and certified, - 435
To whom they shall be sent, - - - - 435
To deliver certain papers to the Clerk of the Peace, 436

INQUISITION—
Over persons dying in an unnatural manner, - - 303
(See *Coroner.*)

INTERROGATORIES—
What may be proposed to a petitioning insolvent debtor 136–7

INTESTATES' *real estates*—
Act concerning, - - - - - - - - 77, 92
Descent of intestates' real estate, - - - - 77
Curtesy, - - - - - - - - - - 77, 78
Dower, - - - - - - - - - - 77
Widow's part shall not be appraised, but shall always be assigned to her, - - - - - - - 81
Widow's part may be assigned alone, - - - 90
Distribution among collaterals, - - - - 78
"Kin" and "kindred," how construed, - - - 78
Consanguinity—degrees of—how computed, - - 78
Partition of intestates' lands, - - - 78, 79, 80, 81
Partition shall not be made of lands in which there is an estate by the curtesy, or of the widow's part, 78
Representation, - - - - - - - - 78, 79

INTESTATES' *real estates*—
How divided, where a child has been advanced by the intestate in his life time, - - - - 80
Appraisement of an intestates' lands, - - - 81
The estate may be divided into two or more portions, when it cannot be divided among all the heirs, - 81
Mode of proceeding, where parties entitled to shares are minors, - - - - - - - - 81, 82
Return of freeholders appointed to make partition, &c. 82
Assignment of the whole real estate, to a party accepting at the appraisement—recognizance in such case, 82
Who shall be entitled to preference in the assignment of the whole of an intestates' lands, - 82, 83, 85, 86
Who shall be entitled to preference in the assignment of a part, - - - - - - 83, 84, 85, 86
Assignment of different parcels at the appraisement, and what recognizance shall be entered into by the assignee of a part, - - - - 83
Assignment of a share, or parts of a share, at the appraisement, - - - - - 84
When a new order shall be issued on a return on a former one without partition or appraisement, - 84
Proceedings where the party entitled to the acceptance of appraised premises refuses or neglects to accept, 85
Rule on a party to appear and accept, - - - 85
A party under 21, or *non compos*, shall be passed by in the order of preference, and his incapacity may be tried by the Orphans' Court, - - - - 86
Assignee of a share shall have the same right of acceptance which the original holder could have, - 86
Assignment may be to the husband of a woman entitled to accept, - - - - - - - - 86
Court may order a sale, when none of the parties will accept, or a partition, - - - - - - 86, 87
Rule to show cause why appraised premises shall not be sold, or why partition shall not be made, - - 86, 87
One accepting part of the land at an appraised value, shall be barred of his claim on the residue to the amount of that value; but he may in some cases accept the residue, or a part of it, - - - 87, 88
Estate of an assignee or purchaser free from incumbrances against heirs, &c. - - - - - - 88
Lien on priority of recognizances for valuation money, 88
Recognizances recorded in another county to be liens when recorded, - - - - - - - 88
Jurisdiction of the Orphans' Court to extend to all the lands of an intestate, altho' in different counties, 88

INTESTATES' *real estates*—
Acts of a majority of freeholders to be valid, - - 89
Oath of freeholders and surveyor, - - - - 89
How minors shall apply for a partition, - - - 89
What possession necessary to obtain partition, assignment, or sale, - - - - - - - - 89, 90
Costs of proceedings under this Act—how paid, - 90
The provisions of this Act concerning partition, assignment, sale, &c. extended to real estate of which the owner has died intestate before the passing of this Act, - - - - - - - - - 90
Appeal from the Orphans' Court to the Supreme Court, 91
Liability of an intestate's lands for debt not to be affected by this Act, - - - - - - - 90, 91

J

JOINT PARTIES—Action survives to—when, - - 264

JOINT TENANTS—
Liable to mutual actions for use and occupation, - 364
And also for actions of waste committed by each other, 365

JOURNALS—
Three hundred copies of—to be printed, - - 246
Clerks shall advertise for proposals, - - - 246
And contract, and certify the same, - - - 246
Governor to draw orders for payment—when, - - 246
Manner of distributing, - - - - 246
Appropriation for the printing of— - - - 164

JUDGE-ADVOCATE—
His duties on trials by courts martial, - - - 21

JUDGES—
To administer oaths in any case where proper, - 182
To take acknowledgment of deeds, - - - 295
To sign bills of exception—when, - - - 413
To be furnished with copies of commitments in certain cases, - - - - - - - - - - 308
Of the Court of Quarter Sessions—
To take acknowledgment of constables' bonds in vacation, - - - - - - - - - 198
And approve the sureties, and certify the same to the recorder, , - - - - - - - 199

JUDGMENT—
In forcible entry and detainer, - - - - - 62, 68
In proceedings by landlord against tenant on a charge of holding over the term after notice to quit, - 66, 68
When to be entered for the penalty in a recognizance or bond, and when for damages assessed, - - 73, 75
When recognizances in the Orphans' Court shall be preferred to judgments and other liens, - - 88
Priority of judgment creditors to the services of an insolvent debtor, - - - - - - - 142
Bind lands only from the date of entry, &c. - - 249
Upon *verdicts*—from what time they bind, - - 249
Amount to be ascertained—from what time, - - 249
Entered on the same day—priority of, - - - 249
Of the High Court of Errors and Appeals; from what time, 250
Force of judgments, - - - - - - - 250
Duty of clerks on entering judgments, - - 250
Penalty for neglect, - - - - - - - 251
What judgments against ex'rs. and adm'rs. bind the real estates of their testators or intestates, - - 478
Against executors or administrators on report of referees are not conclusive as to assets, unless assets be found, - - - - - - - - - 478
Proceedings on judgment by *default* against an executor or administrator, - - - - - - 486
Record of judgments to be satisfied in *sixty days* after payment, - - - - - - - 311
Penalty for neglect, - - - - - - - 311
Bail paying off a judgment is entitled to an assignment, 366
Where judgment is confessed for a penalty, the real debt must be endorsed on the docket, and on the execution, - - - - - - - 252
The attorney confessing such judgment, shall give written directions to this effect, - - - - - 252

JURISDICTION—
Of the Court of Quarter Sessions—of crimes of slaves, 122
Of Orphans' Court to try the fact of infancy, idiocy, &c. 86
Of this court to extend to lands of intestate, although in different counties, - - - - - - 88-9
Of Justices of the Peace, in forcible entry and detainer, 61
In proceeding against tenant holding over, - - 63

JURORS, PETIT—
Number of—for the Court of Oyer and Terminer, - - 412
Oath of—in trials of forcible entry, &c. or tenants holding over, - - - - - - - - - 68

JURORS, PETIT—
Defect of jurors in such cases—how supplied, - - 68
Refusing to serve in such cases—how punished, - 70

JURY—
May find a general or special verdict in any case, - 414
What papers they may take from the bar, - - 414

JUSTICES OF THE PEACE—
Jurisdiction of—*in cases of trespass*, - - - 257
Mode of proceeding—plaintiff's statement, - 257, 258
Case to be removed to the Supreme Court, &c. when, 258
Upon the defendant giving security, - - - 258
Costs to be paid by the justice—when, - - - 258
In cases of assault and battery—
The defendant may submit the case to the justice, - 259
Submission to be signed, - - - - - 259
Justice not to impose a fine exceeding *ten* dollars, - 259
He shall not receive the fine or the costs, - - 259
He may adjourn the case, taking security, &c. - 259
He may permit the parties to settle it, - - - 260
Shall refuse to determine the case—when, - - 260
His duty in such case, - - - - - 260
In cases of bastardy—
Order on the father to give bond of indemnity, - 227
Order to pay lying-in expenses and a monthly allowance, 228
To commit the father for neglecting to give bond, . 228
Bond to be approved, and sent to the trustees of the poor—penalty for neglect, - - - - 229
Any justice may take the bond and discharge the party, 229
Appeal from the order of the justice herein, - - 229
Security to be taken on appeal, - - - - 229
To take recognizance of the mother and other witnesses for their appearance at court, - - - 229
Surety may be required in such recognizance, - 229
The justice shall certify a copy of his orders, - - 229
Court may take the bond of indemnity, - - - 230
Clerk to send the same to the trustees of the poor, 230
The mother is a competent witness, - - - 230
Her dying declarations, evidence—when, - - 230
Form of proceedings in bastardy, - - - - 230
Proceedings against the mother, - - - - 230
Commitment of the mother, - - - - - 231
Process against the father—form of, - - - 231
Process against the mother, - - - - - 232
May be directed to a constable of either county, - 232
And served in either county, - - - - 232

JUSTICES OF THE PEACE—
In cases of Bastardy—
Trial, where to be had, - - - - - - 232
Liability of the father to the trustees of the poor, - 232
Deposition of the mother—when to be taken, - - 232
Costs in—to be paid by the father—when, - - 233
Costs to be paid by the county—when, - - - 233
Justices to issue process for arresting persons accused—when, - - - - - - - 240
To take the voluntary declarations of the accused, - 240
May commit him, or hold him to bail, - - - 240
In *felony*, to reduce the examination and testimony to writing, - - - - - - - 241
And to take the recognizance of witnesses, - - 241
May discharge a person committed for want of bail—when, - - - - - - - 242
To perform the duties of *Coroner* in certain cases, - 308
May authorize the coroner to disinter a body, - - 307
May certify that there is no necessity for an inquisition, 308
Their duty in regard to *strays*, - - - 170
Their fees in such cases, - - - - 171
To fill vacancies in the office of *Wood-corder*, during the recess of the court, - - - - - 234
They may administer an oath whenever it is proper, 182
Two Justices of the Peace may take the acknowledgment of deeds, - - - - - - 295
They must act together, - - - - - 301
Their certificate of acknowledgment, &c. - - 301
To take probate of accounts, - - - - 481
Form of such probate, - - - - 480
It must be signed by the party making it, - - 481
Sums awarded by fence viewers, recoverable before, 438
Duty of justices on imported persons being bound before them, - - - - - - 373
To certify to the Auditor, quarterly, lists of fines imposed by them, - - - - - - 387
Penalty for neglect, - - - - - - 387
To act with a trustee of the poor in removing paupers—when, - - - - - - - 423
Or in requiring surety for their removal, - - 428
In granting licenses for landing emigrants, - - 429
Their duty on granting such licenses, - - - 429
Duty of justices to seize public arms—when, - - 439
If a husband desert his wife, or parents their children, they may be required to give security for their appearance at court, &c. - - - - 428
May bind minors, apprentices or servants, - - 96

JUSTICES OF THE PEACE—
How they shall proceed where negro or mulatto children have no parents able to maintain them, - 97, 98
In cases of binding, they must act together, - - 101
Shall issue warrants for the apprehension or commitment of runaway servants or apprentices, - 104, 105
One justice and one trustee of the poor may bind apprentices, &c. - - - - - - - 107
To have cognizance of cases of forcible entry and forcible detainer, - - - - - - 61
To have cognizance of proceedings against tenants holding over their terms, - - - - - - 63
Act allowing an additional justice to New-Castle county, to reside within one mile of Delaware city, - 48
Act allowing, for seven years, an additional justice to Sussex county, to reside in Seaford, - - - 58, 59

K

KENTON—Swine prohibited from running at large in, - 217

KIDNAPPING—
Negro and mulatto apprentices, &c. within the law against, - - - - - - - - - - 104

KNAPSACKS—for the militia—how furnished, - - 6

L

LANDLORD—
May distrain for rent arrear, - - - - - 346
And follow the goods forty days, - - - - 347
Remedy where the tenant is about to remove his goods before the rent is due, - - - - - - 353
Remedy where the tenant is about to leave the State, before the rent is due, - - - - - 354
Is entitled to one year's rent out of sale of tenant's goods, - - - - - - - - - - 354
Grain, &c. to be sold *subject* to rent, - - 355
May distrain goods taken in execution, - - 356
May distrain goods attached, - - - - - 359
Three months' notice to quit, necessary to determine a tenancy, - - - - - - - 357

LANDLORD—
Tenant to give him notice of declarations of ejectment, 357
And of the service of writs of dower or partition, - 361
(See *Rent—Tenant.*)

LANDS—
Sold on execution—how possession may be obtained, 33
Deed for—where the sheriff who sold is dead, or out of office, - - - - - - - - - 35
Are devisable by last will and testament, - - 221
May be aliened and possession transferred by deed 395
Letter of attorney to sell lands, how acknowledged and proved, - - - - - - - - 296
Made out of the State—how proved, &c. - - 297
Lands may be held by an *alien resident* after declaration, 236
And may be transmitted by such alien, (See *Aliens.*) 236
Contracts for the conveyance of lands to be proved and recorded before suits are brought against an ex'r. or adm'r. for specific performance, - - 485
Order for the sale of—by ex'r. or adm'r. for the payment of debts—how obtained, - - - - 272

LAUREL—
Act establishing the boundaries of the town, - - 42–48
Swine prohibited from running at large in, - - 219

LAWS—
Money appropriated to print, ... 118, 164
Sixth volume to be bound, ... 158
Copy to be sent to J. Sparks, of Boston, . . - 135
When enrolled, to be delivered to the Sec'y. of State, 244
And by him to be printed and distributed, - - 244
Eight hundred copies to be printed, . . . 244
Governor to attend to the interchange of, . . [135] 245
How disposed of by the Prothonotaries, . . . 245
New edition of—to be published, ... 447
Arrangement and contents of said edition, . . 448
Two thousand copies thereof to be printed, . . 448
W. Hall appointed to procure the printing to be done, 448
Authorized to make contracts, and draw orders, . 448
Appropriation for the payment thereof, . . . 449
Appropriation for printing laws of 1829, . . . 164
Eight hundred copies of the Act providing for the establishment of Free Schools, to be printed, . . 489
In the construction of laws, certain expressions in the singular number and masculine gender, extended to a plural and feminine meaning, . . . 204

LEGACIES—
Payment of, and assent to, is within the condition of an executor's or administrator's bond, . . . 471
When payable, ... 483
Specific—when payable, ... 483
Refunding bonds—when they may be required, . . 483
Assumpsit lies for a legacy, ... 483
Unless it be the subject of a trust, ... 484
When a legacy is deemed satisfaction of a debt, . 484

LETTER OF ATTORNEY—
To sell lands—how acknowledged and proved, - 297
Made out of the State—how proved, - - - 297

LETTERS TESTAMENTARY—
To be granted on the probate of a will, - - - 467
The executor must give security, - - - - 467
When granted to several executors, - - - - 467
May be granted to a married woman, - - - 467

LEVY COURT AND COURT OF APPEAL—
How composed, - - - - - 262
[To appoint commissioners to lay off school districts, 185
To examine and correct the returns,] - - 186
May alter school districts from time to time, - - 187
To reject demands, purchased, &c. before allowance, 375
To approve of public roads before they are opened, 399
Costs, &c. of laying out and changing public roads, to be allowed by, - - - - - 400
In New-Castle county damages not to be allowed until certified by the road commissioners, - - 400
May assign a bridge to a particular overseer, - - 401
To appoint overseers of *private* roads—when, - - 405
To appoint trustees of the poor, annually, in February, 416
Appointment to bear date on the first Tuesday of Feb. 416
To settle the accounts of the treasurer of the poor, annually, on the first Tuesday of February, - 418
No allowance to be made him, except commissions, without a voucher, - - - - 419
To lay a poor tax, annually, - - - - 430
In *Sussex county*, accounts for support of paupers out of the poor house, to be laid before the levy court—when, - - - - - - 422
To establish the rate of board for prisoners in gaols, 94
To appoint commissioners of gaols, - - - 94

LEVY COURT COMMISSIONERS—
Number of—in each county, - - - - - 262
To be elected at the general election, - - - 262
Term of office, three years, - - - - - - 262
Qualifications and disabilities, - - - - - 263
To be sworn, - - - - - - - - 264
Those now in office, to remain until, &c. - - 263
Clerk of the Peace to notify the Sheriff of vacancies in the office of, - - - - - - 263
Sheriff to make proclamation thereof, - - - 263
To grant licenses for the landing of emigrants, - - 429
Duty of—on granting such license, - - - 429

LEWESTOWN—
Swine prohibited from running at large in, - - 219

LIBERARI FACIAS—
Return of—evidence of title, - - - - - 36

LICENSE—
Penalty for keeping a public house, &c. without, - 51
For the exportation, &c. of slaves—how granted, 282
Fee thereon, - - - - - - - - - 282
[For the use of gill nets, &c. in the Delaware—fee thereon,] - - - - - - - - - 372
For the landing of emigrants—fee thereon, - - 429

LIEN—
Of recognizances in the Orphans' Court for the valuation money of intestates' lands, - - - - 88
Liens not to be affected by proceedings under the insolvent law, - - - - - - - - - 142

LIMITATION OF ACTIONS—
On Sheriffs recognizance—*six years*, - - - - 267
On administration and testamentary bonds—*six years*, 267
On guardian bonds—*three years*, - - - - - 267
On recognizance in the Orphans' Court—against surety, 267
On the official obligation of State treasurer—Secretary of State—county treasurer—treasurer of the poor—coroner—register of wills—recorder of deeds—clerk of the Supreme Court—prothonotary—clerk of the peace—clerk of the Orphans' Court—collector—constable—*three years*, - - - - 267
Of actions of trespass, replevin, detinue, debt not founded on a record, &c. account, assumpsit and case—*three years*, - - - - - - - - 267

LIMITATION OF ACTIONS—
Not to apply to mutual and running accounts, - 267
Of the action of waste—*three years*, - - - 365
Of actions on promissory notes—*six years*, - - 268
Proviso in case of *infancy*, *coverture*, and *incompetency of mind*, - - - - - - - - 268
Of actions on penal statutes—*one year*, - - 268
Of actions on official bonds given to corporations—*six years from date*, - - - - - - - 268
Computation of time where the defendant is out of the State, - - - - - - - - - 269
On the reversal of a judgment a new action may be brought within one year thereafter, - - 269
Of exceptions to accounts of executors, administrators, and guardians—*three years*, - - - - 269
Proviso in case of *infancy*, *coverture*, *&c.* - - 269
Application of these provisions to bonds, &c. heretofore taken, - - - - - - - - - 270
Actions for mesne profits, not barred by limitation in certain cases, - - - - - - - 309
Limitation of appeals in equity, - - - - 210
Of appeals from an order of bastardy, - - - 229
Of appeals from the Orphans' Court, - - - 332
Of proceedings in forcible entry or detainer, - - 62
This limitation need not be pleaded, - - - 62

LIP—
Punishment of slave for biting off, slitting, &c. 121

LIQUOR—
Penalty for selling less than a quart, - - - 51

LOTTERY—
Masonic hall, Wilmington, - - - - - - 30
St. Peter's church, - - - - - - - 32
Academy, and masonic hall—Georgetown, - - 131

M

MAIMING, *by a slave*—how punished, - - - 121

MANSLAUGHTER—
Of the first degree—how punished, - - - 409
By a negro or mulatto slave—
How punished, - - - - - - - 130, 409

MANSLAUGHTER—
Of the second degree—how punished, - - - 409
By a negro or mulatto slave—how punished, - - 130, 409

MARRIAGE—
Within what degrees marriage is unlawful, - - 449
Between a white person and a negro or mulatto—unlawful, - - - - - - - - - 450
Such marriages are void, and the parties guilty of a misdemeanor, - - - - - - - 457
Penalty on a preacher for solemnizing such marriage, 451
Marriages—how solemnized, - - - - 450
Who may solemnize matrimony, - - - - 450
Not to be solemnized without a license, - - 450
Unless the banns have been published, - - - 450
Penalty on preacher for marrying without a license, &c. 451
Consent of parents, &c. to—when necessary, - - 450
Consent of master or mistress necessary, - - 450
Penalty on a servant for contracting marriage, - 450
Penalty for solemnizing marriage without the consent of the master, &c. or of parents, when such consent is necessary, - - - - - - - 452
Penalty on a free person for marrying with a servant, 451
On person not authorized, pretending to marry, - 451
Penalty for assuming the character of a preacher for this purpose, - - - - - - - 452
Register of marriages to be kept—by whom, - 451
Fee for solemnizing matrimony, - - - - 452

MARSHES—
Penalty for firing out of season, - - - - 28

MASTER—
Rights and authority of—over apprentice or servant, 101
Compensation—in case of apprentice running away,&c. 102
Relief against—on complaint of apprentice or servant, 105
When slave, to be delivered to—for exportation after sentence, - - - - - - - - 122
To pay costs on conviction of slave, - - - 124
He may redeem his slave sold on conviction, - 125

MEMBERS OF THE GENERAL ASSEMBLY—
Incapable of being electors of President and Vice President of the United States, - - - - - 436

MESNE PROFITS—
Actions for—not barred by stat. limitations—when, 309

MIDDLETOWN ACADEMY—
Additional trustees—vacancies, - - - - 265

MILFORD—
Swine not to run at large in, (See *Swine*,) - - 218
Inhabitants of—to elect town officers, - - - 441
Commissioners—their powers—taxes—to be sworn, 441–2
Assessor—place of elections—notice, - - - 442–6
Treasurer—his duty—his bond, - - - - 442–3
Constable—his powers and duty; fees; pound; nuisance, 443–4
Swine, poultry, &c. trespassing, may be killed, - 445
Boundaries of Milford, - - - - - - 446
Constables' bounds, (See *page* 218.) - - - 443

MILITIA—
Absentees from militia duty, - - - - - 12
Adjutants to exercise officers twice a year, - - 22
Of horse and artillery, - - - - - - 13
Adjutant General to be commissioned by the Governor, 7
[His compensation—repealed,] - - - - 19, 345
To call out and apportion the drafted militia, - - 9
To furnish blank forms for returns, - - - - 18
His general duties, - - - - - 9, 18, 19
Age of exempts—and how proved, - - - 3, 4
Aids-de-camp, - - - - - - 7
Ammunition—how furnished, - - - - 6
Arms—
Militia, how armed—officers, how armed, - - 5
Exempt from execution and distress, - - - 6
By whom kept, and how branded, - - - 13
When to be delivered to militia, - - - - 19
Persons now holding any arms belonging to the State, to deliver them up to the captain of the district, 23
Troops not to be kept under arms more than five hours on company days, - - - - - - 11
Arrangement of—
Into brigades, regiments, &c. - - - - 4, 5
Companies for service, classed, - - - - 8
Arrests—
Of officers and privates, for disobedience, disorderly or unmilitary conduct, - - - - - - 21
Of adjutants and brigade inspectors, - - - 22
Articles of War, - - - - - - - 23
Artillery—
Number of companies in a brigade—clothing of, - 5
Battalion of, how formed, when to meet, their officers, &c. 9

MILITIA—
Artillery—
Captains of, may draw orders on the commissary to pay for music, - - - - - 13
How armed, - - - - - 5
Auditor of Accounts—
To settle with military commissary, - - - 16
To receive lists of fines from the brigadier, - - 14
To keep accounts with the commissaries and report to the Legislature, - - - - - - 15
Battalion—
Changes in—how made, - - - - - 4
Colours of each, - - - - - - - 6
Days of meeting, - - - - - - - 11
Of horse and artillery—how formed, - - - 9
Time and place of meeting of cavalry in battalion ordered by brigadier, - - - - - 9
Bond—
Of commissary of military stores, - - - 14
Of collector of fines, - - - - - - 15
Of company officers for arms, - - - - 20
Brigades—
Arrangements into, - - - - - 4
Number of troops of horse and artillery in, - - 5
Reviews of, - - - - - - - - 18
Brigadier General—
To be commissioned by the Governor, - 7
To direct the uniform of cavalry and volunteers, - 5, 6
Returns to, - - - - - - - 8
To send lists of fines to the commissary, and when, 12
His general duties, - - - - 9, 12, 13, 14
To review the brigade once a year, - - 18
To take bond from the commissary - - 14
Brigade Major, - - - - - - - 7
His duties, - - - - - - - 11, 18
Arrests of, - - - - - - 22
Captains—
Their duties, - - - - - 8, 9, 11, 12, 13
Drafts on commissary by captains of horse and artillery, 13
Cashiering, - - - - - 12, 21 (See also 9, 18)
Cavalry—
Troops of, and how armed, - - - - - 4, 5
Number of troops in a brigade, - - - - 9
To be uniformed as the brigadier shall direct, - 5, 6
Squadrons of—their officers, &c. - - - 9
Captains of—may draw orders on the commissaries to pay for music—and how, - - - - 13

MILITIA—
Cavalry—
Horses of—killed in service to be paid for, - - 13
Certificates—
In cases of removal by militia from one district to another, - - - - - - - - 8, 9
Of the appointment of collectors, to the levy court, 16
Of field officers necessary for companies to obtain arms, 19
Changes—
In divisions of the brigades and in battalions, how made, 4
Classing the militia— 8
Each class liable to serve 6 months, - - - 10
Clothing of— 5, 8
Collectors of fines—
Collectors of tax may be appointed collectors of fines, 15
Appointments of—to be made by the commissary, and how, - - - - - - - - - 14, 16
Their warrants and duties, - - - - - 14
Liability of—for fines received—bonds of, - - 15, 16
Commissions of, - - - - - - - 16, 17
Penalty for collecting more than is due, - - - 14
Colonels, Lieutenant—
Commissioned by the Governor, - - - - 7
Colonel's book, - - - - - - - - 8
Returns to, - - - - - - - - - 8
Colours—
Each battalion to have a stand of, - - - - 6
By whom furnished, - - - - - - 6
Borne on battalion days by the eldest ensign present, 6
Paid for out of the fines, - - - - - 13
Commissaries of military stores—
Their duties—Bond of, - - - 12, 13, 14, 16, 17, 20
Compensation of, - - - - - - - 17
To appoint collectors of fines, and how and when, 14, 15, 16
Their warrant, - - - - - - - 14
To settle with the auditor of accounts, - - 16
Penalty for not paying over fines, - - - 17
To pay collectors of fines, - - - - - 17
To examine arms returned, &c. - - - - 20
Commissions of officers, - - - - 7
Rank how determined, - - - - - - 7, 8
Compensation of—
Adjutant general, - - - - - - 19
Collectors of fines, - - - - - - 16
Military Commissaries, - - - - - 17
Militia in time of service, - - - - - 10

MILITIA—
Companies—
Divisions into—number of men in each, - - 4, 5
Number of artillery companies and troops of horse in each brigade, - - - - - - - 5
Courts Martial—
How appointed—oath of members of, - - 21, 22
Trial before, - - - - - - 21
Penalty for not serving on, - - - - - 21
Days of Exercise—
For regiments, battalions, companies, - - 11
Officers, - - - - - - - - - 22
Delinquencies—
Lists of, to be attested by the field officers, and forwarded to the Auditor, - - - - - - 17
Disabled in service—
Provision for such as may be, - - - - - - 11
Discipline, &c.—
Rules of, - - - - - - - - - 10, 11, 23
Disobedience and disorderly conduct—
Penalty for, - - - - - - - - 20
Distress—
Arms exempt from, - - - - - - - 6
Divisions of the counties— - - - - 4, 5
Changes in, - - - - - - - 4
Drafts for actual service—
Officering and paying drafted men, - - - 10
Duty of Adjutant General to apportion, for actual service, 9
Drummers, - - - - - - - - - 6
Drum-Major, - - - - - - - - - 6
Duty—tour of, - - - - - - - - 9
Enrolment—
Who liable to be enrolled—notice of, - - - 3
Enrolment every year, - - - - - - - 8
Ensign—
To be commissioned by the Governor, - - - 7
Eldest ensign present to bear the colours on battalion days, - - - - - - - - - 6
Execution—
Arms exempt from, - - - - - - 6
Exempts from militia service, - - - - 4
Exercise—
Days of—notice of days of, - - - - - 11, 12
Troops not to be kept under arms more than five hours on company days, - - - - - - - 11
Field Officers—
To be commissioned by the Governor, - - - 7

MILITIA—
Field Officers—
Their certificates in cases of companies procuring public arms, - - - - - - - - - 19
To furnish list of delinquencies to the Auditor, - 17
To appoint their own regimental staffs, - - 7
Fifers, - - - - - - - - - - 6
Fife-Major, - - - - - - - - - 6
Fines of—
[For non-attendance on days of parade, 20,] repealed, 345
Account of—to be kept and sent to the commissary and Brigadier General, - - - - - - - 12, 13
How appropriated, - - - - - - - 13
Collectors of, - - - - - - - 14
Lists of, - - - - - - - 14
For disobedience, disorderly or unmilitary conduct, 20, 21
Each regiment to draw only for its own fines, - - 13, 16
Firelock—
Owner of—to appear with it on duty, - - - 5
Governor—
To commission the officers of the militia, - - 7
May review the militia at his pleasure, - - 18
To cause arms to be delivered to militia—and when, 19
To lay before the General Assembly the Adjutant General's return of the militia, - - - - 19
Grenadiers, - - - - - 4, 5
Horse—
Troops of—and how armed, - - - - - 4, 5
Numbers in a brigade, - - - - 9
To be uniformed as the Brigadier shall direct, - 5, 6
Squadrons of—and how officered, - - - - 9
Captains of—how to draw on commissary, - - 13
Horses killed in service—to be paid for, - - - 13
Infantry, - - - - - - - - - 4, 5, 7
Judge Advocate—his duties, - - - - 21
Knapsacks—how furnished, - - - - 6
Lieutenant—
To be commissioned by the Governor, - - - 7
Number of—in different companies, - - - 7
Lieutenant Colonel, - - - - - 7, 8
Light Infantry, - - - - - - - 7, 8
Lookers-on at militia parades—to be fined, - - 12
Majors—
To be commissioned by the Governor, - - - 7
Major General—
To be commissioned by the Governor, - - - 7
To direct the uniform of officers, - - - - 6

MILITIA—
Major General—
To review one brigade every year, - - - - - 18
Militia—
Return of—to be made by the Adjutant General, to the Governor, and by the Governor to the Legislature, 19
Minors, - - - - - - - - - - 4, 5
Musters—times of mustering, - - - - 11, 22
Music—
By whom provided—how paid for, - - - 6, 13
Notice—
Of enrolment. Of days of parade, - - - - 3, 11
To militia, when called into actual service, - - 18
Officers—
How appointed, - - - - - - - - 7
Of companies, when exercised by the Adjutant, - 22
So seize public arms, - - - - - - 439
Pay in service, - - - - - - - - 10
Penalty—
On captains, &c. for not classing the militia, - - 9
for not sending lists of fines to the Commissary and Brigadier, - 12
for not reporting—in case there be no fines, - - - - - - 14
for not making returns to the Adjutant General, - - - - 19
On collectors—for collecting more than is due, - 14
for not giving bond, - - - 16
On commissary—for not settling for, or paying over fines, - - - - - 17
On officers and privates—for not serving, or finding a substitute for actual service, - 18
For not exercising—disorderly conduct, &c. - - 20
For not serving on a court martial, - - . 21
For not delivering arms to the captain of a district, - 23
Printing—
Three hundred copies of the Act to establish the militia, 23
Provision—
For such as may be disabled in service, - - - 11
Quarter Masters—
How appointed—of horse—of artillery, - - - 7, 9
Quarter Master General, - - - - - 7
Rank, - - - - - - - - - 7, 8
Regiments—
Arrangement into—days of meeting, - - - 4, 5, 11
Each to draw for its own fines, - - - - 13, 16

MILITIA—
Regimental Staffs—
How appointed, - - - - - - - - 7
Repeal, - - - - - - - 23
Returns, - - - - - 8, 12, 13, 18, 19, 20
Reviews, - - - - - - - 11, 18
Rolls of Companies, - - - - - - - 8
Calling roll, - - - - - - 12
Secretary of State—
To cause 300 copies of the Act to establish the militia, to be printed, - - - - - - 23
Bonds for arms to be filed in his office, - - - 20
Service, actual—
Drafts for, - - - - - - - - - 10
State Treasurer—
To receive the balance on fines from the military commissary, - - - - - - - - 17
To transmit to the Auditor of accounts, an account of the amount received for fines, - - - - 17
Troops—(See *Cavalry*.)
Uniform, - - - - - - - - - 5, 6, 10
Volunteer Companies—
Must be at least one to a battalion, - - - - 4
Must not contain less than twenty privates, - - 9
Must be uniformed as the Brigadier General directs, 5, 6
Every volunteer to be uniformed in six months after enrolment, ... 10

MILITARY FINES—
Repealed, - - - - - - - - - 345

MILLS—
Owners of—or tenants, to repair public roads—when, 393
To keep a good bridge over the race, &c. - - 393
To keep the mill wheel covered, - - - - 393
Penalty for neglect, - - - - - - 394
Tenant may deduct his expenses herein, from the rent, 395
Overseer of the roads to perform these duties—when, 394
Shall recover double damages from the owner or tenant, 394

MILTON—
Swine not to run at large in, (See *Swine*.) - - 218
Repeal of supplement to their hog law, - - - 155

MINORS—
Partition of intestates' lands among, (See *Intestate*.) 81
How bound as apprentices and servants, &c. - - 96

MISPILLION NAVIGATION COMPANY—
Act to establish it, - - - - - - - 52
Commissioners appointed—their powers and duties, 52
Their oath and compensation, - - - - 58
Directors and President—their meetings, powers, &c. 53, 54
Oath of directors, - - - - - - - 58
Engineers and laborers—by-laws of the corporation, 54
Meetings to be held in Milford, - - - - 54, 55
Annual meetings—elections of directors—shares, 54, 55
Dividends—accounts—subscription money, - - 55
Loan—damages—appeal, - - - - - 56
When and how the creek may be stopped—penalty for injuring the navigation, - - - - 56, 57
Toll to be paid by vessels passing the canals, and how collected, - - - - - - - - 57
Rates of toll, how ascertained, - - - - 58
Penalty on the commander of a vessel refusing to produce the registry or license, when demanded, - 58

MORTGAGES—
Priority of, - - - - - - - - 298
For purchase money, preferred to other liens, - - 298
Satisfaction thereof, to be recorded in *sixty* days, 300
Penalty for neglect, - - - - - - 300
Reconveyance to be made—when, - - - 301
Recorder to note the time of receiving, - - 299
A defeasance to any conveyance to be recorded, - 299

MURDERKILL CREEK—
Act authorizing a drain from Baucumbrig into, - 147
Commissioners—managers—their oath—treasurer, 147-8-9
Penalty for obstructing ditch, - - - - 149

MULBERRY TREES—
Lands planted in—exempt from taxation for ten years, 496
Medal—as a premium for their cultivation, - - 496

N

NEGROES AND MULATTOES—
A negro or mulatto bearing a bastard child at the poor house, may be bound out by the trustees, - 420
Slaves committing the crime of manslaughter, how punished, - - - - - - - - 409

NEGROES AND MULATTOES—
Marriage between a white person and a negro or mulatto, unlawful, - - - - - - - 450
Such marriage void, and parties guilty of misdemeanor, 451
Penalty for solemnizing such marriage, - - - 451

NEGRO AND MULATTO CHILDREN—
How and when bound, - - - - - - - 97
Not, if parents give security, - - - - 98
Kidnapping, - - - - - - - - 104

NEW-CASTLE—
Courts of New-Castle county to be held at, - - 183
Sites for piers at—ceded, - - - - - - 52
[Additional Justice of the Peace] - - - - 48

NEW-CASTLE TURNPIKE COMPANY—
Authorized to make a rail road, - - - - 313
Books to be opened—when, - - - - 313
Corporate name changed, - - - - - 314
Directors—election of—their powers, - - - 315
Ground for new road—how obtained, - - - 316
To keep in good repair a road thirty feet wide, - 316
Penalty for neglect, - - - - - - - 316
Not to obstruct other roads, public or private, - 317
Rate of toll, - - - - - - - - 317
Stock in this company, personal property, - - 318

NEW-CASTLE AND FRENCHTOWN TURNPIKE COMPANY—
Authorized to make a rail road, - - - 319
Books to be opened—when, - - - - 320
Corporate name changed, - - - - 320
Directors, election of—their powers, - - 321
Location of the rail road, - - - - 322
Road thirty feet wide to be kept open, - - 323
Rate of toll, - - - - - - 324
Stock in this company, personal property, - - 324

NORTH WEST FORK HUNDRED—
[Additional Justice of the Peace and constable in,] 58

NOSE—
Slave slitting, &c. by lying in wait—punishment, - 121

NOTICE *to quit*—(See *Tenant.*) - - - 63

NOTARY PUBLIC—
To administer oaths whenever it is proper, - - 182

NUISANCES—
Certain shows prohibited as nuisances, - - - 281

O

OATHS AND AFFIRMATIONS—
May be administered to each other by persons appointed by the court to perform any duty, - - 181
And to the surveyor, &c. and witnesses, - - 181
May be administered by the surveyor to chain carriers, 182
Form of oath, &c. to accompany commissions, rules, &c. 182
The Chancellor may administer an oath, &c. in any case where an oath. &c. is proper to be taken, - - 182
Or any judge, Justice of the Peace, or notary public, 182
Of jurors, in cases of forcible entry, &c. or tenant holding over, - - - - - - - 68
Of insolvent petitioner, - - - - - 137, 145
Of freeholders and surveyor, under the intestate law, 89
Of Commissioners of gaols, - - - - 94

OBSOLETE—
The following Acts declared obsolete—

Chap.	2, a.	1 vol.	51	-	-	-	-	-	174
	5, a.	.	52	-	-	-	-	-	174
	12, a.	.	55	-	-	-	-	-	174
	14, a.	.	57	-	-	-	-	-	174
	122, a.	.	299	-	-	-	-	-	174
	231, a.	.	587	-	-	-	-	-	174
	128, a.	.	310	-	-	-	-	-	174
	162, a.	.	352	-	-	-	-	-	174
	174, a.	.	385	-	-	-	-	-	174
	178, a.	.	396	-	-	-	-	-	174
	191, a.	.	437	-	-	-	-	-	175
	219, a.	.	506	-	-	-	-	-	175
	230, a.	.	571	-	-	-	-	-	175
	174, b.	2 vol.	921	-	-	-	-	-	174
	54, b.	.	690	-	-	-	-	-	174
	8, b.	.	608	-	-	-	-	-	175
	22, b.	.	627	-	-	-	-	-	175
	38, b.	.	647	-	-	-	-	-	175
	41, b.	.	656	-	-	-	-	-	175
	46, b.	.	670	-	-	-	-	-	175

OBSOLETE—
The following Acts declared obsolete—

Chap.	51, b. 2 vol.	679		175
	53, b.	682		175
	56, b.	692		175
	61, b.	704		175
	63, b.	709		176
	67, b.	715		176
	68, b.	718		176
	71, b.	719		176
	77, b.	748		176
	85, b.	763		176
	75, b.	741		176
	74, b.	739		176
	83, b.	751		176
	103, b.	784		176
	95, b.	771		177
	97, b.	774		177
	99, b.	776		177
	107, b.	787		177
	113, b.	801		177
	141, b.	867		177
	161, b.	906		177
	192, b.	937		177
	202, b.	960		177
	229, b.	1016		177
	124, b.	823		177
	138, b.	852		177
	156, b.	895		177
	165, b.	909		177
	170, b.	918		177
	198, b.	945		177
	213, b.	977		177
	59, c.	1183		178
	77, c.	1204		178
	106, c.	1299		178
	128, c.	1343		178
	57, b.	701 not in force		178
	49, 3 vol.	123 obsolete,		174

ORDER—
For sale of appraised premises which none of the parties will accept, - - - - - - - 86
New order, on return, without partition or appraisement, - - - - - - - - 84
For a deed—when Sheriff is dead or out of office, - 35
Of bastardy—how made, (See *Justices of the Peace.*) 228

ORPHANS' COURT—
Shall be held twice a year in each county, - - 329
The clerk may open and adjourn it, in the Chancellor's absence, - - - - - - - - - 329
Powers of the court to enforce its orders, &c. - - 329
Process of citation may be issued into every county, - 329
Sequestration shall bind from the time of service, - 329
May award commissions to take depositions, - - 330
And direct issues of fact to be tried by a jury, - - 330
Testimony in—to be reduced to writing—when, - 330
To order counter security on the complaint of surety of an executor, administrator or guardian, - - 331
And in case of refusal, &c. may remove such executor, administrator, &c. - - - - - - - 331
And order him to pay the money, &c. in his hands, to a receiver, - - - - - - - - - 331
Receiver to give bond and security, - - - 331
The court may direct money in the hands of an executor, administrator or guardian, to be lent out on security, for a limited time, - - - - - - - 332
Has authority to appoint and remove guardians, - 333
A minor, fourteen years old. may choose a guardian, 333
Testamentary guardians—when to be appointed, - 333
Guardians to give bond and security, - - - 333
Court may require further security—when, - - 334
Shall direct a valuation of wards' lands, - - 334
May direct guardians to expend more than the income of the wards' estate, ... 335
May order property to be delivered to the ward on his coming to age, ... 336
If a minor have no guardian, the court may appoint a person to take charge of his property, . . . 337
The rent in such case to be paid into court, . . 337
May grant orders for the sale of real estate for the payment of debts—when, ... 272
May direct a sale of part of the lands, . . . 273
Sale to be approved of by the court, . . . 274
Deed to be made under the order of the court, . . 275
To take bond from an executor or administrator before making an order of sale, ... 277
And from an administrator d. b. n. before he receives the purchase money on such sale, . . . 278
To tax the costs of sale, &c. 278
May refuse an order of sale, ... 279
Appeal herein, ... 279
To perform the duties of Register for the probate of wills in cases where he is interested, . . . 487

ORPHANS' COURT—
In such cases an appeal lies to the Supreme Court, . 487
Appeal from, to the Supreme Court in cases of partition of intestates' lands and orders made in pursuance of the Act concerning intestates' real estates, - 91
Appointment by—of five freeholders to divide intestates' lands, &c. - - - - - - - 80
Assignment of intestates' real estate, in certain cases, to a party accepting at the appraised value, 82, 83, 84, 85, 86
Costs of partition of intestates' lands, how regulated by, &c. - - - - - - - - - 90
Freeholders appointed by—to divide intestates' lands, how directed by—their returns, &c. - - 81, 82
Jurisdiction of—to extend to all the lands of an intestate, altho' in different counties, - - - 88, 89
Order for sale of appraised premises which none of the parties will accept, - - - - - - 86, 87
Recognizances for appraised value of intestates' lands, 82, 83
Recognizances taken by—recorded in another county shall be liens, - - - - - - - 88
Proceedings when a party entitled to the acceptance of appraised premises refuses or neglects to accept, 85

OVERSEERS OF BRIDGES—
To have the same power for obtaining materials as the overseers of roads, - - - - - - 404
Penalty for suffering bridges to be obstructed, &c. 401
(See *Overseers of Roads.*)

OVERSEERS OF ROADS—
Their duty to erect coverings over mill wheels, &c.—when, - - - - - - - - - 394
To recover double damages therefor from owner, &c. 394
Penalty for neglecting this duty, - - - - - 395
Penalty for suffering roads to be out of repair, &c. or for the neglect of any duty incumbent on them, 401
Their general powers, - - - - - - - 402
To take sand, gravel, timber, &c. for repairs, &c. 402
These materials to be first appraised, - - - 403
Mode of proceeding in the appraisement, - - 403
Notice to be given to the owner, - - - - 404
Appraised value to be paid, if demanded, - - 404
If not demanded, duty of the overseer, - - 404
Materials may be obtained by purchase, - - 404
Overseers of *private* roads—when appointed, - - 405
Their powers, &c. - - - - - - - 405

OVERSEER OF THE POOR HOUSE—
To be appointed by the trustees of the poor, - - 419
To give bond and security, - - - - - 419
Not to receive any person in the poor house without the order of two trustees, one of whom must reside in the pauper's hundred, - - - - - 419
He shall keep a list of paupers—date of admission, &c. 419
And an account of the furniture, provisions, expenses, income, &c. of the poor house, - - - 419
He shall employ the paupers, - - - - 420
Not to inflict corporal punishment, - - - 420
Shall obey the order of trustees dismissing paupers, 420
Penalty for permitting any one to be in the poor-house who ought not to be there, - - - 420
Salary of the overseer, - - - - - 420
Penalty for conniving at the marriage of a pauper, 421
Not to furnish any article for the poor house, - 431
Penalty for violating this provision, - - - 431

OYER AND TERMINER, *Court of*—
General jurisdiction of that court, - - - 410
Shall assign counsel for the accused—when, - - 410
Number of petit jurors to be summoned at, - - 412

P

PARENTS—
Liability of—to support their children, - - - 424
Proceedings against—in cases of desertion, - - 425

PAROL DEMURRER—
Not to be allowed in any suit at law or in equity, 336

PARTITION—
Writ of—how served, - - - - - 361
Tenant to give notice of such writ to his landlord, 361
No process of *pone* or *attachment* allowed in, - 361
In partition, several shares may be laid off in common, 362
Joint tenants, and tenants in common, compellable to make partition, - - - - - - 363
Writ of partition—form of, - - - - 363
On judgment by default in—what shall be inquired of, 364

PARTITION OF INTESTATES' REAL ESTATE—
Shall be postponed till the death of the tenant by curtesy, - - - - - - - . - 78

PARTITION OF INTESTATES' REAL ESTATE—
Shall not be had of the widow's part until her death, 78, 79
What possession necessary to obtain it, - - - 89, 90
Manner of making partition, - - - - 79
Advancement of a child by intestate in his life time to be estimated in making, - - - - 80
How and by whom it may be procured, - - - 80, 81
When partition and appraisement shall be made, and when appraisement alone, - - - - 81
How made where the parties entitled to shares, are minors, - - - - - - - - - 81, 82
Orphans' Court may, on hearing a rule to shew cause why appraised premises shall not be sold, order partition instead of a sale, - - - - 87
Of lands in different counties, - - - - 88, 89
Costs of—how paid, - - - - - - - 90
(See *Intestate.*)

PAYMENT—
Of a judgment, single bill, &c. how pleaded and proved, 75

PENALTY—
Arms—for buying, selling, or giving away public arms, 439
Bridges—for injuries done to, - - - - 402–4
Chesapeake and Delaware Canal—for injuries done to, 360
Clerks—for purchasing witnesses' fees, - - - 374
for neglecting to certify to Auditor, list of fines, &c. - - - - 387
for not indexing judgments, &c. - - 251
for not satisfying judgments, when they are returned paid, - - - - 312
Clerks of the Orphans' Court, for not recording recognizances, &c. - - - - - - - 331
for not certifying to the State Treasurer fine, &c. imposed by the court at each term, 173
[for failing to settle, quarterly, for fees arising from licenses for the use of gill nets and seines,] - - - - - 374
for neglecting to give notice of meeting of school voters, &c. - - - - 188
for neglecting to pay over fees for constables' commissions, - - - - - 200
Constables—for neglecting to pay over fines, &c. - 173
for neglecting to settle with the Auditor, 380
County, demands against—for purchasing before allowance, - - - - - 375
Distress—for taking unreasonable distress, - - 347

PENALTY—
for taking, when no rent is due, - - 350
Dover—for removing boundary stones in, - - 455
on commissioners of—for receiving any part of the tax raised in, - - - 462
Emigrants—for landing them without license, - 429
Inquest—for burying a body on which inquest ought to be held, - - - - - - 308
Juror—for not attending coroner's inquest, - - 307
Judgments—for neglecting to satisfy them when paid, 311
Justices of the Peace—for not certifying fines, &c. to Auditor, - - - - - - 387
Marriage—for solemnizing without license, &c. - 451
without consent of master, or of parents, when such consent is necessary, - - - 452
on persons not authorized, pretending to solemnize, - - - - - 451
for assuming the character of a preacher, for that purpose, - - - - - 452
Mortgages—for neglecting to have satisfaction recorded on payment, - - - - - 312
Overseer of the Poor House—for permitting persons to be there improperly, - - - 420
for conniving at the marriage of a pauper, - 421
Overseer of the roads—for suffering them to be out of repair, - - - - - - 401
for not erecting coverings to mill wheels, &c. 395
Public officers, certain—for not settling with the Auditor, 380
Roads—for obstructing, or continuing nuisances in, - 402–5
School voters—for illegal voting, &c. - - - 190
Sheriffs, &c.—for not paying over fines, &c. collected, 173
Shows—for exhibiting, or permitting to be exhibited, 281
Tenant—for not giving up, after notice, - - - 357
for not giving notice of declarations in ejectment, - - - - - 357
of service of writs of dower or partition, - 361
Trustees of the Poor—for refusing to serve when appointed, - - - - - - 416
Wood—for buying or selling it, unmeasured, - - 235
Wood Corder—for not measuring wood, when required, 235
When judgment shall be for the penalty of a recognizance or bond, and when for damages assessed, - - - - - 75, 73
For offences against the "Act concerning gaols and the treatment of persons under arrests," 94, 95
For not paying subscription money to the Mispillion Navigation Company, - - - 55

PENALTY—
For injuring the navigation of Mispillion creek, - 57
For summoning witnesses to increase costs in forcible entry and detainer, or proceedings against a tenant for holding over, and on jurors refusing to serve in such cases, - - - - - - - 68, 69, 70
On sheriff or coroner refusing or neglecting to attend such trials, - - - - - - - - 70
For bribing, or treating, to influence electors of sheriff, 25
For firing woodland or marsh before 10 March or after 1 May, - - - - - - - - 28, 29
On owners of stoned horses running at large, - 39
On keepers of public houses, suffering drinking at unseasonable hours of the night, or disorderly conduct, gambling, &c, - - - - - - 50, 51
For selling liquor by small measure without a license, 51
For offending against the provisions regulating travelling over Summit bridge, - - - - 152
For injuring Summit bridge, - - - - 152
For not causing lamps to be lighted on Summit bridge, 153
On Justices of the Peace and trustees of the poor for neglecting to deliver an indenture of apprenticeship &c. to recorder within 60 days, - - - 99, 100
On recorder, for not recording an indenture of apprenticeship, &c. - - - - - - - 100
For employing, &c. the apprentice of another, - - 106
For fraudulently sending, &c. a negro apprentice or servant from this State with intent to reduce him to slavery, - - - - - - - - 104
(See *Kidnapping.*)
For crimes committed by slaves, - - - 120–130
For exporting, &c. slaves, - - - - - - 126
For obstructing the exportation of slaves when sentenced to be exported, - - - - - 123, 124
For preparing or stationing any vessel or boat in any harbour for the purpose of exporting slaves, 128
For swearing falsely, having taken an oath under the "Act concerning insolvent prisoners," - - 145

PENNSYLV'A. DEL. AND MARYL'D. *Steam Nav. Co.*—
Their charter confirmed, - - - - - - 291
Roads, how opened—damages—review, - - 292
Other companies using the road, to pay part of the damages, - - - - - - - - 294

PERJURY—
Insolvent petitioner swearing falsely—guilty of, 145

PETITION—
Of insolvent debtor, to be discharged from prison, 136
For partition of intestates' real estate, - - - 80
For deed, when sheriff who sold is dead or out of office, &c. - - - - - - - - 35

POISONING, *attempted by slaves*—
How punished, - - - - - - - - 121

POOR—
To be provided for, by the trustees of the poor, - 417
How admitted into the poor house, - - - 419
How dismissed, - - - - - - - - 420
Not to be corporally punished, - - - - 420
No pauper in the poor house shall marry, - - 421
No person to deal with paupers without the overseer's consent, - - - - - - - - 421
Out of the poor house may be relieved—when, - 421
Burial charges for—payment of, how obtained, - 421
Legal settlement, place of, - - - - - 422
How acquired, - - - - - - - - 422
Persons likely to become a county charge, how removed, and in what cases, - - - - - 422
Costs of pauper to be paid by the county where he has a settlement, - - - - - - - - 424
Proceedings against persons importing non-resident paupers, - - - - - - - - 428
Licenses for landing emigrants—how obtained, - 429
Penalty for landing them without license, - - 429
Liability of parents for the support of their children, and of children for the support of their parents, 424
Court to enforce this liability, - - - - 425
Proceedings against husband for deserting his wife who thereby becomes a county charge, - - 425
Against parents for desertion of their children, - 425
Liability to the payment of poor rates no disqualification to a judge, justice, juror, &c. in a settlement case, 430

POSSESSION—
How obtained by purchasers of land sold on execution, 33
Of tenant, is possession of landlord, in forcible entry, &c. 63
Writ of possession in such cases, - - - 69
What possession necessary to obtain partition, assignment, or sale of intestates' real estate, - - 90

POSTHUMOUS CHILDREN—
Act concerning, - - - - - - - - 118

POSTHUMOUS CHILDREN—
Infant in the mother's womb to take as a living child if born alive, if not, to have no effect, - - 118
Child born after will made, and unprovided for, 118, 119
Will made by one without issue at the time, revoked if he have a child, &c. - - - - - - 119

PRATT'S BRANCH SCHOOL—
Incorporated, - - - - - - - - 208

PREACHERS OF THE GOSPEL—
Authorized to solemnize marriages, - - - 450
But not without a license or the publication of banns, 450
Penalty for marrying a pauper supported in the poor house, - - - - - - - - - 421
For marrying persons within the prohibited degrees, 451
For marrying a white person with a negro or mulatto, 451
For marrying without license or publication of banns, 451
For marrying a minor without the consent of parents, &c. when such consent is necessary, - - 452
For marrying a servant without the master's consent, 452
They shall keep a *register* of marriages, - - - 451
Fee for solemnizing matrimony, - - - - 452

PRESIDENT AND VICE PRESIDENT U. S.—
Electors of—to be elected by the people, - - 432
If they fail to elect—by the General Assembly, - 435
(See *Electors of President and Vice President.*)

PRISONERS, *treatment of*, - - - - - - - 92
Fuel and bedding, how furnished—board of, - - 93
Sheriff or gaoler to receive nothing for ease or favour, 93
to give receipts for money paid by or for prisoners, 95
Persons under arrest not to be carried to taverns without their consent, - - - - - - - 93

PROBATE OF ACCOUNTS—
Against the estates of deceased persons—how made, 480
By an ex'r. or adm'r. or an officer of a corporation, 480
May be made before any judge, justice, notary, &c. 481
To be *signed* by the party making it, - - - 481
Falsely swearing herein, perjury, - - - - 481
Executors and administrators not to pay debts without probate, - - - - - - - - 480
Nonsuit for want of a probate—when to be given, 480
Costs to be disallowed for want of—when, - - 480

PROBATE OF WILLS—
How taken, - - - - - - - - 465
Review of—when granted, and to whom, - - 466
Caveat against—when it shall be received, - - 466

PROHIBITED DEGREES—(See *Marriage.*) - - - 449

PROSECUTIONS—
In the absence of the Attorney General, how conducted, 29

PROTHONOTARIES—
How they shall dispose of the laws lodged with them, 245
Shall account therefor, annually, in December. - - 245
Duty of—in case of a record remanded from the High Court of Errors and Appeals, - - - - 250
Their duty on entering judgments, - - - 250
To note the time of such entry, - - - - 251
To keep two indexes, direct and reversed, - - 251
To index the judgments in *twenty-four hours*, - 251
Penalty for neglect, - - - - - - 251
To enter the real debt on the docket, &c. - - 252
Limitation of actions on their official bonds, - - 267
To issue licenses for exporting and importing slaves—when, - - - - - - - - - 282
To collect the fee due the State thereon, - - 283
Their fee on such license, - - - - - 283
To enter on the docket payments received on executions, 312
To satisfy the judgment when it is thus paid off, - 312
Penalty for neglect, - - - - - - 312
Not to purchase witnesses' fees. Penalty, - - 374
To transmit to the auditor lists of fines, &c. imposed by the court at each term, - - - - - 387
And also returns of sales of persons as servants, 387
Penalty for neglect of these duties, - - - 387
To distribute the "Act for the establishment of free schools," and account for the proceeds, - - 489

PUBLIC HOUSES—
Act concerning, - - - - - - - - 50
Keepers of—suffering drinking at unseasonable hours, or gambling &c.—how punished, - - - - 50
Penalty for keeping a public house without license, 50
——— for selling spirituous liquors by the small, without license, - - - - - - - - 51
Sheriff or gaoler, not to keep a public house, &c. in the gaol, - - - - - - - - - 93

PUBLIC RECORDS—
Act to preserve the—in Sussex, - - - - 26

PUNISHMENT—
Of slaves, for crimes, - - - - - - 120

PURCHASERS OF LAND SOLD ON EXECUTION—
How to obtain deeds where sheriff is dead or out of office, &c. - - - - - - - 35
How deeds are obtained when the purchaser is dead, 35
How to obtain possession of the lands, - - - 33
Entitled to rent from the day of sale, - - - 35
Remedy to recover rent, - - - - - 35
When he may recover more than the rent reserved, 35

Q

QUARTER MASTERS—
How appointed—as part of the regimental staff, 7
Of horse and artillery, - - - - - - 9

QUARTER MASTER GENERAL—
How commissioned, - - - - - - 7

R

RAIL ROAD—
From New-Castle to Clark's Corner, - - - 313
From Clark's Corner to the Maryland line, - - 319

RANK, *of officers of militia*—
How determined, - - - - - - 7

RAPE—*Attempted by slaves on white women*, - - 121

REAL ESTATE—(See *Intestate.—Partitition.—Purchasers*, &c)

RECEIVER—
Appointed by the Orphans' Court—to give bond, &c. 331

RECORDS—
Of recognizances for the appraised value of intestates' lands in other counties, &c. - - - - 88

RECORDS—
Of indentures of apprenticeship, - - - - - 99, 100
Of the assignment and certificate of approval of indentures of apprenticeship, - - - - - 101
Of a copy of an adjudication to serve beyond the terms of the original binding, - - - - - - 103
Of the discharge of an apprentice or servant, &c. - 106
Of procedings under the insolvent law, - - 139
Of the petition and order for a deed when the officer who sold lands is dead or out of office, - - - 36

RECOGNIZANCES—
Limitation of actions on—in the Orphans' Court, - 267
To be recorded by the clerk in *five* days after taken, 330
For the appraised value of intestates' real estate, 82, 83, 84
When recorded in another county to be liens there, and preferred to judgment in certain cases, - - 88
To indemnify the county for the maintenance of an insolvent prisoner, &c. - - - - - - 143, 144
Act regulating proceedings on recognizances and public bonds and specialties containing a penal sum, 72–76
In trust for persons aggrieved, - - - - - 73
When judgment on—shall be entered for the damages assessed, and when for the penalty, - - - 73, 75
Not to be extinguished by judgment on—for damages assessed, - - - - - - - - 73
Consolidation of actions on the same recognizance, 73
How breaches may be assigned and damages inquired of, 73
No one to be made liable beyond the penalty, - - 74
Who shall be entitled to preference when the penalty is inadequate to cover all damages, - - - 74
Payment may be pleaded in an action on—altho' not evidenced by instrument under seal, - - - 75
Office copies of—to be evidence, - - - - 75, 76
Production of original may be ordered, - - 76

RECORDER OF DEEDS—
To record constables' bonds, - - - 199
And file and keep the originals, - - - - 199
Limitation of actions on his official bond, - - - 267
To note the time of receiving deeds, &c. to be recorded, 299
And to endorse a certificate of the recording, - - 300

REFUNDING BONDS—
When they may be required by an executor or administrator before payment of a legacy or distributive share, - - - - - - - - - 483

REGIMENT, (See *Militia*) - - - - - - 7, 11, 13

REGISTER FOR THE PROBATE OF WILLS—
Not to receive a *nuncupative* will after thirty days, 222
Not to admit a will to probate, unless, &c. - - 224
To record wills proved, and preserve the originals, 465
Proof of a will may be taken without giving notice, unless requested, - - - - - - - - 465
Notice to be given—when, and how, - - - 465
A *review* shall be granted—when, - - - 466
Proceedings upon review same as upon a caveat, - 466
Not to be granted after seven years, saving, &c. - 466
A *caveat* shall be received at any time before proof of will, - - - - - - - - - 466
Proceedings upon a caveat, - - - - - 466
Notice thereof to be given—when, - - - 466
Register may order issues of fact to be tried by a jury, 466
To grant *letters testamentary* on proof of a will, - 467
The executors must give security, - - - 467
When letters shall be granted to one of several ex'rs. 467
Adm'n. *with the will annexed*, when to be granted, 467
Adm'n. *during minority*, when to be granted, - - 467
Letters test'ry may be granted to a married woman, 467
Letters of adm'n. to be granted in the county where deceased resided, - - - - - - - 467
Where granted in case of a non-resident, - - 468
To whom letters of administration shall be granted, 468
Letters of adm'n. *d. b. n.* & *c. t. a.* to be granted under the same regulations as original administration, 468
Letters of adm'n. *pendente lite* or *durante absentia* to be granted at the discretion of the register, - - 468
Persons disqualified from being ex'rs. or adm'rs. 469
Register may remove an executor or administrator, 469
Grant of letters on the discovery of a will removes the administrator, - - - - - - - 469
Register shall take bond from ex'rs. and adm'rs. 469
And approve the security, - - - - - 469
Condition of the bond, - - - - - 469
Several ex'rs or adm'rs may join in one bond, - 470
Husband and wife shall join in the bond—when, - 471
Docket entry of the bond, &c. - - - - 471
Liability of the register for granting letters without bond, - - - - - - - - - - 471
He shall require further security to be given—when, 471
Shall remove the ex'r. or adm'r. for failure to give such surety, - - - - - - - - - 472
To preserve the bonds in his office, - - - 472

REGISTER FOR THE PROBATE OF WILLS—
The register shall appoint *appraisers*, - - - 473
Oath of appraisers, - - - - - - - 473
What shall be deemed assets and included in the inventory, - - - - - - - - 473
Certificate of the appraisers, - - . - 474
Debts due deceased from executor, &c. to be inserted in the list of debts, &c. - - - - - 474
Oath of an executor or administrator, - - - 473
Affidavit of an ex'r. or adm'r. to the inventory, - 474
Affidavit to the list of debts and credits, - - 475
The register may administer these oaths, - - 475
He may suppress an inventory or list, and order a further one, - - - - - - - - 475
From his decision hereon an appeal lies to the Orphans' Court, - - - - - - - - - 475
Testimony of witnesses before him to be reduced to writing, - - - - - - - - 475
Inventory of goods, &c. and list of debts, &c. to be filed in *six* months, - - - - - - - 476
Or the register shall issue attachment, - - - 476
One of several executors, &c. refusing to join in the list, &c. may be removed, unless, &c. - - 476
Additional inventory or list, when to be made, - 476
Register may award commissions to take depositions, 477
To compel ex'rs and adm'rs to file accounts every year, 481
He may enlarge the time, and dispense with an account, 481
From this decision there is an appeal, - - - 481
To compel guardians to file accounts of their guardianship, - - - - - - - - - 335
In case of the death, &c. of an ex'r. &c. the co-ex'r. &c. or succeeding ex'r. &c. shall receive the unadministered goods, - - - - - - - 472
Commissions in such case to be apportioned, - - 472
Costs awarded against ex'rs. or adm'rs. shall not be allowed in their accounts, unless the court certify, &c. 478
Order of payment of debts by an executor or adm'r. 479
Rents, &c. coming to their hands, are *assets*, - - 479
Probate against the estate of a deceased person, - 480
By an ex'r. adm'r. or an officer of a corporation, - 480
Several probates necessary in certain cases. - - 480
Probate may be made before any judge, justice, &c. 481
Probate to be signed by the person making it, - - 481
Residue of personal estate—how distributed, - - 481
Residue undisposed of by will—how distributed, - 482
Ex'rs and adm'rs. not to be charged with interest for one year, unless, &c. - - - - - - 483

REGISTER FOR THE PROBATE OF WILLS—
Register to make an order for giving notice of the grant of letters—upon application of an ex'r. or adm'r. 484
What notice such order shall require, - - - 484
He may take depositions to prove its execution, - 484
His powers in issuing process and compelling obedience, 487
An appeal lies from the register to the Sup. Court—when 472
In cases where he is interested, the Orphans' Court has cognizance with an appeal to the Supreme Court, 487
Limitation of actions on his official bond, - - 267

REGISTERS IN CHANCERY—
To open and adjourn the court in certain cases, - 153

REGISTER OF MARRIAGES—
To be kept by every preacher who solemnizes marriage, 451
By every religious society, where marriages are solemnized, - - - - - - - - - 451

RELIANCE FIRE COMPANY—
Number of members, - - - - - - - 164

REMAINDERS—
Remedies by and against grantees of, - - - 370

RENT—
May be distrained for, - - - - - 346
Who may distrain, - - - - - - 346
What may be distrained, - - - - - 347
Goods removed without license, may be followed forty days after removal, or after rent becomes due, 347
Penalty for taking unreasonable distress, - - 347
Notice of a distress—how given, - - - - 347
Property to be appraised, if not replevied in five days, 348
Appraisers to be *sworn*. To certify the appraisement, 348
Value of *grain rent*—how ascertained, - - 348
Certificate of the freeholders, of such value, - - 348
Not to be questioned but on replevin, - - - 348
The distress may be sold—when, - - - - 349
Surplus to be refunded, - - - - - - 349
A second distress may be made for any balance of rent, 349
Property distrained may be left on the premises, or *impounded*, - - - - - - - 349
Property of distrainer therein—and his privileges, 350
In case of *pound breach* or *rescous*, double damages may be recovered, - - - - - - 350
Penalty for taking a distress, when no rent is due, - 350

RENT—
Irregularity of proceeding not to make a distrainer, a *trespasser*, - - - - - 350
On replevin, bond and security to be given, - - 350
Avowry or cognizance—how made, - - - 351
The jury shall find the sum due for rent arrear, - 351
Amount—how ascertained, on judgment without jury trial, - - - - - - - 351
Replevin bond—when it shall be assigned, - - 352
Husband may recover rent due in right of his wife, after her death, - - - - - - 352
So of a person entitled to rent for the life of another, 352
Action of debt lies for rent arrear, - - - 352
Rent of land held under tenant for life, &c. may be apportioned, if the lessor's estate determine before the end of the year, - - - - 352
Action on the case for use and occupation not to be defeated by evidence of a demise without deed, &c. 353
Proceedings where tenant is about to remove his goods before the rent is due, - - - - 353
Attachment may issue on affidavit, - - - 353
Goods to be discharged, if tenant give bond and security, 353
If bond be not given, they may be sold—how, - - 354
If the rent be denied, the court shall direct an issue, 354
Judgment to be given against garnishees, - - - 354
Proceedings in case the tenant is about to leave the State before the rent is due, - - - - 354
Goods taken on execution liable to one year's rent, 354
Rent to be paid out of the sale, - - - - 355
Grain taken in execution, &c. liable to one year's rent, 355
To be sold *subject* to such rent, . . . 355
Not to be removed without payment of the rent, . 355
Officer selling goods of a tenant, to give notice to landlord, ... 356
Goods taken in execution, may be distrained and sold, 356
Notice of such distress to be given to the plaintiffs, . 356
Straw, husks, &c. not to be removed from the premises, 356
A contract of renting generally is a lease for one year, 356
Three months' notice necessary to determine a tenancy, 357
Penalty for not giving up, after notice, . . . 357
An ex'r. or adm'r. shall not distrain after *six* months, 358
No distress to be taken after two years, . . . 358
Nor to remain in force more than sixty days, . . 358
A distress, without sale, does not satisfy the rent, . 358
Fees upon a distress, ... 359
Rent may be attached, ... 358
Attachment does not prevent a distress, . . 369

RENT—
But if the distress proceed to sale, the money must be paid into court, ... 359
Grant of rent, &c. good, without attornment, . . 367
Rent in arrear before a grant, &c. not assignable, . 370
Rent received by ex'rs. or adm'rs. shall be *assets*, - 479
One years' rent to be paid before the goods of an insolvent are removed from the demised premises, . 139
For premises sold on execution to go to the purchaser from the day of sale, ... 35
Apportionment of, - 35

REPEAL *of*—

Chapter	65,	vol. 1,	p. 164,	26
	80	1	217	29
	87	1	232	29
	13	1	56	30
	100 a	1	253	39
	91 a	1	239	71
	58	1	134	95
	146 a	1	345	95
	77 a	1	210	107
	129	1	313	107
	43	1	102	129
	118	1	282	146
	194	1	444	146
	21 c	2	1092	38
	53 c	2	1172	91
	193 b	2	941	129
	194 b	2	942	129
	12	3	33	36
	112	3	244	51
	132	3	288	71
	182	3	392	95
	121	3	263	107
	49	4	123	23
	157	4	443	23
	217	4	582	23
	233	4	608	23
	65	4	215	146
	74	5	127	23
	82	5	146	91
	187	5	349	95
	219	5	392	155
	110	6	161	51
	159	6	255	76
	198	6	326	107

REPEAL of—

Parts of Chap.	46		vol. 1	p. 115	-	-	-	36
	75	a	1	193	-	-	-	51
	30	a	1	87	-	-	-	76
	119	a	1	284	-	-	-	91
	186	a	1	417	-	-	-	ib.
	222	a	1	537	-	-	-	ib.
	76		1	204	-	-	-	95
	170	a	1	383	-	-	-	107
	119		1	294	-	-	-	119
	186		1	419	-	-	-	ib.
	76		1	196	-	-	-	146
	105		2	1298	-	-	-	38
	59		2	1186	-	-	-	ib.
	39	c	2	1153	-	-	-	71
	31	c	2	1130	-	-	-	76
	218	b	2	995	-	-	-	107
	145		2	884	-	-	-	129
	22	c	2	1093	-	-	-	ib.
	124	c	2	1321	-	-	-	ib.
	28		3	66	-	-	-	38
	122		4	332	-	-	-	ib.
	156		4	441	-	-	-	71
	93		4	270	-	-	-	91
	164		4	468	-	-	-	107
	200		5	363	-	-	-	91
	99		6	149	-	-	-	36
	180		6	298	-	-	-	71
	328		6	608	-	-	-	76
	71		6	91	-	-	-	91
	193		6	318	-	-	-	107
	362		6	741	-	-	-	129
Chap.	25	a	1	80	-	-	-	178
	52	a	1	120	-	-	-	ib.
	68	a	1	175	-	-	-	ib.
	72	a	1	187	-	-	-	179
	74	a	1	191	-	-	-	ib.
	101	a	1	256	-	-	-	ib.
	99	a	1	249	-	-	-	ib.
	124	a	1	303	-	-	-	ib.
	130	a	1	314	-	-	-	ib.
	85	a	1	226	-	-	-	ib.
	132	a	1	324	-	-	-	220
	210	a	1	508	-	-	-	ib.
	192	a	1	441	-	-	-	ib.
	226	a	1	561	-	-	-	221
	145	a	1	342	-	-	-	224

REPEAL *of*—

Chapter	196	vol.	1	p.	448	-	-	-	224
	144	a	1		339	-	-	-	226
	44	a	1		105	-	-	-	233
	98	a	1		247	-	-	-	235
	167	a	1		375	-	-	-	184
	86	a	1		228	-	-	-	270
	216	a	1		524	-	-	-	ib.
	117	a	1		280	-	-	-	279
	218	a	1		528	-	-	-	302
	127	a	1		308	-	-	-	ib.
	30	a	1		87	-	-	-	337
	66	a	1		166	-	-	-	376
	114	a	1		277	-	-	-	ib.
	131	a	1		316	-	-	-	406
	225	a	1		544	-	-	-	431
	27	a	1		81	-	-	-	488
	107	a	1		269	-	-	-	ib.
	2	c	2		1054	-	-	-	167
	96	b	–		773	-	-	-	169
	130	b	–		841	-	-	-	171
	6	b	–		604	-	-	-	173
	89	b	–		769	-	-	-	179
	5	b	–		602	-	-	-	183
	190	b	–		934	-	-	-	201
	219	b	–		999	-	-	-	202
	203	b	–		965	-	-	-	220
	76	c	–		1203	-	-	-	221
	108	c	–		1304	-	-	-	233
	119	c	–		1307	-	-	-	235
	18	c	–		1086	-	-	-	264
	248	b	–		1031	-	-	-	270
	35	c	–		1133	-	-	-	ib.
	67	c	–		1198	-	-	-	302
	39	c	–		1147	-	-	-	359
	143	b	–		869	-	-	-	389
	251	b	–		1053	-	-	-	ib.
	26	c	–		1098	-		-	ib.
	247	b	–		1027	-	-	-	ib.
	64	b	–		712	-	-	-	407
	223	b	–		1005	-	-	-	ib.
	23	c	–		1095	-	-	-	ib.
	139	c	–		1363	-	-	-	ib.
	218	b	–		988	-	-	-	431
	249	b	–		1034	-	-	-	ib.
	211	b	–		972	-	-	-	452
	237	b	–		1022	-	-	-	183

REPEAL *of*—

Chapter	10	vol. 3	p. 26	179
	37	-	79	ib.
	33	-	72	ib.
	100	-	222	202
	117	-	252	ib.
	59	-	151	213
	75	-	211	220
	130	-	283	ib.
	23	-	62	ib.
	22	-	61	233
	131	-	287	235
	103	-	229	246
	30	-	69	302
	79	-	189	312
	5	-	15	389
	34	-	73	ib.
	52	-	128	ib.
	177	-	389	407
	6	-	20	ib.
	160	-	350	ib.
	110	-	241	431
	223	4	595	170
	166	4	472	202
	123	4	336	220
	114	4	314	ib.
	170	4	477	ib.
	93	4	270	224
	96	4	274	235
	172	4	483	237
	193	4	521	247
	110	4	310	260
	246	4	666	302
	241	4	647	328
	88	4	262	359
	156	4	441	ib.
	55	4	171	ib.
	164	4	467	389
	225	4	596	ib.
	148	4	407	407
	105	4	299	ib.
	40	4	103	446
	72	4	225	447
	29	4	75	488
	—	4	—	ib.
	87	5	157	180
	141	5	238	182

REPEAL *of*—

Chapter	5 vol.	5	14	-	-	-	184
	146	5	251	-	-	-	197
	183	5	340	-	-	-	ib.
	75	5	128	-	-	-	220
	77	5	139	-	-	-	ib.
	22	5	38	-	-	-	ib.
	44	5	70	-	-	-	235
	69	5	119	-	-	-	237
	205	5	373	-	-	-	247
	203	5	366	-	-	-	ib.
	48	5	92	-	-	-	260
	237	5	429	-	-	-	302
	67	5	117	-	-	-	328
	199	5	363	-	-	-	ib.
	30	5	55	-	-	-	ib.
	231	5	421	-	-	-	343
	197	5	360	-	-	-	376
	184	5	346	-	-	-	431
	143	6	240	-	-	-	197
	165	6	263	-	-	-	202
	219	6	336	-	-	-	ib.
	303	6	559	-	-	-	ib.
	184	6	301	-	-	-	220
	66	6	87	-	-	-	ib.
	39	6	38	-	-	-	ib.
	107	6	157	-	-	-	ib.
	319	6	583	-	-	-	ib.
	141	6	238	-	-	-	247
	58	6	79	-	-	-	ib.
	40	6	40	-	-	-	328
	133	6	225	-	-	-	337
	180	6	295	-	-	-	359
	11	6	10	-	-	-	406
	25	6	26	-	-	-	407
	177	6	288	-	-	-	ib.
	305	6	560	-	-	-	ib.
	332	6	593	-	-	-	ib.
	193	6	317	-	-	-	431
	227	6	361	-	-	-	ib.
	343	6	647	-	-	-	ib.
	272	6	485	-	-	-	437
	185	6	302	-	-	-	447
	55	7	134	-	-	-	202
	23	7	40	-	-	-	220
	27	7	48	-	-	-	ib.
	56	7	135	-	-	-	247

REPEAL *of*—

Parts of Chap.	28 a	vol. 1	page 86	-	-	178
	38 a	1	99	-	-	178
	64 a	1	162	-	-	178
	213 a	1	518	-	-	179
	224 a	1	543	-	-	179
	167 a	1	379	-	-	179
	54 a	1	121	-	-	184
	205 a	1	476	-	-	201
	54 a	1	131	-	-	212
	54 a	1	121	-	-	253
	167 a	1	376	-	-	253
	176 a	1	424	-	-	270
	119 a	1	292	-	-	280
	60 a	1	144	-	-	302
	82 a	1	219	-	-	302
	83 a	1	219	-	-	302
	186 a	1	417	-	-	337
	222 a	1	539	-	-	ib.
	176 a	1	402	-	-	406
	184 a	1	411	-	-	406
	119 a	1	285	-	-	487
	186 a	1	417	-	-	487
	28 c	vol. 2	1126	-	-	173
	132 c	2	1851	-	-	179
	125 c	2	1330	-	-	179
	222 b	2	1004	-	-	184
	97 c	2	1211	-	-	226
	5 c	2	1064	-	-	246
	178 b	2	927	-	-	253
	146 b	2	890	-	-	270
	178 b	2	925	-	-	270
	4 c	2	1063	-	-	270
	146 b	2	891	-	-	337
	7 c	2	1070	-	-	ib.
	99 c	2	1263	-	-	407
	126 c	2	1330	-	-	407
	100 c	2	1270	-	-	407
	28 c	2	1127	-	-	452
	146 b	2	888	-	-	488
	7 c	2	1069	-	-	488
	57	vol. 3	139	-	-	389
	106	–	235	-	-	389
	2	–	4	-	-	407
	138	–	305	-	-	407
	154	–	342	-	-	438
	39	vol. 4	102	-	-	169

REPEAL *of*—

Parts of Chap.	196 vol.	4	525	169
	197	4	530	169
	158	4	462	212
	65	4	218	243
	158	4	457	271
	21	4	32	337
	158	4	460	302
	122	4	328	389
	21	4	46	488
	70	5	120	173
	200	5	364	337
	347	6	656	181
	65	6	86	197
	242	6	377	197
	321	6	593	312
	362	6	741	243
	109	6	159	247
	119	6	192	260
	332	6	622	261
	296	6	539	271
	328	6	609	271
	71	6	95	366
	41	6	44	389
	278	6	515	407
	362	6	709	411
	362	6	745	411
	3	7	59	202
	38	7	90	366
	50	7	120	417

REPLEVIN—

Bond and security to be given upon, - - - 350
When the bond shall be assigned, - - - - 352

RESOLUTIONS—

Compensation of W. P. Brobson, war agent, - 156
Directors to the Farmers' Bank, - - - - 156, 494
Investment of moneys belonging to the school fund, 157
Relative to the removal of negroes, &c. from the U. S. 157
Directing 6th vol. laws to be bound, - - - 158
Appointing State Treasurer, - - - - - 159, 495
Authorizing him to borrow money, - - - 494
Portrait of Col. James Gibson, - - - - 495
White mulberry-trees—concerning, - - - 496

RESTITUTION—
Writ of—when awarded on reversal of judgment in forcible entry, &c. or against tenant holding over, 70

REVERSIONS—
Remedies by and against grantees of, - - 370
Grant of—without attornment, - - - 367

ROADS—
Width of public roads, - - - - 390
To be kept in good repair, - - - - 391
Costs and charges thereof—how borne in Kent county, 391
in Sussex county, 391
in N. Castle county, 392
Costs of repairing bridge, &c. between two counties—how borne, - - - - - 391
Owners, &c. of mills, &c. to repair roads—when, - 393
And to keep a good bridge over the mill race, &c. - 393
To erect a covering over their mill wheels, - - 393
Tenant may deduct his expenses herein from the rent, 395
Overseer of—to erect such covering—when, - - 394
Penalty for neglect, - - - - - 395
He may recover double damages from the owner, &c. 394
Jurisdiction of the Court of Quarter Sessions, in laying out, changing and vacating public roads, - - 395
Mode of proceeding, - - - - - ib.
Review—when granted, - - - - 398
Second review—when, - - - - - 398
Return to be confirmed—when, - - - 398
Road not to be opened till approved by the Levy Court, 399
Nor until the growing crops are taken off, - - 399
Costs, &c. of laying out, changing, &c.—how paid, 400
Bridge crossing the line between two hundreds, &c. by whom to be repaired, - - - - 401
Penalty on overseer of—for neglect of duty, - - 401
Penalty for committing nuisances in, - - - 402
Nuisances to be abated, - - - - 402
Sand, timber, &c. for repair of—how obtained, - 402
To be appraised before it is taken, - - - 403
Jurisdiction of the Court of Quarter Sessions, in laying out, changing and vacating *private* roads, - 405
Width of private roads, - - - - 405
Penalty for committing nuisances therein, - - 405
Costs, &c. of laying out private roads—how paid, - 405

RULE, *to shew cause*—
Why a writ of possession for premises sold on execution shall not be awarded, - - 34

RULE, *to shew cause*—
Why appraised lands of intestates shall not be sold, 86
On a party entitled to the acceptance of intestate's lands, to appear and accept, - - - - 85

RUNAWAY APPRENTICES AND SERVANTS—
Apprehension and commitment of, - - - 104
Sheriff to give notice thereof, - - - 105
Compensation of master, on retaking, - - 102

S

SALE—
Of slaves, for crimes, - - - - 122--125
Order for sale of appraised lands of intestates, which none of the parties will accept, - - - 86

SATISFACTION—
When received on a mortgage, to be recorded in 60 days, 300
Penalty for neglect, - - - - - 300
Of *Judgment*, to be entered in 60 days, - - 311
Penalty for neglect, - - - - - 311
This does not apply to judgments before Justices of the Peace, - - - - - - 311

SCHOOLS—
To be free, - - - - - - 195
When to be opened, - - - - - 195
Commissioners to be appointed to lay off school districts, 185
To be sworn. Their powers and duties, - - 185
To meet as a board on the first Monday of August, 185
Their pay, - - - - - - 197
School districts—to be laid off, - - - 185
How corrected, - - - - - 185-6
Incorporated. Corporate powers, - - - 195-6
A district may forfeit its portion of the school fund, 194
School voters—time and place of their meetings, - 187
Qualifications of, - - - - - - 187
Penalty for illegal voting, - - - - - 190
Occasional meetings of, - - . - - - 188
Notice of such meetings to be given by the clerk of the school district, - - - - - - - 188
Proceedings of meetings to be certified to the clerk of the district and the Clerk of the Peace, - - 189

SCHOOLS—
Penalty for certifying falsely, - - - - 189
School committee—how constituted, - - - 190
Their powers and duties. To be sworn, - - 190
To settle their accounts with the Auditor, - - 194
To lay them before the school voters, - - - 195
Pay of the school committee, - - - - 195
Collectors of the school districts—to give bond, - 191
Clerks of the school districts—their duties, - - 192
Income of the school fund, apportioned & appropriated, 192
Duty of the trustee of the school fund, - - 192
Superintendants of free schools, to be appointed, - 196
Their duties. To receive no compensation, - - 196
Penalty for making fraudulent certificates to draw money from the school fund, - - - - 195

SCIRE FACIAS—
Upon what judgments it may be issued, - - - 371
By and against what parties, - - - - - 372
An ex'r. or adm'r. may be made party plaintiff, without, 478

SEAFORD—
Swine restrained from running at large in, - - 219
Additional Justice of the Peace [and Constable,] - 58

SECRETARY OF STATE—
To have the keeping of the records, &c. of the Executive Department, - - - - - - - - 244
Laws to be delivered to him as soon as signed, - 244
To have printed 800 copies of all public acts and resolutions, - - - - - - - - - 244
With marginal notes, a certificate and an index, - 244
He shall collate the proof sheets with the originals, 244
Laws hereafter printed to correspond with the digest, 244
To contract for the printing, - - - - - 244
And certify the sum due according to contract, - 244
The Governor to draw orders for the payment thereof, 244
Laws, how distributed by the secretary, - - - 245
To bind up the journals in his office—when, - - 246
Limitation of actions on his official bond, - - 267
[To prepare licenses for the use of gill nets, &c. - 373
These licenses, how distributed and accounted for,] 374
To settle with the auditor annually, *in December*, - 379
Penalty for neglect, - - - - - - 380
To transmit to auditor copies of laws granting a State tax, &c. - - - - - - - - 388
To record the auditor's bond in the register, - - 388

SECRETARY OF STATE—
And certify its approval to the General Assembly, 388
Certificate of the election of electors of President and Vice President, to be delivered to him, - - 435
To cause 800 copies of the "Act providing for the establishment of free schools," to be printed, - 489
These copies, how disposed of, and accounted for, - 489
To have the 6th volume of the laws bound, - - 158, 159
How to distribute the bound volumes, - - - 158, 159
To transmit to the Rev. Jared Sparks, of Boston, a copy of the laws, - - - - - - 135
Appropriation to defray the expenses of his office, 151, 493
To record the bond of the State Treasurer, and send a certified copy to the auditor, - - - - 38
To certify the Governor's approval of the State Treasurer's bond to the Legislature, - - - - 38
To cause 300 copies of the militia law to be printed, 23
To file in his office the bond of officers of companies for arms, - - - - - - - - 20

SERVANTS—
Act concerning apprentices and servants, - - 96
Terms of binding altered, - - - - - - 172
The term "servant" how construed, - - - 107
Minors may be bound, - - - - - - - 96
Negro and mulatto children—when bound, - - 97, 98

SETTLEMENT—
Place of legal settlement, - - - - - - 422
How acquired, - - - - - - - - 422
A person not having a legal settlement, and likely to become a county charge, may be removed, unless, &c. 423
Tho' admitted into the poor house he may be removed, 423
Costs of pauper to be paid by the county where he has a settlement, - - - - - - - - 424
Settlement cases between two counties, how decided, 424
Liability to poor rates, no disqualification to a judge, justice, juror, &c. in a settlement case, - - 430

SHERIFF—
When one who has served as under sheriff shall not be chosen sheriff, - - - - - - - 25
Giving or promising bribes, treats, &c. to promote election of—how punished, - - - - - - 25, 26
Not serving summons in case of forcible entry or detainer, or against tenant for holding over, &c. to pay costs, - - - - - - - - 67

SHERIFF—
To have charge of the gaol, - - - - - - 92
To receive no reward for appointing a keeper of the gaol, 92
To be paid board for prisoners when keeper of the gaol, 92, 93
Not to keep a tavern, ale-house, or public house in the gaol, - - - - - - - - - 93
Shall carry no person arrested to a public house without his consent, - - - - - - - - 93
To receive nothing for ease or favour, or for any fee not allowed by law, - - - - - - - 93
(See *Gaol.*)
On commitment of a runaway apprentice or servant, immediately to give notice to the master, - - 105
When a slave sentenced to be exported shall be sold by the sheriff, - - - - - - - - - 122, 123
His proceedings in case a slave sentenced to be exported, shall after return to this State, - - - 123
His proceedings when a slave for whose exportation bond has been given, or who has been sold for exportation, is not exported within 20 days, - - 123
Sales of slaves by—on conviction of theft, &c. before two justices, - - - - - - - - 124
To give notice of sales of slaves, - - - - - 125
Having sold lands, and dying, or out of office, how deeds shall be made to purchaser, - - - - - 35
To attend trials for forcible entry and detainer and proceedings against tenants for holding over, - - 70
To pay over fines, &c. by him collected, in 90 days, 172
Penalty for neglect, - - - - - - - 173
To take bail bond—when, - - - - - - 238
And assign it to plaintiff on request, - - - 238
His liability for taking insufficient bail, - - - 239
Rule on—to produce the body—when granted, - - 239
To deliver to each court a list of prisoners, &c. - 243
To note the time of receiving executions, - - 252
To make proclamation of vacancies in the office of levy court commissioner, in certain cases, - - 263
Limitation of actions on sheriff's recognizance, - 267
In capital cases, &c. he shall furnish the judges with a copy of the commitment, - - - - - 308
Duties of sheriff to be executed by the coroner—when, 308
Sheriff receiving payment on execution, shall return the fact, and it shall be entered on the record, - 311
Penalty for neglect, - - - - - - - 312
Liability of—for the escape of a person charged in execution, - - - - - - - - - 371
To settle with the auditor, annually, for fines, &c. - 380

SHERIFF—
Penalty for neglect, - - - - - - - 380
To take duplicate receipts for payments to the State Treasurer, and transmit one to the auditor, - 387
To abate nuisances—when. Fee therefor, - - 402
To deliver to the inspectors of an election for electors of President and Vice President, forms, boxes, lists, &c.—when, - - - - - - - 433
Clerk of the Peace to deliver said lists to him, - 433
Duty of sheriff in case of the death of an inspector, 434
To build armories in Kent and Sussex, - - - 438
And deposit public arms therein, - - - - 439
His duty to seize public arms—when, - - - 439

SHOWS—
Penalty for exhibiting certain shows, - - - 281
On owner of lands, &c. permitting the exhibition, - 281

SILK—
Act to encourage the production of, - - - 328
Resolutions to the same effect, - - - - 496

SLAVES—
Act concerning crimes and offences committed by, &c. 120
Committing, or abetting, &c. the commission of a crime made capital by the "Act providing for the punishment of certain crimes and misdemeanors," (*passed* 8 *Feb.* 1826) shall suffer death, - - - 120
Manslaughter by—how punished, - - - - [120] 409
Value of—convicted capitally, shall be assessed by the jury, and two thirds of it allowed to the owner, 120
Assaulting, with intent to murder, or attempting to poison, or to ravish a white woman, &c. how punished, 120, 121
Maliciously, and by lying in wait, cutting out or disabling the tongue, slitting, cutting out, or biting off the nose, lip, or ear of any person, or maiming any person, how punished, - - - - - 121
Breaking and entering the dwelling house of another, with intent to commit felony, how punished, - 121
Assaulting, with intent to commit robbery, - - 121
Setting fire to certain buildings, wheat, grain, or hay in the stack, or abetting the same, - - - 121
Committing or abetting any other crime, made felony by the "Act providing for the punishment of certain crimes and misdemeanors," except larceny, 121
Aiding a felon, with intent that he may escape from arrest or prison, except the felon be the master, &c. 121, 122

SLAVES—
Entering into any plot or conspiracy, - - - 121, 122
How tried for such offences, - - - - - - 122
When a slave sentenced to be exported shall be delivered to his master, and when sold by the sheriff, 122
Proceedings in case a slave exported shall after return to this State, - - - - - - - - 123
Proceedings when a slave, for whose exportation, bond has been given, or who has been sold for exportation, is not exported within twenty days, - - 123
Penalty for obstructing the exporting of slaves sentenced to be exported, - - - - - - - 123–4
Proceedings in cases of slaves stealing or assisting to steal, or receiving or concealing stolen goods, - 124–5
Construction of the phrase "personal property," . 125
Notice of sales of, ... 125
Joining in, or being present at, a riot, rout, etc. . 125
Committing assault and battery on a white person, . 125
on a negro, . . 126
Carrying dangerous weapons, . . . 125
Master to pay costs in cuch cases, . . . 126
Penalty for exporting or attempting to export a slave from this State, or selling or transferring, purchasing or receiving for the purpose, etc. . . 126
Penalty for bringing slaves into this State, . . 126
When slaves may be removed to or from this State, 126, 127
Exported, etc. to be *thereupon* free, . . . 127
Penalty, if any vessel, etc. be prepared or stationed in any harbour, etc. for the purpose of exporting slaves, etc. 128
Construction of the word "slave," . . . 129
Firing woodlands and marshes—how punished, . 29
May be exported or imported by leave of court, . 282
License therefor—fee due on such license, . . 283

SMALL DEBTS—
Act for the recovery of—amended, - - - 167

SMALL MEASURE—
Selling spirituous liquor by, - - - - 51

SMYRNA BANK—
May discount negociable notes drawn in any form, - 117

SOUTH MILFORD—
Swine prohibited from running at large in, - - 218

SPECIALTIES—(See *Bonds.*)

SPECIAL BAIL—
Defendant cannot appear without giving special bail—when, - - - - - - - - - 238

SPIRITUOUS LIQUOR—
Not to be disposed of in gaols, etc. - - - - 93
Penalty for selling by the small measure, - - - 51

ST. PETERS' CHURCH, in Wilmington, - - - 248

ST. GEORGES—
Election ground changed, - - - - 117
Swine prohibited from running at large in, - 40, 216, 219

STATE TREASURER—
Bond of, - - - - - - - - - - 37
His bond must be given in seven days, or another person appointed, - - - - - 38
Vacancy in the office of—how supplied, - - 38
Proceedings on his bond—by whom to be directed, 38
To receive the balance of fines from military commissaries, - - - - - - - - - - 17
To transmit to the Auditor an account of the amount received, - - - - - - - - 17
Limitation of actions on his official bond, - - 267
To settle with the Auditor, annually, in December, 379
Penalty for neglect, - - - - - - 380
To issue warrants for the collection of State taxes, - 384
He may appoint collectors, for whom he shall be responsible, - - - - - - 382
He shall first take from them bonds and security, - 383
His appointment of collectors to be certified to the Auditor, - - - - - - 382
Proceedings in case of the death of a collector, - 384
In such case the execution of his warrant devolves on his ex'r. or adm'r.—subject, &c. - - - 384
If more than its portion of tax be raised in any county, the surplus to be paid to the county treasurer, - 385
To pay orders drawn on him for printing a new edition of laws, - - - - - - - 449
To pay certain claims against the State, - 151, 154, 491-3
Authorized to borrow ten thousand dollars, - - 494
To be applied to the support of government, - - 494
Ezekiel Cowgill appointed State treasurer, - - 159, 495

STOCK—
In any incorporated company, may be *attached & sold*, 340
Notice of such sale, - - - - - 341
Order of sale, not to issue till final judgment, - - 342
Money arising from the sale of—how applied, - 342

STONED HORSES—
Liability of owners for suffering them to run at large, 39

STRAYS—
To be advertised by the person taking them up, - 169
Owner not appearing in thirty days, a description of the stray to be filed before the nearest Justice, - 170
Justice to appoint freeholders to appraise the stray, - 170
And put up advertisements, - - - - 170
And cause the same to be published in the newspapers in certain cases, - - - - - 170
Shall order a sale—when, - - - - 171
Owner appearing, shall have the stray upon payment of charges, &c. 171
Stray beasts of burden may be used, . . . 171
Fees of Justice—of freeholders—of constable—in cases of strays, ... 171

SUMMONS—
Warrant of—in forcible entry and detainer, . . 61
In proceedings against tenant holding over, . . 63
Date and return day of, and when to be served, . 67

SUPERINTENDANTS OF FREE SCHOOLS—
To be appointed—their duties—no compensation, . 196

SURETIES AND JOINT DEBTORS—
Not released by an adjudication to serve creditors, . 143

SURVEYORS—
Authorized to qualify chain carriers, (See *Intestate.*) 182

SURVIVORSHIP—
Of actions among joint parties, (See *Joint Parties—Abatement.*)

SWINE—
Running at large within certain limits, may be impounded, ... 214
Notice to be given of such impounding, . . . 214
May be sold by a constable, ... 214

SWINE—
To be restored—when, ... 215
Trespassing on enclosed ground, may be killed, . 215
Notice of such killing to be given to the owner, . 215
Limits to which these provisions are applicable:—
Part of Appoquinimink hundred, ... 216
The town of St. Georges, ... 216
Cantwell's Bridge and parts adjoining, . . . 216
Old Duck creek, ... 216
Part of Duck creek hundred, . . . 216
Kenton, ... 217
Dover, ... 217
Camden, ... 218
Frederica, ... 218
Milford, ... 218
South Milford, ... 218
Milton, ... 218
Lewestown, ... 219
Laurel, ... 219
Georgetown, ... 219
Bridgeville, ... 219
Seaford, ... 219
Proviso respecting Seaford, Milton and Milford, . 219
Not to run at large in Pencader hundred, part of St. Georges and Appoquinimink hundreds, . . 219

T

TENANT—
Landlord's remedy, where tenant is about to remove his goods before the rent is due, - - - - - 353
By attachment on affidavit, - - - - - 353
Goods to be discharged upon tenant giving bond, &c. 353
Otherwise they may be sold by order of the court, 354
If tenant deny the rent, the court shall direct an issue, 354
Landlord's remedy, where tenant is about to leave the State before the rent is due, - - - - 354
Not to remove straw, husks, &c. from demised premises, 356
Three months' notice necessary to determine a tenancy, 357
Penalty for not giving up, after notice, - - - 357
To give landlord notice of declarations in ejectment, 357
Penalty for neglect, - - - - - - - 357
To give him notice of writs of dower and partition, - 361
Penalty for neglect, - - - - - - - 361

TENANT—
Payment of rent without notice of a grant, a good discharge, - - - - - - - - - 367
Tenants of mills to keep in order bridges over race, etc. 393
And to erect coverings over the mill wheels, - - 393
Penalty for neglect, - - - - - - 394
May deduct the costs thereof, out of the rent, - - 395
(See *Rent—Landlord.*)
Holding over after notice to quit—
Proceedings against, - - - - - - - 63
Two Justices to have cognizance of such cases, - 63
Form of warrant of summons, & when to be served, &c. 63, 64, 67
Demise—how laid, - - - - - - 65
Every tenancy to be construed to be from year to year, except, &c. - - - - - - 65
Notice to quit, - - - - 63, 65, 66
The benefit of notice to quit, shall pass with the estate, 66
Proceedings by remainder-man, or reversioner, on death of tenant for life, &c, - - - - 65, 66
When tenant shall not dispute his landlord's title, - 66
Form of verdict for plaintiff, judgment and execution, 66
Damages—what and how to be recovered, - - 67
Day of trial—mode of trial, - - - - - 67, 68
Adjournments—costs of adjournments, - - 67
Oaths of jurors, - - - - - - 68
When cause may be proceeded in, in defendant's absence, 68
Defect of jurors—how supplied, - - - 68
Verdict for defendant, judgment and execution for costs, 68
Witnesses—their attendance, how compelled, - - 68
when summoned to increase costs, how the fees shall be paid, - - - 68, 69
Form of warrant for possession, damages and costs, 69
Execution, how issued in case no goods to pay damages and costs, can be found, ... 69
Jurors refusing to serve—how punished, . . 70
Penalty on sheriff or coroner, not attending trials under this Act, ... 70
What entries shall be made of the proceedings, . 70
Judgments not to be reversed for formal defects, . 70
Certiorari not a supersedeas of execution, . . 70
Restitution—when awarded on a reversal, . . 70
Fees of witnesses and sheriff, . . . 71

TENANTS IN COMMON—
Liable to mutual actions for use and occupation, . 364
Liable to mutual actions of waste, . . . 365

TESTIMONY—
Respecting bounds of lands—how perpetuated, - 225
By application to Chancery, - - - - 225
Persons interested to be summoned, - - - 225
Depositions of witnesses—how taken, - - - 225
Costs of these proceedings—how paid, - - - 226

TREASURER OF THE TRUSTEES OF THE POOR—
To be appointed annually by the trustees of the poor, 417
To give bond and security, - - - - - 418
Appointment to be void without security, - - 418
To settle with the Levy Court, annually, on the first Tuesday of February, - - - - - 419
No allowance to be made him without a voucher, except, etc. - - - - - - - 419
To settle with the auditor, annually, - - - 379
Penalty for neglect, - - - - - - 380
Poor tax to be paid to him, - - - - 430
Not to furnish any article for the poor house, - - 431
Penalty for so doing, - - - - - 431
Limitation of actions on his official bond, - - - 267

TRESPASS—
Jurisdiction of Justices of the Peace, in case of, - 257
Proceedings in—before Justice of the Peace, - - 257
Plaintiff to file a statement of the injury, - - - 258
Costs in—to be paid by the Justice—when - - 258
Case to be removed to the Court of Common Pleas or Supreme Court—when, - - - - - - 258

TRIAL—
For forcible entry and detainer, - - - - 60
Against tenants, for holding over after notice to quit, 63
Of slaves for crime, - - - - - - 120, 124

TRUSTEES OF THE POOR—
To be appointed by the Levy Court, annually, in Feb. 416
To be sworn or affirmed, - - - - - - 416
Penalty for refusing to serve as a trustee, - - 416
Number and residence of—in the several counties, - 414
Term of office. Qualifications, - - - - 415
Term of trustees now in office, - - - - 415
In the several counties, incorporated, - - - 416
Corporate powers, - - - - - - 416
To have charge of the poor in their respective counties, 417
To meet four times a year, at stated periods, - 417
A majority constitutes a quorum to do business, - 417

TRUSTEES OF THE POOR—
The board shall keep a register of their transactions, 417
To appoint their officers annually, in April, - - 417
"Treasurer of the trustees of the poor" to give bond, 418
Appointment to be void without surety, - - - 418
To appoint an overseer of the poor house, - - 419
He shall give bond, &c. His duties, - - - 419
Any two trustees may dismiss a pauper, - - 420
Trustees to fix the salary of the overseer, - - 420
May appoint other officers, &c. and make them compensation, - - - - - - - - - 420
May make rules for the government of the poor, - 420
May bind negroes, &c. having bastard children at the poor house, - - - - - - - 420
Form of such binding, - - - - - - 420
No pauper supported in the poor house, shall marry, 421
Penalty on overseer for conniving at such marriage, 421
On preacher for solemnizing such marriage, - - 421
Penalty for dealing with paupers without overseer's consent, - - - - - - - - - 421
Paupers *out of the poor house*, may be relieved—when, 421
Allowance for burial charges—how obtained, - - 421
In Sussex county, paupers may be supported out of the poor house—when, - - - - - 422
Account thereof, to be kept, and laid before the Levy Court, - - - - - - - - - 422
Legal settlement—place of—and how acquired, - 422
Person having no legal settlement, and likely to become a charge on the county—how removed, - - 423
Such person admitted into the poor house, may be removed, - - - - - - - 423
Costs of pauper to be paid by the county where he has a settlement, - - - - - - - - - 424
Settlement cases between counties—how decided, 424
Liability of parents to support their children, and of children to support their parents, - - - - 424
If husband desert his wife, or parents their children, the trustees have power to sequester their goods.&c. 425
Appeal from such sequestration to the Court of Quarter Sessions, - - - - - - - - - 427
Lien of such sequestration, - - - - - 426
Goods, &c. sequestered, may be sold, and credits collected, - - - - - - - - - - 426
Trustees may require persons importing and employing non-resident paupers, to give security for their removal, - - - - - - - - - 428

TRUSTEES OF THE POOR—
Liability of corporations for introducing, &c. non-resident paupers, - - - - - - - 428
Duty of trustees in case of the binding imported persons, - - - - - - - - - 375
To grant licenses for landing emigrants to this country, 429
Their duty on granting such licenses, - - - 429
To account with Levy Court for disbursements—when, 430
Expenses of the poor house to be published annually, 430
No trustee to furnish any article for the poor house, 431
Penalty for violating this provision, - - - 431
How and when the trustees may bind minors as apprentices and servants, - - - - - - - 96

TRUSTEE OF THE SCHOOL FUND—
To return the proceedings of the school commissioners to the General Assembly, - - - - 185–7
His duty in apportioning and paying the income of the school fund to the school districts, - - - 192
Payments to be certified to the auditor, - - - 194
To transfer $3,000 to the State treasury, - - 448
That sum to be a loan to the State, - - - 449
To pay certain claims for the tuition of poor children, 489
To invest certain stocks, and report to auditor, - 157

TURNPIKES—
Wilmington and Great Valley, - - - - - 24
From Wilmington to the Pennsylvania line, toward Philadelphia, - - - - - - - 60
New-Castle Turnpike Company, - - - 313
New-Castle and Frenchtown Turnpike Company, 319

U

UNDER SHERIFF—
Not eligible as Sheriff—when, - - - 25

UNIFORM—
Of the militia, - - - - - - - - - 5, 6, 10

UNITED STATES—
Cessions to the, - - - - - - - - - 31, 52

USE—
The legal estate shall accompany the use and pass with it, 295

USE AND OCCUPATION—
Action of—when it lies, - - - - - - 253
Not to be defeated by evidence of demise, without deed, 253
Lies against one joint tenant or tenant in common at the suit of another, - - - - - - - 364

V

VERDICT—
In forcible entry and detainer, - - - - - 62
In proceedings against tenant holding over, - - 66

VESSEL—
Prepared or stationed for exporting slaves, - - 128

VOLUNTEER COMPANIES—(See *Militia.*) - - 4, 5, 6, 9, 10

VOTING—
Bribes, treats, &c. by Sheriff, to influence—how punished, 25

W

WARRANTY—
Made by tenant for life, not to affect reversioner, etc. 368
Collateral—effect of, - - - - - - 368

WASHINGTON BENEFICIAL SOCIETY OF WILMINGTON, - 133

WASTE—
Action of—when it lies, - - - - - - 364
Against an assignee, - - - - - - 364
Against husband, of tenant in dower, - - - 365
Between joint tenants and tenants in common, . . 365
By an heir for waste done in time of his ancestor, . 365
Against executors and administrators, . . 365
Not to abate by the death of either party, . . 365
Judgment in an action of waste, . . . 365
Accidental fire, not waste, ... 365
Limitation of the action of waste, . . . 365
Writ of waste—how served, ... 365
Judgment by default, ... 365
When a writ of estrepement shall be awarded, . . 365

WEAPONS—
Slaves carrying—how punished, ... 125

WHIPPING—
Slaves whipped for crime—when, ... 120

WIDOW—
Her dower, ... 77
Dower not to be appraised, but always assigned, . 81
Of one whose husband, before marriage, had made a will, not providing for her, ... 119

WILL—
Lands are devisable by will, ... 221
Who may make a valid will, ... 221
Disability, ... 221
Requisites of a valid will, ... 221
Creditor, etc. may be a witness to a will, ... 222
Manner of revoking wills, ... 222
Nuncupative wills—when valid, ... 222
Will made out of the State—how verified, ... 222
Copy of a will recorded, etc.—evidence, ... 223
To be proved in the county where deceased resided, . 465
How proved, in case of a non-resident, ... 465
Wills being proved, to be recorded, ... 465
Originals to be preserved in the Register's office, . 465
Proof of—how taken, ... 465
Notice thereof—when to be given, ... 465
Review of such probate, to whom granted, and how, 466
Caveat against, shall be received at any time before proof, 466
Proceedings on a caveat, ... 466
Will being allowed, letters to be granted thereon, . 467
Child born after will made, and unprovided for, to take as if the parent died intestate, ... 118
Widow of one whose husband, before marriage, had made a will, not providing for her, shall have dower, as if he had died intestate, ... 119
Made, when testator had no issue; revoked if he leave a child, - - - - - - - - - 119

WILLIAMSVILLE—
Name of Guinea-Town, changed to, - - - - - 59

WILMINGTON AND BRANDYWINE AMICABLE SOCIETY, 326

WITNESSES—
In cases of forcible entry, &c. and of tenants holding over, 68

WITNESSES—
Their fees in such cases, - - - - - - 68-9, 71
Depositions of—respecting bounds of lands—how taken, 225
The mother a competent witness in cases of bastardy, 230
Her dying declarations—when evidence, - - 230
Fees of—not to be purchased before allowance, - 374

WOOD CORDERS—
To be appointed by the Court of Quarter Sessions, annually, - - - - - - - - - 234
Vacancies to be filled by Justices of the Peace, - 234
They may appoint deputies, - - - - 234
Penalty for buying or selling unmeasured wood, - 235
Penalty on—for neglecting to measure wood on request, 235
Fees of wood corders, ... 234
Length of wood, ... 235

WOOD LANDS—
Penalty for firing, ... 28

WRIT OF POSSESSION—
When awarded to a purchaser of land sold on execution, 33

R. W. PETERSON—Printer.

END

OF

VOLUME